

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 SHARE PURCHASE PROCEDURE (B-3) 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.
- **Competition Act.** Amendments to the *Competition Act*, R.S.C. 1985, c. C-34, effective June 23, 2023 include provisions prohibiting agreements for mutual conduct to not hire or solicit each other’s employees.
- **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 (*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 Law Society and Federation of Law Societies online courses. Also see the Discipline Advisories (an updated list can be found at www.lawsociety.bc.ca/for-lawyers/discipline-advisories/), which include topics such as Securities fraud: Microcap Stocks, 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 share purchase procedures, see *Advising British Columbia Businesses* (CLEBC, 2006–); *Buying and Selling a Business: Annotated Precedents* (CLEBC, 2000–); and the *Due Diligence Deskbook* (CLEBC, 1994–).

CONTENTS

1. Initial Contact
2. Identification of Parties

3. Recitals
4. Definitions
5. Purchase Price and Sale
6. Vendor’s Representations and Warranties
7. Purchaser’s Representations and Warranties
8. Vendor’s Obligations—Prior to Closing
9. Conditions Precedent to Obligations of Purchaser
10. Conditions Precedent to Obligations of Vendor
11. Closing
12. Loss or Damage Prior to Closing
13. Indemnification
14. Vendor’s Obligations—Post-Closing
15. General Provisions
16. Schedules

1. INITIAL CONTACT		
1.1	Complete the CLIENT FILE OPENING AND CLOSING (A-2) and SHARE PURCHASE PROCEDURE (B-3) 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).	<input type="checkbox"/>

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?).	<input type="checkbox"/>

3. RECITALS		
3.1	General statement of the legal relationship between, or roles of, the parties.	<input type="checkbox"/>
3.2	General statement of the factual background to the transaction.	<input type="checkbox"/>

4.	DEFINITIONS	
4.1	Provide definitions for terms used throughout the agreement, consider including the scope and meaning of phrases such as “to the best of [one’s] knowledge” and “material adverse [change or effect]”.	<input type="checkbox"/>

5.	PURCHASE PRICE AND SALE	
5.1	Mutual obligations of vendor to sell and purchaser to purchase shares.	<input type="checkbox"/>
5.2	Consider the following (non-exhaustive) potential structures for payment:	<input type="checkbox"/>
	.1 Deposit given on execution of agreement. Provision for increase of deposit to a certain dollar amount after all subjects removed, with deposit to be non-refundable but forming a part of the purchase price. Consider placing the deposit in an interest-bearing account with interest accruing to the purchaser’s credit (if long closing).	
	.2 Fixed sum payable on closing (consider whether a pricing formula applies). If more than one purchaser, obligations to pay purchase price should be joint and several.	
	.3 Fixed sum payable on closing, part of which is held in escrow to be offset against indemnities or breaches of representations and warranties, or is otherwise deferred.	
	(a) Consider tax ramifications of any proposal deferral.	
	(b) An escrow agent should be identified. 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 <i>Legal Profession Act</i> , S.B.C. 1998, c. 9, 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.	
	(c) Consider terms of escrow and responsibilities of agent, and other terms for escrow agreement.	
	(d) Consider use and application of an escrow or holdback of funds for other matters: pending litigation, environmental concerns, tax liabilities, etc.	
	.4 Fixed sum payable to vendor’s counsel on undertakings to pay out any security registered against the company or its assets.	
	.5 Working capital adjustment, including provisions for determining applicable financial statement/tax return responsibility and dispute resolution.	
	.6 Earn-out provisions.	
5.3	Manner and holding of payment.	<input type="checkbox"/>
	.1 Fixed sum on closing, drawn on a Canadian chartered bank and payable in Canadian funds:	

	(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.	
	.2 Escrowed funds on deposit on closing in an interest-bearing trust account. See caution at item 5.2.3(b).	
5.4	If part of the purchase price is deferred, consider security in favour of the vendor pending payment of the deferred price (or where the transaction is otherwise vendor-financed) through restrictions on the conduct of the company's business after closing, or other mechanisms. Many of these restrictions will also be relevant to the period between signing and closing, even if there is no deferral of payment.	<input type="checkbox"/>
	.1 Company to continue operations as a separate business, in the ordinary course.	
	.2 Company to comply with all relevant laws in the jurisdiction in which the company carries on business.	
	.3 Company to notify the vendor forthwith upon release of a "hazardous substance" (definition to be included) into the environment by the company, or any material change in the business or operations (adverse or otherwise).	
	.4 Company to maintain adequate insurance coverage.	
	.5 Company to make no commitments (by loan, guarantee, or other liability) increasing the company's debt beyond a specified amount.	
	.6 Maintain corporate goodwill on behalf of the purchaser.	
	.7 Preserve relationships with suppliers, customers, employees, and others having dealings with the company.	
	.8 Repair and maintain assets until the closing date, and no capital expenditures in excess of a specified amount.	
	.9 Restrictions on the payment of dividends or other distributions.	
	.10 Restrictions on salaries and bonuses.	
	.11 Prohibitions against non-arm's-length management fees.	
	.12 Prohibitions on other non-arm's-length transactions.	
	.13 Prohibitions on reduction in working capital.	
	.14 No redemption of issued shares.	

