

PROVISIONS TO BE CONSIDERED	NOTES
<p style="text-align: center;">INTRODUCTION</p> <p>Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) and PARTNERSHIP AGREEMENT PROCEDURE (B-8) checklists. The provisions suggested in this checklist must be considered in relation to the particular facts in the matter at hand, and augmented and revised as appropriate. This checklist is current to September 1, 2016. All section references are to the <i>Partnership Act</i>, R.S.B.C. 1996, c. 348, unless otherwise indicated.</p> <p>New developments:</p> <ul style="list-style-type: none"> • Changes to the Partnership Act. The <i>Societies Act</i>, S.B.C. 2015, c. 18, which will come into force on November 28, 2016 (B.C. Reg. 216/2015), will amend s. 90.4(2) of the <i>Partnership Act</i>, R.S.B.C. 1996, c. 348 in regard to the knowledge requirement for director and officer liability relating to false or misleading statements by a corporation. The <i>Finance Statutes Amendment Act, 2012</i>, S.B.C. 2012, c. 12 includes amendments to the <i>Partnership Act</i> that are not yet in force. Amendments affecting forms of registration statements and notices, registration of foreign partnerships, and reservation of names do not currently have dates for coming into force. It is strongly recommended that practitioners verify their status prior to drafting any partnership agreement. • Law Society Rules. On July 1, 2015, revised and consolidated Law Society Rules came into effect. See www.lawsociety.bc.ca/page.cfm?cid=4089&t=Law-Society-Rules-2015. • Code of Professional Conduct for British Columbia (the “BC Code”). In July 2015, rule 3.7-9 of the <i>BC Code</i> was amended to require that a lawyer promptly notify the client, other counsel, and the court or tribunal of the lawyer’s withdrawal from a file. • Articled students permitted to act as commissioners for taking affidavits. Effective September 1, 2015, articled students and temporary articled students are prescribed as persons who are commissioners for taking affidavits in British Columbia (B.C. Reg. 142/2015, pursuant to s. 60(1) of the <i>Evidence Act</i>, R.S.B.C. 1996, c. 124). Principals remain responsible for students’ actions and will need to ensure that students understand the effect of acting as commissioner. <p style="text-align: center;">CONTENTS</p> <ol style="list-style-type: none"> 1. Initial Contact 2. Effective Date of Agreement 3. Identification of Parties 4. Recitals 5. Interpretation 6. Partnership 7. Conduct of the Affairs of the Partnership 8. Financing 9. Partnership Property 10. Transfer and Encumbrance of Interest in Partnership 11. Effect on the Partnership of Various Events 12. Dissolution 13. Miscellaneous and General Provisions 	

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<p style="text-align: center;">CHECKLIST</p> <p>1. INITIAL CONTACT</p> <p>1.1 Confirm compliance with Law Society Rules 3-98 to 3-109 on client identification and verification, and complete the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist.</p> <p>2. EFFECTIVE DATE OF AGREEMENT</p> <p>3. IDENTIFICATION OF PARTIES</p> <p>3.1 Distinguish general and limited partners.</p> <p>3.2 Provide for the addition of partners.</p> <p>4. RECITALS</p> <p>4.1 General statement of the legal relationship between the parties and the reasons for entering into the agreement.</p> <p>4.2 Statement relating the recitals to the rest of the agreement.</p> <p>5. INTERPRETATION</p> <p>5.1 Definitions:</p> <p>.1 Specific definitions (consider setting out in a schedule).</p> <p>.2 Statement that accounting terms not defined have the meanings ascribed to them in accordance with generally accepted accounting principles, including any new applicable principles based on International Financial Reporting Standards.</p> <p>5.2 Choice of law and forum.</p> <p>5.3 General principles that govern the interpretation of the agreement (e.g., use of the masculine form, insertion of headings for convenience only).</p> <p>5.4 Schedules, such as:</p> <p>.1 Definitions (see item 5.1.1).</p> <p>.2 Pro forma budget (see item 7.8).</p> <p>.3 Assets that are partnership property (see item 9.2).</p> <p>6. PARTNERSHIP</p> <p>6.1 Establishment of the partnership.</p> <p>6.2 Name:</p> <p>.1 Note any limits on names and business name reservation provisions for all partnerships (see the PARTNERSHIP AGREEMENT PROCEDURE (B-8) checklist and the introduction to this checklist, which notes pending changes to the <i>Partnership Act</i>).</p> <p>.2 For a limited partnership, ensure compliance with s. 53.</p> <p>.3 For a limited liability partnership, use the permitted descriptions at the end of the business name (s. 100).</p>	

