INTRODUCTION

Purpose and currency of checklist. This checklist is designed to be used with the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1), CLIENT FILE OPENING AND CLOSING (A-2), and ASSET PURCHASE PROCEDURE (B-1) 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. The checklist is current to September 4, 2024.

LEGEND

☐	⚡	⏰
Checkbox	**Important Reminder**	**Deadline or Limitation Date**

NEW DEVELOPMENTS

- ***Investment Canada Act.*** Recent amendments to the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.) and changes to policy announced by the Minister of Innovation, Science and Industry (the "Minister") continue to address changing threats that can arise from foreign investment.
  - **Modernization.** *An Act to Amend the Investment Canada Act*, S.C. 2024, c. 4 received Royal Assent on March 22, 2024, with amendments coming into force September 3, 2024. The amendments further the Minister's ability to detect, review, and restrict foreign investments that are potentially injurious to Canadian national security.
  - **Investment digital media sector.** Foreign investors and Canadian businesses in the investment digital media sector (the "IDM sector") must review their investment plans for potential connections to entities owned or influenced by hostile foreign states and consult with Innovation, Science and Economic Development Canada's Investment Review Division at least 45 days before implementing any investment. Foreign investors in Canada's IDM sector must ensure their investments support the creation and retention of Canadian intellectual property and comply with stringent undertakings and possible reviews for net benefit by the Minister of Canadian Heritage, focusing on maintaining Canadian control and cultural expression.
- **Mandatory disclosure regime to report transactions.** Enhanced mandatory disclosure rules under ss. 237.3 to 237.4 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) consist of changes to the existing reportable transaction rules and a new rule to report "notifiable transactions". These rules apply to transactions occurring after June 21, 2023. Members of the legal profession are caught by the rules through the definition of an "advisor" and are therefore exposed to the possibility of substantial penalties. Legal professionals are currently exempt from the rules pending determination of the Federation of Law Societies' of Canada's challenge to the constitutionality of these rules on the grounds that they infringe the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), c. 11 (specifically, that the rules create potential conflicts of interest between legal professionals and their clients). Other parties, such as clients and accountants, are not exempt from the rules. Lawyers should consider advising their clients to consult with accountants and other professionals, such as tax counsel, on their obligations as well as updating their reporting correspondence.

- ***Land Owner Transparency Act*.** The *Land Owner Transparency Act*, S.B.C. 2019, c. 23 (the "*LOTA*") requires a transparency declaration or report (if applicable) to be filed with the Land Owner Transparency Registry (the "LOTR") any time an application is made to register or transfer an interest in land under the *Land Title Act*, R.S.B.C. 1996, c. 250. A reporting body under the *LOTA*—which includes most corporations, trusts, and partnerships, subject to limited exceptions—must file a transparency report any time there is a change in interest holders or beneficial owners, even if legal title is not transferred. Amendments to the *LOTA* came into effect November 20, 2023 and include new definitions for "Surveyor of Taxes" and "transferee". The amendments are to enhance the accuracy and completeness of transparency declarations and provide the ability to correct previously filed transparency declarations (s. 10.2), particularly where information was incorrect, or a reporting body was omitted (s. 15.2). Additionally, reporting bodies are now required to file a transparency report within two months after receiving a notification from the Surveyor of Taxes regarding a revested property (s. 15.1). For further information, see the Land Owner Transparency Registry website and also the course presentation and materials by S. Carter, R. Danakody, and C.R. MacDonald, "Land Title and Survey Authority of British Columbia: Land Owner Transparency Registry", in *Residential Real Estate Conference 2020* (CLEBC, 2020) and R. Danakody and T. Norman, "Land Owner Transparency Registry (LOTR)" in *Real Estate Development Update 2021* (CLEBC, 2021), available through CLEBC Courses on Demand.

- **Transparency register.** Private companies incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57 must create and maintain a "transparency register" of information about "significant individuals" (as defined by s. 119.11 of the *Business Corporations Act*). Consult the *Business Corporations Act* and British Columbia government websites to confirm compliance. The *Business Corporations Amendment Act, 2023*, S.B.C. 2023, c. 20 will introduce a new corporate transparency registry and transparency requirements by 2025.

- ***Canada Business Corporations Act*.** Amendments to the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "*CBCA*"), which took effect August 31, 2022, require distributing corporations (generally only public companies which are governed under the *CBCA*) to comply with new requirements with respect to the election of directors. Note the amendments in s. 106 of the *CBCA*, with respect to "majority voting" and "individual election" requirements. Accordingly, if a *CBCA* company is being incorporated, and particularly if it may become a reporting issuer, attention should be given to the company's articles with respect to electing and appointing its directors. As of January 22, 2024, corporations created under the *CBCA* are required to file information regarding individuals with significant control ("ISC") with Corporations Canada and to keep a copy of their ISC register with their corporate records.