	.15 No issuing of additional shares.	
	.16 No alterations of constating documents such as memorandum, notice of articles, or articles.	
	.17 No sale, encumbrance, or gift of corporate assets.	
	.18 Shares to be held in escrow or pledged.	
	.19 Right of vendor to inspect books and records as well as company premises.	
	.20 Right of vendor to receive financial statements.	
	.21 Right of vendor to receive notice of and attend shareholders' meetings and directors' meetings.	
	.22 Right of vendor to have nominees sit on board of directors.	
	.23 Mortgage on lands of purchaser including company, subject to compliance with s. 195 of the <i>Business Corporations Act</i> , S.B.C. 2002, c. 57.	
	.24 General security agreement on assets of purchaser including company, subject to compliance with <i>Business Corporations Act</i> , s. 195.	
	.25 Guarantees by third party.	
	Many of these items may need to be qualified by the phrase "except in the ordinary course of business" or a materiality threshold, and may not be appropriate in the circumstances.	

6.	VENDOR'S REPRESENTATIONS AND WARRANTIES	
	Some of these representations and warranties should be given both with respect to the vendor and the target company. Consider extending them to any subsidiaries or significant interests, such as partnerships and joint ventures.	
6.1	Corporate status.	<input type="checkbox"/>
	.1 Valid incorporation.	
	.2 Good standing.	
	.3 Private, non-reporting company.	
	.4 No business carried on outside province except as stated.	
	.5 Compliance with extraprovincial and other applicable licensing, registration, or qualification requirements.	
	.6 Constating documents (such as memorandum, notice of articles, and articles) are unchanged since a specified date, and accurate copies are provided.	
	.7 Constating documents (such as memorandum, notice of articles, and articles) permit company to own its present assets, and to carry on its present business.	

6.2	Capital structure.	<input type="checkbox"/>
	.1 Number of authorized shares.	
	(a) Common (par value or N.P.V. voting rights).	
	(b) Preferred.	
	.2 Number of issued shares.	
	(a) Common.	
	(b) Preferred.	
	.3 Issued shares are fully paid and non-assessable.	
	.4 The company has no other issued, or agreements to issue, securities, options, rights, etc.	
6.3	Number of shares owned by the vendor.	<input type="checkbox"/>
	.1 Common.	
	.2 Preferred.	
6.4	List of directors and officers of the company.	<input type="checkbox"/>
6.5	Vendor's right to sell and perform obligations in accordance with the agreement.	<input type="checkbox"/>
	.1 Good and marketable title, free and clear (consider whether this is appropriate for all assets, such as contracts).	
	.2 Sale has been authorized by all necessary corporate action.	
	.3 No encumbrances, except as set out in the agreement.	
	.4 No contractual or regulatory consents, licences, permits or approvals required, except as set out in the agreement.	
	.5 No options	
	.6 No shareholders' agreements.	
	.7 No beneficial interest of third parties.	
	.8 No restrictions imposed by constating documents (such as memorandum, notice of articles, or articles).	
	.9 No contrary court orders.	
	.10 No triggering event has occurred under the <i>Family Law Act</i> , S.B.C. 2011, c. 25, s. 81 (or, if applicable, the former legislation, <i>Family Relations Act</i> , R.S.B.C. 1996, c. 128, s. 56). Note that under the <i>Family Law Act</i> , the only triggering event would be the date of separation.	