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<p>.4 Consider provisions regarding amendment and, where the partnership name includes the names of partners, retention or deletion of the name of a departed partner and indemnification from any liability resulting from continued use of that name.</p> <p>6.3 Description of business.</p> <p>6.4 Place or places of business.</p> <p>6.5 Offices. Consider whether the partnership should be extraprovincially registered in other jurisdictions. Note the streamlined provisions for extraprovincial registration of limited partnerships and limited liability partnerships in Alberta and Saskatchewan under the New West Partnership Trade Agreement (the “NWPTA”). Under the Trade, Investment and Labour Mobility Agreement (the “TILMA”), British Columbia and Alberta agreed to reconcile their business registration and reporting requirements, so that an enterprise meeting the requirements of one province would also be deemed to meet the requirements of the other province. Saskatchewan was added to the arrangement under the NWPTA. Under Part 7 of the <i>Partnership Act</i>, the Lieutenant Governor in Council may name “designated provinces” and make regulations affecting foreign partnerships, limited partnerships, and extraprovincial limited liability partnerships from such a province. Presently, only Alberta and Saskatchewan are “designated provinces”. For information about corporate registry procedures pursuant to the <i>New West Partnership Trade Agreement Implementation Act</i>, S.B.C. 2011, c. 3, see the NWPTA page on the Corporate Registry website at www.bcregistryservices.gov.bc.ca. For registration requirements outside British Columbia with respect to general partnerships, consult the partnership legislation of the province in question.</p> <p>6.6 Term. For example, does it commence before execution (note that limited partnerships do not commence until the certificate is filed, and limited liability partnerships do not become such until the registration statement is filed, and therefore activities prior to those times could have been undertaken as general partners), or does the partnership continue until a specified date, or until terminated as provided in the agreement?</p> <p>6.7 Addition of partners:</p> <ol style="list-style-type: none"> .1 Terms and conditions. .2 Restrictions (e.g., maximum number of partners). <p>7. CONDUCT OF THE AFFAIRS OF THE PARTNERSHIP</p> <p>7.1 Duties and powers of partners, including any restrictions on powers, distinguishing where appropriate between types of partners (i.e., general and limited) and individual partners, and including such matters as:</p> <ol style="list-style-type: none"> .1 How major decisions are made (e.g., see item 8.7 of the SHAREHOLDERS’ AGREEMENT DRAFTING (B-7) checklist). .2 How day-to-day decisions are made. .3 Partners’ duties to be considered: <ol style="list-style-type: none"> (a) Duty to devote full energy, a specified amount of time, or a particular skill to the business of the partnership, subject to any prescribed right to vacations and sabbaticals and subject to any carve-out of activities not intended to be covered by the partnership agreement. 	