- **Purpose-built rental exemption.** Effective January 1, 2024, certain new purpose-built rental buildings are exempt from the further 2% property transfer tax applied to residential property values that exceed $3,000,000 and meet the eligibility requirements.

- **Greenwashing provisions of the *Competition Act*.** The *Competition Act*, R.S.C. 1985. c. C-34, added new provisions that took effect June 20, 2024. The new provisions require companies making environmental claims about their products or services must support these claims with adequate and proper testing. Furthermore, any statements regarding the environmental benefits of a business or its activities must not be substantiated using "internationally recognized methodologies".

OF NOTE

- **Aboriginal law.** Special considerations apply to businesses involving Indigenous persons and lands belonging to First Nations. While significant tax and other advantages may be available under the *Indian Act*, R.S.C. 1985, c. I-5, such advantages are affected by the following: the type of business; transaction nature; business entity (sole proprietorship, partnership, joint venture, trust, or incorporated company); location of business activity (either on or off First Nations lands); and the specific First Nation and its applicable governance. Effective May 11, 2023, the *Budget Measures Implementation Act, 2023* came into force, amending the *Treaty First Nation Taxation Act*, S.B.C 2007, c. 38, and the *Nisga'a Final Agreement Act*, S.B.C. 1999, c. 2. These legislative amendments allow taxing treaty First Nations and the Nisga'a nation, respectively, to implement tax exemptions for property on their lands. If the transaction involves First Nations land, consider seeking the advice of a lawyer who has experience in Aboriginal law matters. Further information on Aboriginal law issues is available on the "Aboriginal Law" page on the "Practice Areas" section of the Continuing Legal Education Society of British Columbia website (www.cle.bc.ca) and in other CLEBC publications. See also *Negotiating & Structuring Business Transactions with First Nations 2011* (CLEBC, 2011).

- **Money laundering—companies, trusts, and other entities.** As a means of laundering money, criminals use ordinary legal instruments (such as shell and numbered companies, bare trusts, and nominees) in the attempt to disguise the true owners of real property, the beneficial owners. These efforts can be hard to detect. As such, lawyers must assess the facts and context of the proposed retainer and financial transactions. Lawyers should be aware of red flags, and if a lawyer has doubts or suspicions about whether they could be assisting in any dishonesty, crime, or fraud, they should make enough inquiries to determine whether it is appropriate to act and make a record of the results of their inquiries (*BC Code* rules 3.2-7 and 3.2-8 and Law Society Rules 3-103(4), 3-109, and 3-110). See the anti-money laundering resources on the Law Society's "Client ID & Verification" webpage, including: "Forming Companies and Other Structures—Managing the Risk"; "Source of Money FAQs"; "Risk Assessment Case Studies for the Legal Profession"; "Red Flags Quick Reference Guide"; "Risk Advisories for the Legal Profession"; and free online Law Society and Federation of Law Societies of Canada courses. Also see the Discipline Advisories (an updated list can be found at https://www.lawsociety.bc.ca/for-lawyers/discipline-advisories/), which include topics such as Client ID & Verification, Country/geographic risk, and Private lending. Lawyers may contact a Law Society practice advisor at practiceadvice@lsbc.org for a consultation about the applicable *BC Code* rules and Law Society Rules and obtain guidance.

- **Law Society of British Columbia.** For changes to the Law Society Rules and other Law Society updates and issues "of note", see LAW SOCIETY NOTABLE UPDATES LIST (A-3). Note in particular the commentary on fraud prevention, bank holds on trust funds, and all other matters that may be relevant to purchase and sale transactions.

- **Additional resources.** For further information about asset purchases, see *Advising British Columbia Businesses* (CLEBC, 2006–); *Buying and Selling a Business: Annotated Precedents* (CLEBC, 2000–); *British Columbia Personal Property Security Act Practice Manual* (CLEBC, 1995–); and the *Due Diligence Deskbook* (CLEBC, 1994–).

CONTENTS

1.	**INITIAL CONTACT**	
1.1	Complete the CLIENT FILE OPENING AND CLOSING (A-2) and ASSET PURCHASE PROCEDURE (B-1) checklists. Confirm compliance with Law Society Rules 3-98 to 3-110 for client identification and verification and the source of money for financial transactions, and complete the CLIENT IDENTIFICATION, VERIFICATION, AND SOURCE OF MONEY (A-1) checklist. Consider periodic monitoring requirements (Rule 3-110).	☐

2.	**IDENTIFICATION OF PARTIES**	
2.1	If the vendor is a limited company or other entity, consider whether the principals should be added as covenantors (usually dependent on the history and long-term (future) financial capability of the vendor; i.e., will the vendor retain any assets or operations after the sale?).	☐

3.	RECITALS	
3.1	General statement of the legal relationships between the parties.	☐
3.2	General statement of the factual background to the transaction.	☐