	.11 No other outstanding agreements or securities that carry the right to acquire shares.	
	.12 Agreement is a legal, valid, and binding obligation of the vendor and the target company.	
6.6	Schedule of company assets.	<input type="checkbox"/>
	.1 Inventory.	
	.2 Accounts receivable.	
	.3 Real estate.	
	.4 Leases, licences, and permits.	
	.5 Machinery, equipment, and vehicles.	
	.6 Furniture and accessories.	
	.7 Intellectual property and intangibles (trade secrets, brand names, patents, etc.).	
	.8 Material contracts.	
	.9 Computer equipment (a separate class according to the <i>Income Tax Act</i> , R.S.C. 1985, c. 1 (5th Supp.)).	
	.10 Buildings.	
	(a) Located within the property of the company.	
	(b) Built in accordance with all laws, particularly zoning.	
	(c) In good repair.	
	(d) Not subject to government work orders.	
	(e) Company has no notice of non-compliance.	
	(f) No encroachment on any right of way.	
	(g) Vendor has no notice of an intention to expropriate property of the company or of any change in bylaws that would affect use of the property.	
6.7	Environmental matters.	<input type="checkbox"/>
	.1 Properties and buildings are free from hazardous substances (e.g., asbestos) and in compliance with all laws. Company has all permits and approvals.	
	.2 No underground storage tanks exist on the properties.	
	.3 Company has handled, stored, treated, shipped, and disposed of hazardous substances in compliance with all laws.	
	.4 Company has not had an environmental audit or assessment conducted with respect to the company or property owned by the company. (Consider contaminated sites legislation and possible audit.) No notice of violation, investigation, or potential responsibility for corrective action.	

	.5 Consider other environmental matters (and appropriate representations), depending on the nature of the business and any potential risks (e.g., migration).	
6.8	Right of company to assets.	<input type="checkbox"/>
	.1 Good and marketable title (as in item 6.5.1 of this checklist, consider whether this is appropriate for all assets).	
	.2 No liens or encumbrances, except as set out in agreement.	
	(a) General security agreements.	
	(b) Mortgages on land.	
	(c) Debentures (both fixed and floating charge).	
	(d) Assignments of book accounts.	
	(e) Security under the <i>Bank Act</i> , S.C. 1991, c. 46, s. 427.	
	.3 No beneficial interest of third parties.	
	.4 Right of company to its trade names, trademarks, and other intellectual property; no notice of infringement. Consider more extensive intellectual property provisions where applicable to the business.	
	.5 Vendor (or any of the directors, officers or shareholders, if a company, or relatives, if an individual) or another company does not own assets used by company (alternative to use of schedule).	
	.6 All assets are used in the business; no other assets are necessary to operate the business.	
	.7 No contracts that commit the company's production to third parties.	
6.9	Execution or performance of the agreement will not result in:	<input type="checkbox"/>
	.1 Violation of any constating documents (such as memorandum, notice of articles, or articles) or any law, order, decree, statute, bylaw, or regulation applicable to the company or its assets.	
	.2 Third party having right to terminate contractual or other rights of company.	
	.3 Creation of liens or encumbrances on company assets.	
	.4 Default under any agreement giving third-party security in company assets or rights against the company or its assets.	
	.5 Crystallization of floating charge.	
	.6 Any fees, duties, taxes, assessments, or other amounts relating to any assets of the company becoming due and payable.	
6.10	Full disclosure of transactions between the company and the vendor, the vendor's family, affiliated companies, directors, officers, shareholders, and other insiders (as applicable).	<input type="checkbox"/>

	.1 Employment contracts.	
	.2 Management contracts.	
	.3 Other contracts (particularly, material contracts).	
	.4 Debts of company to the vendor or insiders or these other parties.	
	.5 Debts of vendor or insiders to the company or these other parties.	
	.6 Payments to the vendor or insiders or these other parties authorized by the company, other than payments authorized pursuant to contracts listed in items 6.10.1, 6.10.2, and 6.10.3 in this checklist.	
6.11	Conduct of business.	<input type="checkbox"/>
	.1 Date of last authorization of dividends or other distribution.	
	.2 Amount of total authorized capital expenditures, no expenditures, or commitments in excess of a specified limit since the date of financial statements.	
	.3 No waiver or surrender of rights.	
	.4 Incurred no obligations or liabilities and no premature payment of debts or discharge of other liabilities.	
	.5 No dispositions or acquisitions of any property.	
	.6 Material transactions are properly recorded and filed.	
	.7 Minutes of shareholders' and directors' meetings (and all other corporate records) are accurate and complete.	
	.8 Company's assets are properly insured, including against public liability.	
	.9 All assets are properly maintained and, where needed, repaired or replaced.	
	.10 Company has issued no guarantees or indemnities, or entered into any agreements.	
	.11 There have been no pay increases or agreements to increase pay to directors and officers since a stipulated date, and no pay increases or agreements to increase pay to employees except in the ordinary course of business.	
	.12 Company has not paid or agreed to pay any benefits under a pension, profit-sharing, bonus, or other similar plan, except as stated.	
	.13 All transactions are in the ordinary course of business.	
	.14 List of company's major customers and suppliers.	
	.15 No termination of any operations or arrangements with any customer or supplier.	
	.16 No changes in billing arrangements or credit terms.	
	.17 No material change in business or operations (adverse or otherwise).	
	.18 No extraordinary or material loss or damage.	