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<p>(b) Duty not to compete (and what constitutes competition) while a partner and for a reasonable time thereafter, within a reasonable geographic area, or not to solicit customers or employees for a reasonable time after ceasing to be a partner. Alternatively, consider provision for payment of a specified sum, or a reduction in capital to be returned, in the event the partner competes with the partnership or solicits clients after ceasing to be a partner.</p> <p>(c) Duty not to disclose or use any confidential information acquired by reason of the partner's association with the partnership, both while a partner and for a reasonable time thereafter.</p> <p>(d) Methods for authorizing exceptions.</p> <p>.4 Filing a registration statement for a general partnership under ss. 81 and 82, if required.</p> <p>.5 Specific duties of the general partner of a limited partnership, such as:</p> <p>(a) Filing s. 51 certificate and any amendments or cancellations that may be required.</p> <p>(b) Establishing an office and keeping records there (as required for a limited partnership, pursuant to s. 54).</p> <p>.6 Filing a registration statement under s. 96 for a limited liability partnership.</p> <p>7.2 Is a partners' committee to be established? Will it have specified duties and powers (e.g., its consent may be required for specified major decisions or for permitting a partner to compete or act in a conflict of interest) while considering the liability position of limited partners?</p> <p>7.3 General partner has power of attorney for limited partner(s) for specified purposes (e.g., filing amendments to certificate of limited partnership).</p> <p>7.4 Meetings, including rights of limited partners:</p> <p>.1 Place and time.</p> <p>.2 Calling a meeting, including notice requirements.</p> <p>.3 Quorum and voting.</p> <p>.4 Record date.</p> <p>7.5 Liability of partners, distinguishing general and limited partners, and including liability of general partner to limited partners and provisions applicable in a limited liability partnership.</p> <p>7.6 Indemnification of the partnership and the partners, distinguishing general and limited partners in various circumstances and, where appropriate, partners in a limited liability partnership.</p> <p>7.7 Whether a general partner may also be a limited partner.</p> <p>7.8 Pro forma budget (consider attachment as a schedule and inclusion of a statement of intent).</p> <p>7.9 Whether a partner is to be employed by the partnership and, if so, consider:</p> <p>.1 Including employment provisions in the partnership agreement.</p> <p>.2 Having a separate employment or management contract tied to the partnership agreement so that a default by the partner under either the employment contract or the partnership agreement would constitute a default under both agreements.</p>	

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<p>7.10 Fiscal year.</p> <p>7.11 Bank and accounts.</p> <p>7.12 Signing officers.</p> <p>7.13 Auditor/accountant.</p> <p>7.14 Books of account, financial statements, accounting principles.</p> <p>7.15 Access of limited partners to the books and records.</p> <p>7.16 Reports and statements required to be made to partners, including those by the general partner(s) to the limited partners.</p>	
<p>8. FINANCING</p> <p>8.1 Define the interest of each partner in the partnership as a percentage, as units (possibly of different classes), or otherwise.</p> <p>8.2 Initial capital contribution required and the basis on which it is determined.</p> <p>8.3 Mechanisms by which the partnership may raise additional funds for working capital or otherwise:</p> <p>.1 Borrowing from an institutional lender:</p> <p>(a) Whether the partnership is required to try to obtain funds in this manner before turning to the partners (as described in item 8.3.2).</p> <p>(b) Whether the partners are required to enter into guarantees of indebtedness of the partnership (such guarantees are usually required by the lender to be joint and several, in which case include an appropriate provision for mutual indemnification).</p> <p>.2 Additional loans or capital contributions from the partners:</p> <p>(a) Circumstances in which the partnership may require this, how the decision is made, and whether there is a maximum amount that may be demanded.</p> <p>(b) Basis of contribution (e.g., on percentage of interest).</p> <p>(c) Notice requirements.</p> <p>(d) Partners' obligation (or option) to advance funds.</p> <p>(e) Where the partners are obligated to advance funds, a provision for consequences of failure to do so (e.g., reduction of interest).</p> <p>8.4 Whether the capital contributions or loans of the partners bear "interest", and if so, how it is calculated and paid (note that compensation on capital contributions is not really interest but a charge against surplus, and current tax advice is appropriate).</p> <p>8.5 Whether and in what circumstances capital contributions can be withdrawn or loans required to be repaid.</p> <p>8.6 Other contributions that may be or are required of partners (e.g., property, services).</p> <p>8.7 Obligations of partners to provide their own equipment, cars, office furniture, etc.</p> <p>8.8 Obligations of partners with respect to costs and expenses.</p>	