4	ASSETS TO BE SOLD	
4.1	Tangible property.	☐
	.1 Land held in fee simple, including improvements.	
	.2 Land held under lease, including improvements.	
	.3 Buildings and improvements.	
	.4 Machinery, vehicles, and other equipment.	
	.5 Furniture and accessories.	
	.6 Computer equipment (a separate class under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.)).	
4.2	Intangible property.	☐
	.1 Trademarks and other company logos.	
	.2 Trade or brand names.	
	.3 Copyrights.	
	.4 Designs and patents.	
	.5 Computer software, source code, and object code.	
	.6 Restrictive covenants.	
	.7 Franchises and distributorships.	
	.8 Licences and leases.	
	.9 Other industrial or intellectual property, including trade secrets, know-how, company manuals, franchise manuals, computer manuals, etc.	
	.10 Contracts	
4.3	Shares and securities.	☐
4.4	Inventory.	☐
4.5	Accounts receivable.	☐

4.6	Prepaid expenses.	☐
4.7	Work in progress.	☐
	.1 Unfilled orders.	
	.2 Forward commitments to purchase.	
	.3 Executory contracts.	
4.8	Goodwill.	☐
	.1 Right to use business name and domain name.	
	.2 Customer lists including telephone numbers, website domains, email addresses, and other information.	
4.9	Property to be excluded (if applicable), for example:	☐
	.1 Cash on hand.	
	.2 Other.	
4.10	Clearly state which of the two categories (assets included, assets excluded) is the general category.	☐

5.	**PURCHASE PRICE AND ALLOCATION**	
5.1	Basis of calculation. Consider the following alternatives:	☐
	.1 Capital assets.	
	(a) Fixed sum; or	
	(b) Fair market value as determined by a named third party.	
	.2 Inventories.	
	(a) Assets are to be valued at the lower of “cost” or “net realizable value” or otherwise (terms and process for determination to be defined).	
	(b) Date for taking inventory.	
	(c) Last day for representatives to agree on valuation.	
	(d) Where no agreement is reached by representatives, inventory is to be valued by a third party, such as the auditors of the respective parties or by an independent auditor or arbitrator appointed for this purpose (consider who pays, whether the decision is binding, and allow sufficient time prior to closing).	

	.3 Accounts receivable and prepaid expenses.	
	(a) To be valued at "net book value" (to be defined) or other agreed-upon basis at time of closing or other effective date determined as agreed, or on same basis as set out in item 5.1.2(d) in this checklist.	
	(b) Allowance for doubtful accounts.	
	(c) Joint election under *Income Tax Act*, s. 22(1).	
	.4 Deduction of amount for warranty or product liability claims.	
5.2	Allocation.	☐
	.1 To land.	
	.2 To buildings and improvements.	
	.3 To leasehold interests.	
	.4 To machinery, equipment, and vehicles.	
	.5 To prepaid expenses.	
	.6 To inventory.	
	.7 To accounts receivable (consider warranty and reduction of price if receivables are not paid within a certain time).	
	.8 To intangible property and material contracts.	
	.9 To goodwill.	
	.10 Consider, with a tax advisor, the ramifications if Canada Revenue Agency were to reallocate under the *Income Tax Act*.	
5.3	Holdback. Consider placing holdback funds in trust with the purchaser's lawyer or other party until all liabilities are paid/accounts receivable collected. Consider an escrow agreement, and appropriate terms.	☐

6.	**RESPONSIBILITY FOR VENDOR'S BUSINESS LIABILITIES**	
6.1	Liabilities to be paid by the vendor.	☐
6.2	Liabilities to be assumed by the purchaser, with set-off against purchase price (as agreed).	☐
	.1 Current liabilities of the vendor incurred before the closing time and set out in writing at the time of closing.	
	.2 Balances owing as of time of closing under mortgages, security agreements, and other instruments of indebtedness set out in a schedule.	

	.3 Other obligations.	
	.4 Exclusions.	

7.	ESCROWS/HOLDBACKS	
7.1	Consider the following for a possible escrow of funds or holdback (providing for the application of funds to be used to discharge or secure the following):	☐
	.1 Liabilities outstanding on closing.	
	.2 Taxes.	
	.3 Accounts payable.	
	.4 Pending litigation.	
	.5 Potential product liability and warranty claims.	
	.6 Environmental concerns.	
	.7 In support of the vendor’s representations and warranties (i.e., a general holdback).	
7.2	Consider if one party’s counsel will hold the funds; consider use of a third-party escrow agent. In selecting an escrow agent, keep in mind Law Society Rule 3-58.1, which requires that, except as permitted by the *Legal Profession Act*, S.B.C. 1998, c. 9, or the Law Society Rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.	☐
7.3	Negotiate terms of holdback or escrow. Draft escrow agreement if applicable.	☐

8.	PRORATIONS	
8.1	Consider prorating the following amounts as between the vendor and the purchaser depending on the date of closing (may be dealt with in adjustments):	☐
	.1 Insurance.	
	.2 Telephone bills and listings.	
	.3 Utility bills or “final readings”.	
	.4 Rent and security deposits.	
	.5 Alarm service system and deposit.	
	.6 Utility deposits.	
	.7 Fees and transferable licences.	