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<p>8.9 Matters relevant to the determination of taxable income, such as the rate at which capital cost allowance (“CCA”) is claimed, whether deductible expenses are capitalized, etc.</p> <p>8.10 Allocation of profits and losses.</p> <p>8.11 Distributions:</p> <ol style="list-style-type: none"> .1 In what amounts distribution will occur (e.g., except as prohibited by the terms of debt financing, and to the extent permitted by law, after provision (by a specified mechanism) for necessary reserves). .2 Frequency of distribution. .3 Basis for distribution (e.g., based on each partner’s book equity, percentage of interest). 	
<p>9. PARTNERSHIP PROPERTY</p> <p>9.1 Lease, sale, or contribution of property by partners to the partnership.</p> <p>9.2 Statement of assets that are partnership property (consider attaching a schedule).</p> <p>9.3 Statement of types of assets that will become partnership property.</p> <p>9.4 Statement affirming types of assets that will not become partnership property (desirable when property is co-owned by partners who wish to claim CCA at different rates).</p> <p>9.5 Statement regarding the nature of the interest of each partner in the partnership and its assets (e.g., whether the interest consists of contractual rights).</p>	
<p>10. TRANSFER AND ENCUMBRANCE OF INTEREST IN PARTNERSHIP</p> <p>10.1 No partner shall dispose of or mortgage his or her interest except as set out in the agreement (ensure that the agreement specifies any differences between general and limited partners).</p> <p>10.2 Conditions that must be met before a partner may dispose of his or her interest, including consideration of:</p> <ol style="list-style-type: none"> .1 Written consent of all the other partners. .2 Right of first refusal to be offered to the other partners. See, for example, item 10 of the SHAREHOLDERS’ AGREEMENT DRAFTING (B-7) checklist, and adapt it to the circumstances. .3 Piggy-back rights pursuant to which the partner may dispose of his or her interest pursuant to a right of first refusal only if the purchaser also purchases the interests of all, or certain of, the other partners on their request. .4 Drag-along rights where a selling partner may require other partners to sell their interests on the same terms, if they do not exercise their rights of first refusal to buy. <p>10.3 Circumstances in which a partner may force the purchase of that partner’s interest or the sale of another partner’s interest, including consideration of:</p> <ol style="list-style-type: none"> .1 A compulsory buy-out (roulette or shotgun clause). See, for example, item 11 of the SHAREHOLDERS’ AGREEMENT DRAFTING (B-7) checklist, and adapt it to the circumstances. 	

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<p>.2 A piggy-back clause providing that a partner may require the other partners to join in the sale of all of their interests to an outsider. See, for example, item 12 of the SHAREHOLDERS' AGREEMENT DRAFTING (B-7) checklist, and adapt it to the circumstances.</p> <p>.3 A drag-along clause providing that a partner may require the other partners to purchase that partner's interest upon the occurrence of specified events (e.g., retirement from the work force or from active involvement in the partnership).</p> <p>10.4 A defaulting partner is not entitled to dispose of the defaulting partner's interest pursuant to the above provisions, unless prior to or concurrently with the transfer that partner ceases to be a defaulting partner.</p> <p>10.5 Consider including a set-off where the seller is indebted to the partnership.</p> <p>10.6 Conditions upon which a transferee will be admitted as a partner.</p> <p>10.7 Obligation of the partners, where a partner has disposed of all of the partner's interest in compliance with the agreement, to use all reasonable efforts to have any guarantee or pledge given by the partner discharged or cancelled, and to indemnify the departing partner for those liabilities after the partner's departure.</p> <p>10.8 Consider circumstances in which a potential purchaser under item 10.2.2 or item 10.3.1 can decide not to close, or can renegotiate the purchase price (e.g., material adverse change before closing, breach of representations and warranties, failure to obtain requisite consents and approvals).</p>	
<p>11. EFFECT ON THE PARTNERSHIP OF VARIOUS EVENTS</p> <p>11.1 Provision for various events, including their effect and the procedures to be followed:</p> <ol style="list-style-type: none"> .1 Withdrawal from the partnership. .2 Retirement from the partnership. .3 An active partner's incapacity or inability to work. .4 Expulsion from the partnership (note that reasonable notice must be given before a partner is expelled). .5 Death (also consider a provision that the partnership or partners be required to maintain life insurance policies on each other, to be used in financing a compulsory purchase of a deceased partner's interest). See also items 15 (insurance policies), 16 (sale on death), and 17 (wills/alter ego trust) of the SHAREHOLDERS' AGREEMENT DRAFTING (B-7) checklist. <p>11.2 Default:</p> <ol style="list-style-type: none"> .1 Circumstances that constitute a default, such as: <ol style="list-style-type: none"> (a) Failure to carry out obligations under the agreement for a specified period of time after the other partners have made a written demand that the failure be cured. (b) Failure to defend assiduously a proceeding affecting possession or management of the partner's interest for a specified period of time after the other partners have made a written demand that the failure be cured. 	