	.8 Maintenance contracts on equipment.	
	.9 Leases for equipment and signage.	
	.10 Leases on motor vehicles.	
	.11 Property tax.	
	.12 Advertising: in yellow pages or multiple newspaper insertions.	
	.13 Other.	

9.	**PAYMENT OF PURCHASE PRICE**	
9.1	Time for payment. May be a mixture of the following:	☐
	.1 On execution of the contract (e.g., as a deposit; see item 9.3 in this checklist).	
	.2 On closing.	
	.3 Payment by installments.	
	(a) Acceleration clause in the event of a default or other circumstance.	
	(b) Prepayment and prepayment penalty.	
	(c) Interest.	
	(i) Increased rate on default. (Note restrictions in the *Interest Act*, R.S.C. 1985, c. I-15.)	
	(ii) Application of payments to interest due and then to principal.	
	.4 Factor in holdback/escrow (see item 7 in this checklist).	
9.2	Manner of payment.	☐
	.1 Assumed liabilities.	
	.2 Balance.	
	(a) Certified cheque.	
	(b) Banker's draft. Note restrictions in Law Society Rule 3-64.3 with respect to withdrawal from trust by bank draft.	
	(c) Lawyer's trust cheque.	
	(d) Wire transfer. Note restrictions in Law Society Rules 3-64.1 and 3-64.2.	
	(e) Cash. Note restrictions in Law Society Rule 3-59 with respect to receiving cash and Rule 3-70 for records of cash transactions.	
	(f) Other.	

	.3 Adjustment for prorations.	
	.4 Vendor or third-party financing.	
9.3	Deposit.	☐
	.1 Forfeit on default. Consider if it is refundable in any circumstances.	
	.2 Provide for increase upon fulfillment of specific conditions precedent.	
9.4	Earn-out provisions, if applicable.	☐

10.	**SECURITY FOR VENDOR IN VENDOR-FINANCED TRANSACTIONS**	
10.1	Security agreement(s).	☐
	.1 Amount.	
	.2 Collateral (exclude consumer goods).	
	.3 Acceleration clause.	
	.4 Provision for interest, including interest on default (note restrictions in the *Interest Act*).	
	.5 Application of payments to interest due and then to principal.	
10.2	Mortgage on real estate.	☐
	.1 Amount.	
	.2 Property covered.	
	.3 Acceleration clause.	
	.4 Provision for interest, including interest on default (note restrictions in the *Interest Act*).	
	.5 Application of payments to interest due, and then to principal.	
	.6 Blended payments: check for compliance with the *Interest Act*.	
	.7 Will payments include property taxes and require a separate agreement?	
10.3	Guarantees or indemnities by third parties. Consider the following:	☐
	.1 Right of the vendor to impair the security (e.g., through election to sue or through seizure and sale).	
	.2 Guarantor/indemnitor to maintain net worth.	

	.3 Guarantor/indemnitor to postpone claims.	
	.4 Security for guarantee/indemnity.	
10.4	Other security arrangements.	☐

11.	CLOSING	
11.1	Time and place.	☐
11.2	Transfer of assets.	☐
	.1 Transfer forms for real estate.	
	.2 Bills of sale for chattels or other personal property.	
	.3 Assignments of leases and agreements.	
	.4 Assignments of licences, permits, trademarks, copyrights, and franchise agreements.	
	.5 Endorsement of share certificates and/or other transfer of securities.	
	.6 Assignment of receivables.	
	.7 PST/GST and other tax elections, if applicable.	
	.8 Other transfers, as required.	
11.3	Delivery of other closing documents.	☐
11.4	Registrations in necessary offices (Land Title Office, Land Owner Transparency Registry, Canadian Intellectual Property Office, etc.).	☐

12.	VENDOR'S REPRESENTATIONS AND WARRANTIES	
12.1	Vendor's corporate status.	☐
	.1 Valid incorporation, corporate authority.	
	.2 Good standing.	
	.3 No business carried on outside province, except as stated.	
	.4 Compliance with applicable licensing, registration, or qualification requirements (including extraprovincial, if applicable).	
	.5 Constating documents are unchanged since a specified date.	
	.6 Constating documents permit the vendor to own its present assets and to carry on its present business.	

	.7 Agreement is a legal, valid, and binding obligation.	
12.2	Vendor’s authority to sell.	☐
	.1 Good and marketable title to assets.	
	.2 Title to assets is free of liens, charges, or encumbrances (except as in schedule of encumbrances or material contracts, and except for standard statutory liens, inchoate liens, etc.). Consider separate confirmation of ownership for particular types of property: real property, intellectual property, leases, etc.	
	.3 Sale has been authorized by all necessary corporate action.	
	.4 Sale is not in violation of corporate constitution, court orders, contracts, or applicable laws.	
	.5 No third party consents are required, except as disclosed.	
	.6 No triggering event has occurred under the *Family Law Act*, S.B.C. 2011, c. 25, s. 81 (or, if applicable, the former legislation, *Family Relations Act*, R.S.B.C. 1996, c. 128, s. 56). If one has occurred, consider obtaining a waiver from the other spouse or making that spouse a party to the agreement and paying the purchase price to both spouses jointly. Note that under the *Family Law Act*, the only triggering event would be the date of separation.	
12.3	Sale will not cause default, so as to impair the vendor’s rights under, or clear title to, any of the assets; nor will it impair the purchaser’s ability to carry on the business.	☐
12.4	Assets.	☐
	.1 Assets and their value are as represented in schedules or elsewhere in agreement.	
	.2 Assets being sold are all the assets used and necessary for the business.	
	.3 Real property is as identified: no encumbrances (except as specified), no notices of expropriation.	
	.4 Buildings are wholly situated on property owned by the vendor.	
	.5 Buildings are constructed and are used in accordance with all laws, are in good repair, and are not subject to any government work orders or notices of non-compliance.	
	.6 All leases on real property or equipment are valid and comply with registration requirements. All rents have been paid, and the vendor or other party thereto is not in breach of any terms and has not assigned or encumbered its interest under the leases.	
	.7 Assets, e.g., machinery, vehicles, and other equipment (included leased property) are in good repair.	

	.8 Intellectual property including patents, industrial designs, copyrights, trademarks, and trade names, and applications for any of these items, are in good standing and registered, if applicable. There currently exists no infringement of the vendor's intangible property rights.	
	.9 Inventory is good and usable and capable of being sold in the ordinary course.	
	.10 Accounts receivable are all bona fide and collectible.	
	.11 Assets are not subject to work orders, notices of non-compliance, or deficiency notices.	
	.12 Vendor did not acquire the assets through a transaction reviewable under the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.).	
12.5	Environmental matters.	☐
	.1 Property and buildings are free from "hazardous substances" (provide definition) and comply with all laws.	
	.2 No urea-formaldehyde or asbestos exists in the insulation of buildings.	
	.3 No underground storage tanks exist on the property.	
	.4 Vendor has handled, stored, treated, shipped, and disposed of hazardous substances in compliance with all laws.	
	.5 Vendor has not had an environmental audit or assessment conducted with respect to it or property owned by the vendor. (Consider contaminated sites legislation.)	
	.6 Consider what other environmental representations are appropriate depending on the nature of the business and assets.	
12.6	Accuracy of balance sheet and financial statements.	☐
	.1 Financial statements are accurate: true, correct and complete, and present fairly the financial condition and results of operations.	
	.2 Generally Accepted Accounting Principles (GAAP), International Financial Reporting Standards (IFRS), or Accounting Standards for Private Enterprises (ASPE), are applied on a basis consistent with previous years.	
	.3 Books and records are complete and accurate.	
	.4 No material changes since last balance sheet (may include list of such changes—incurrence of liabilities, payment of dividends, etc.).	
	.5 No liabilities other than in financial statements, or as specifically assumed by the purchaser.	
	.6 Auditor's closing statement of net book value, if applicable, is accurate.	
	.7 Review all financial representations and warranties with a tax advisor.	

12.7	Contracts.	☐
	.1 Vendor is not in default under any contracts. All contracts between the vendor and dealers or suppliers are in good standing and have not been assigned or encumbered.	
	.2 Outstanding forward commitments for purchase or sale of inventories are on the basis of established price lists or vary from them only in accordance with the vendor's normal business practice.	
	.3 All material contracts (written or oral) are listed and fully described in the schedule of material contracts, including all contracts:	
	(a) Out of the ordinary course of business.	
	(b) Where the obligation to pay exceeds a specified sum.	
	(c) Which affect title to assets.	
	(d) In respect of tangible property.	
	(e) Dealing with pensions, group insurance, or employee welfare plans.	
	(f) Dealing with bonuses or incentive compensation.	
	(g) That are written employment contracts, or employment contracts of fixed term.	
	(h) That are non-competition and confidentiality agreements.	
12.8	Employment matters.	☐
	.1 List of employees with job title, duration of employment, remuneration, etc.	
	.2 There are no agreements to provide severance pay or separation allowances. No change of control agreements.	
	.3 No obligations to pay benefits or share profits will survive termination of employment or service contracts.	
	.4 No employee or benefit plans. If plans exist and are to be assumed, consider appropriate representations and warranties regarding status and funding. Consider pension, tax, and actuarial advice regarding mechanism to transfer plan assets or obligations, or both, if applicable. Consider post-retirement benefits issue.	
	.5 No collective agreement is in force or under negotiation.	
	.6 No employees of the vendor are represented by a certified bargaining unit, no applications for certification are pending, and no attempt has been made to certify (otherwise, consider the effect of possible successorship declaration).	
	.7 Consider application of *Employment Standards Act*, R.S.B.C. 1996, c. 113, s. 97, regarding deemed continuation of employment and responsibility to employees. Also, consider *Labour Relations Code*, R.S.B.C. 1996, c. 244, s. 54.	