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<ul style="list-style-type: none"> (c) Bankruptcy, commission of an act of bankruptcy, the appointment of a receiver or receiver-manager with respect to the partner's assets, or an assignment for the benefit of creditors or otherwise. (d) Change in control of a corporate partner. (e) Termination of employment, retirement or death of a partner, or of a representative of a partner which is a corporation or other legal person, who was employed by the partnership. (f) Incapacity (as defined in the agreement). <p>2. Consequences of default (indicate if consequences differ for different types of default; indicate alternatives), such as:</p> <ul style="list-style-type: none"> (a) Dissolution. (b) Other partners may waive the specific default. (c) Other partners may pursue any remedy available in law or equity. (d) Other partners may take such actions as may reasonably be required to cure the default, in which case expenses shall be recoverable as provided in the agreement. (e) Implementation of a buy/sell procedure, whereby the defaulting partner is deemed to offer to sell all or a part of the partner's interest to the other partners, possibly at a reasonably discounted value. 	
<p>12. DISSOLUTION</p> <p>12.1 The partnership will be dissolved in the circumstances specified (e.g., written consent of the parties, insolvency of the partnership).</p> <p>12.2 The partnership will not be dissolved in the circumstances specified.</p> <p>12.3 Procedures to be followed upon dissolution (e.g., notices to creditors).</p>	
<p>13. MISCELLANEOUS AND GENERAL PROVISIONS</p> <p>13.1 Interest rate on any funds required to be paid to other partners.</p> <p>13.2 Valuation methods (e.g., to value an interest in the partnership, the purchase price in various circumstances).</p> <p>13.3 Whether insurance is to be carried by the partnership or the partners (e.g., life insurance (see item 11.1.5), income protection, accident insurance).</p> <p>13.4 If a partner disposes of all of the partner's interest, in compliance with the agreement, then the partner is bound by only the rights and obligations that arose pursuant to the agreement prior to that disposition.</p> <p>13.5 Execution of further assurances.</p> <p>13.6 Entire agreement.</p> <p>13.7 Amendments may be made as provided in the agreement (specify the type of amendment and the procedure that must be followed for each, particularly notice and consent requirements).</p> <p>13.8 Any provision having the effect of imposing on a limited partner the duties of a general partner shall be of no force and effect.</p> <p>13.9 Severability of invalid provisions.</p> <p>13.10 Time is of the essence.</p>	

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<p>13.11 Failure to insist upon strict performance of any provision of the agreement shall not prevent a subsequent violation of the agreement from having the effect of an original violation.</p> <p>13.12 Notices:</p> <ul style="list-style-type: none">.1 Addresses for service..2 Prepaid registered mail, facsimile, email, or other arrangement..3 Deemed date of receipt, including effect of any postal strike. <p>13.13 Dispute resolution, with initial reference to parties' executives and discretion (or not) to elect mediation, arbitration, or recourse to the courts. (The first Protocol of Amendment to the NWPTA was signed on January 6, 2015, resulting in amendments that clarify labour mobility language and dispute resolution provisions.)</p> <p>13.14 Binding on heirs and executors, successors and assigns.</p> <p>13.15 Validity of counterparts, execution by facsimile or other specified electronic means, and other adopting instruments.</p>	