12.9	Vendor's legal position.	☐
	.1 All required licences and permits are as specified and are in good standing.	
	.2 Property is appropriately zoned for the purposes for which it is currently used.	
	.3 Property is appropriately zoned for the purchaser's stated purposes.	
	.4 Vendor's operations do not infringe any registered patent, industrial design, copyright, trademark, trade name, or other intellectual property right of a third party.	
	.5 Vendor is not in breach of any court order.	
	.6 Vendor (and operation of business) is not in breach of any statute, regulation, or bylaw. Consider specific items like privacy and personal information legislation.	
	.7 No pending change in statutes, regulations, or bylaws (including zoning) will render any part of the vendor's operations illegal.	
	.8 No litigation or administrative proceeding against the vendor is in progress, pending, or threatened, and no order or judgment is outstanding.	
	.9 No outstanding or unresolved product liability or warranty claims.	
	.10 Vendor has paid all employer obligations including Canada Pension Plan, employment insurance, and Workers' Compensation Board contributions to date.	
	.11 No employment standards, human rights, workers' compensation, or similar actions are pending, and there are no orders or judgments outstanding against the vendor.	
	.12 Vendor has not experienced, nor is it aware of, any occurrence or event which has, or might reasonably be expected to have, a material adverse effect on the business or the results of its operations.	
12.10	Vendor's tax situation.	☐
	.1 True and timely filing of all federal, provincial, and local tax returns (income, sales, PST/GST, employee deduction remittances).	
	.2 Tax liability is as indicated by returns.	
	.3 No property tax owing.	
	.4 Vendor is a Canadian resident within the meaning of the *Income Tax Act*.	
	.5 Vendor and purchaser satisfy the requirements for election under *Excise Tax Act*, R.S.C. 1985, c. E-15, s. 156 or 167, if applicable.	
	.6 Consider *Excise Tax Act*, s. 221(2), in the case of real property.	
	.7 Vendor did not acquire the assets pursuant to any tax elections.	
	.8 Note: review tax representations and warranties with the tax advisor.	

12.11	No indebtedness or liability other than as listed and described in the schedule of assumed indebtedness and liabilities or in the financial statements.	☐
12.12	Certificates furnished at closing are accurate.	☐
12.13	Consider incorporating recitals as appropriate.	☐
12.14	Consider “ordinary course of business”, knowledge, and materiality qualifiers on representations, if appropriate (vendor’s counsel will seek these).	☐

13.	**PURCHASER’S REPRESENTATIONS AND WARRANTIES**	
13.1	Purchaser’s corporate status.	☐
	.1 Valid incorporation and corporate authority.	
	.2 Agreement is a legal, valid, and binding obligation.	
	.3 Good standing.	
	.4 Status under the *Investment Canada Act*.	
13.2	Purchaser’s authority to purchase.	☐
	.1 Purchase is not in violation of constating documents or applicable laws.	
	.2 Purchase is not in conflict with any agreement to which the purchaser is a party.	
	.3 No third party consents required to purchase.	
	.4 Purchase has been authorized by all necessary corporate action.	
	.5 Purchaser has authority to give security, if there is vendor financing.	
13.3	Purchaser is a GST registrant for the purposes of *Excise Tax Act*, s. 221(2)(b), in the case of non-residential real property.	☐
13.4	Representations and warranties survive closing.	☐
13.5	Consider incorporating recitals, as appropriate.	☐

14.	**VENDOR’S OBLIGATIONS**	
14.1	Have auditors or agreed-upon parties determine the value of receivables, inventories, and prepaid expenses as of the day preceding closing (or another agreed time) in accordance with the schedules or otherwise specified accounting principles, if applicable.	☐

14.2	Conduct of business up to closing.	☐
	.1 No transactions outside the ordinary course of business.	
	.2 Carry on business diligently at the same location.	
	.3 Preserve assets intact—no further encumbrances.	
	.4 Properly maintain and repair machinery, equipment, vehicles, and real property.	
	.5 Not unduly deplete inventories.	
	.6 Retain employees for the purchaser, if instructed.	
	.7 Preserve goodwill and existing relationships with customers, suppliers, and creditors.	
	.8 No purchases, other contracts, or commitments over a specified amount without the purchaser's prior consent in writing.	
	.9 Advise promptly of any material adverse change.	
14.3	Give the purchaser access to properties, accounts, and records (consider, in particular, access for environmental audits and testing).	☐
14.4	Supply the purchaser with information as requested.	☐
14.5	Insure or continue insurance on tangible assets with the purchaser added as a named insured.	☐
14.6	Use reasonable best efforts to obtain consent to assignment of leases and contracts, where needed.	☐
14.7	Terminate all employees at the time of closing (if so instructed, and if this is a term of the transaction) and pay all outstanding holiday pay, workers' compensation contributions, income tax assessments, etc., up to the date of closing. Consider group termination issues under the *Employment Standards Act* and notice issues under the *Labour Relations Code*. (See also item 12.8 in this checklist.)	☐
14.8	Pay or remit all property and business or commodities taxes owing at the date of closing, including interest or penalties for late payment (subject to proration adjustment).	☐
14.9	Change the business name and/or company name, if required.	☐
14.10	Provide a commitment not to compete (specify the area, activity, time limit, and include principals/covenantors in their personal capacities).	☐
14.11	Pay the amount by which uncollected receivables exceed the provision for doubtful accounts in the statement of value (90 days, 180 days, etc.) after closing (purchaser to reassign uncollected accounts to vendor), if applicable.	☐
14.12	Effect transfer of assets.	☐

14.13	Pass or have passed all necessary corporate resolutions (including the special resolution of the shareholders as required by *Business Corporations Act,* s. 301(1) and *Canada Business Corporations Act*, s. 189(3)). Provide an officers' certificate. See item 16.4 in this checklist.	☐
14.14	Execute and file any joint election required in connection with tax returns under *Income Tax Act,* s. 22 and *Excise Tax Act,* s. 167.	☐
14.15	Notify customers and suppliers of the sale of the business, and introduce the purchaser to major customers and suppliers.	☐
14.16	Give notice under *Competition Act,* R.S.C. 1985, c. C-34, Part IX, if required.	☐
14.17	Indemnify purchaser. Vendor and principals/covenantors (i.e., vendor's shareholders) jointly and severally indemnify the purchaser in regard to representations and warranties, obligations and liabilities not agreed to be assumed by purchaser, and any actions and expenses incident to the foregoing. See also item 19.2 in this checklist.	☐

15.	**PURCHASER'S OBLIGATIONS**	
15.1	Offer employment to present employees of the business (on the basis agreed). Consider assuming pension plans or other benefits (if so, ensure that appropriate representations and warranties and tax and actuarial advice are obtained).	☐
15.2	Pay tax owing under the *Provincial Sales Tax Act*, S.B.C. 2012, c. 35, and/or the *Property Transfer Tax Act*, R.S.B.C. 1996, c. 378, and GST, if this is a term of the transaction (unless otherwise exempted). Further information about the GST and PST can be found at www.canada.ca/en/revenue-agency/services/forms-publications/publications/rc4022/general-information-gst-hst-registrants.html and www2.gov.bc.ca/gov/content/taxes/sales-taxes/pst.	☐
15.3	Give notice or apply for review pursuant to the *Investment Canada Act*, if required.	☐
15.4	Give notice under the *Competition Act*, if required. Consider availability of an advance ruling certificate (*Competition Act*, s. 102).	☐
15.5	Assist the vendor in obtaining consents to assignments of leases and other contracts.	☐
15.6	Enter into assumption agreements; use reasonable best efforts to obtain releases of liability in favour of the vendor.	☐
15.7	Pass all necessary corporate resolutions.	☐
15.8	Pay the agreed price.	☐

15.9	Continue operating the business (where there is vendor financing).	☐
15.10	Indemnify vendor against assumed obligations and liabilities; see also item 19.2 in this checklist.	☐

16.	**CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER**	
16.1	Opinion of vendor's counsel, in form and substance satisfactory to purchaser's counsel, that:	☐
	.1 Vendor is duly incorporated, validly existing, and in good standing.	
	.2 All necessary corporate action has been taken by the vendor and, if applicable, its shareholders.	
	.3 Agreement has been duly executed and delivered and is a legal, valid and binding obligation enforceable against the vendor.	
	.4 There are no actions or probable actions against the vendor (based on information and belief and review of files) or other proceedings that restrain closing.	
	.5 The agreement is not in conflict with the vendor's constating documents and material contractual commitments.	
	.6 Assets pass to the purchaser free and clear of encumbrances or contrary claims, except as contemplated by the agreement (purchaser obtains good and marketable title).	
	Note: Many of these will be resisted by the vendor's counsel and may not be appropriate. Review *Advising British Columbia Businesses* (CLEBC, 2006–) and *Buying and Selling a Business: Annotated Precedents* (CLEBC, 2000–).	⚡
	.7 Consider extending some of these opinions to shareholders or covenantors who are parties.	
16.2	Truth of the vendor's representations and warranties at the time of closing.	☐
16.3	Performance by the vendor of all obligations required to be performed at or before the time of closing.	☐
16.4	Delivery by the vendor at the time of closing of a statement, signed by the vendor or corporate officers, that items 16.2 and 16.3 have been satisfied.	☐
16.5	Favourable review of acquisition of business if required by the *Investment Canada Act*, *Competition Act*, or both.	☐
16.6	Delivery at or before closing of duly executed consents to assignments of leases, licences, permits, and contracts (where needed).	☐

16.7	No adverse developments in the vendor's business.	☐
16.8	Provision that the purchaser may waive some or all conditions precedent to their obligations.	☐

17.	**CONDITIONS PRECEDENT TO OBLIGATIONS OF VENDOR**	
17.1	Truth of the purchaser's representations and warranties at the time of closing.	☐
17.2	Performance by the purchaser of all obligations required to be performed at or before the time of closing.	☐
17.3	Consent of third parties to assignment of leases, licences, permits, and contracts (where needed).	☐
17.4	Favourable review of acquisition of business, if required by the *Investment Canada Act*, *Competition Act*, or both.	☐
17.5	Opinion of purchaser's counsel, in form and substance satisfactory to vendor's counsel. (See item 16.1 in this checklist—including the cautionary note—as applied to the purchaser.)	☐
17.6	Provision that the vendor may waive some or all conditions precedent to their obligations.	☐

18.	**LOSS OR DAMAGE PRIOR TO CLOSING**	
18.1	Terminate agreement.	☐
18.2	Complete agreement on terms:	☐
	.1 Payment of all insurance proceeds recovered to purchaser.	
	.2 Assign insurance proceeds to the purchaser.	
18.3	Adjust the purchase price.	☐

19.	**GENERAL PROVISIONS**	
19.1	Survival (representations, warranties, but consider other clauses that should survive closing or a termination of the agreement).	☐
19.2	Dollar, time (survival period), and other limits on warranties and indemnities.	☐
19.3	Vendor will notify the purchaser as soon as possible if the vendor determines a state of facts exists that will result in an untrue representation, non-fulfillment of any condition, or material change.	☐

19.4	Risk of loss (e.g., passes to purchaser on closing).	☐
19.5	Further assurances.	☐
19.6	Set-off for amounts due from the vendor (and its shareholders) to purchasers, including under indemnities.	☐
19.7	Entire agreement (supersedes any letter of intent, etc.).	☐
19.8	Waivers to be in writing and signed. Consider providing for a right of the purchaser to waive breaches of representations and warranties without prejudicing the right to sue for damages.	☐
19.9	Subsequent modifications to be in writing signed by the parties.	☐
19.10	Termination to be in writing signed by both parties.	☐
19.11	Successors and assigns.	☐
19.12	Limitations on assignability.	☐
19.13	Time is of the essence, if considered desirable.	☐
19.14	Arbitration or mediation, if considered desirable.	☐
	.1 Choice of arbitrator/mediator.	
	.2 Statement that agreement constitutes a submission under the *Arbitration Act*, S.B.C. 2020, c. 2, *International Commercial Arbitration Act*, R.S.B.C. 1996, c. 233, or otherwise.	
	.3 Choice of forum.	
	.4 Statement of which issues are arbitrable or subject to mediation.	
	.5 Mandatory time limits for submission of disagreements to arbitrator/mediator.	
	.6 Arbitrator/mediator’s decision is final and binding.	
	.7 Expedited arbitration or mediation provision.	
	.8 Costs.	
19.15	Choice of law and attornment to jurisdiction.	☐
19.16	Choice of exclusive forum.	☐
19.17	Currency.	☐

19.18	Costs of transaction.	☐
	.1 Consider appropriate allocation of costs.	
	.2 Normally payable by vendor:	
	(a) Agent’s commission.	
	(b) Vendor’s accountant’s fees.	
	(c) Conveyances, transfers, and assignments.	
	.3 Normally payable by purchaser:	
	(a) Assumption agreements and releases.	
	(b) Registration of documents.	
	.4 Normally negotiated:	
	(a) *Investment Canada Act* notice or review.	
	(b) *Competition Act* notice.	
19.19	Notices.	☐
	.1 Addresses for service.	
	.2 Prepaid registered mail or other arrangement.	
	.3 Deemed date of receipt.	
19.20	Nominees.	☐
19.21	Publicity.	☐
	.1 Press releases.	
	.2 Confidentiality of agreement terms, both before and after closing, if required. These terms should extend to directors, officers, and key employees of all companies involved.	
19.22	Severability.	☐
19.23	General interpretation and construction.	☐
19.24	Counterparts and electronic delivery.	☐

20.	SCHEDULES	
	Note: Example schedules; actual schedules subject to provisions of agreement.	
20.1	Buildings and Lands.	☐
20.2	Leasehold Property.	☐
20.3	Machinery, Equipment, and Vehicles.	☐
20.4	Intangible Property.	☐
20.5	Material Contracts.	☐
20.6	Description of Assumed Indebtedness.	☐
20.7	Permitted Encumbrances.	☐
20.8	List of Employees and Start Date.	☐
20.9	Litigation.	☐
20.10	Accounting Principles.	☐
20.11	Audited Financial Statements.	☐
20.12	Unaudited Financial Statements.	☐
20.13	Other schedules as necessary.	☐