6.12	Accuracy of the balance sheet and financial statements.	<input type="checkbox"/>
	.1 True, correct and complete; fairly represent financial position of company.	
	.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 Full disclosure of all material financial transactions.	
	.4 Full disclosure of current and contingent liabilities.	
	.5 Adequacy of provision for doubtful accounts receivable.	
	.6 Basis on which inventory is valued (typically, at the lower of cost or realizable value).	
	.7 No more than a stipulated percentage (typically 10%) of the inventory is obsolete or unsaleable in the ordinary course of business.	
	.8 Federal income tax returns and GST/HST returns have been examined by the Canada Revenue Agency to a specified year or reporting period, and the balance sheet reflects the results.	
	.9 No adverse material change in company's financial position since date of statements.	
	.10 Prepaid expenses outlined in schedule.	
	.11 Refundable deposits outlined in schedule.	
	.12 No liabilities or indebtedness except as presented or in a schedule.	
6.13	Contracts.	<input type="checkbox"/>
	.1 Company is not in default under any contracts. All contracts between the company and dealers, customers, or suppliers are in good standing and have not been assigned or encumbered.	
	.2 Contractual obligations not altered, violated, or breached by completion of this transaction.	
	.3 No contracts involve total liability in excess of a specified sum except those set out in schedule.	
	.4 Notice period for termination without further liability of contracts with third parties is as follows:	
	(a) Directors.	
	(b) Officers.	
	(c) Employees.	
	(d) Management firms.	

	(e) Accountants.	
	(f) Lawyers.	
	(g) Agents.	
	(h) Suppliers or customers.	
	(i) Distributors.	
	(j) Lessors.	
	(k) Lessees.	
	(l) Any other material contracts.	
	.5 There are no agreements to provide severance pay or separation allowances. No change-of-control agreements.	
	.6 No obligations to pay benefits or share profits will survive termination of employment or service contracts.	
	.7 No collective agreement is in force or under negotiation.	
	.8 Leases on real property or equipment.	
	(a) Validity.	
	(b) Compliance with registration requirements.	
	(c) Rents have been paid.	
	(d) Company and other party not in breach of terms, and company entitled to all benefits.	
	(e) Company has not assigned, sublet, or encumbered its interest under the leases.	
	(f) Terms not altered, breached, or violated by completion of transaction.	
6.14	Labour issues.	<input type="checkbox"/>
	.1 Employees are set out in schedule with name, job title, duration of employment, vacation, and remuneration. Consider list of those on leave or disability.	
	.2 No employees of the company are represented by a certified bargaining unit.	
	.3 No applications for certification are pending.	
	.4 No attempt has been made to certify. No threat of strike or other disturbance.	
6.15	Pension and benefits issues.	<input type="checkbox"/>
	.1 No pension or any other benefit plan except as specified. Copies provided.	
	.2 List of all policies and procedures regarding vacation, disability, etc.	

	.3 Pension plans registered and in compliance with applicable law. No unfunded liability. No changes. It is important to consider obtaining tax and actuarial assistance in calculating liability for post-retirement benefits.	
	.4 Stock options or other incentive or profit-sharing plans.	
6.16	Company's legal position.	<input type="checkbox"/>
	.1 Company holds all permits, licences, registrations, and authorizations needed to own and operate its assets and carry on its business.	
	.2 Property is zoned to permit existing operations.	
	.3 Company's operations do not infringe any registered patent, trademark, or copyright.	
	.4 Company is not in breach of any law or court order.	
	.5 Company (and operation of business) is not in breach of any statute, regulation, or bylaw. Consider specific items, such as privacy and personal information legislation.	
	.6 No pending change in statutes, regulations, or bylaws (including zoning) will render any part of the company's present operations illegal.	
	.7 No litigation against company is in progress, pending, or threatened. Consider extending representations and warranties to major customers and suppliers.	
	.8 Company has a valid defence to any actual or potential lawsuits (specify).	
	.9 Company 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.	
	.10 No outstanding work orders or deficiencies.	
	.11 Condition of properties and equipment.	
	.12 No subsidiaries or other interests.	
	.13 Listing, adequacy and status of insurance.	
6.17	Company tax returns.	<input type="checkbox"/>
	.1 True and timely filing of all federal, provincial, and local tax returns (income, sales, GST/PST/HST, corporation capital tax, employee deduction remittances) in accordance with applicable law. Further information can be found at www.canada.ca/en/services/taxes.html and www2.gov.bc.ca/gov/content/home .	
	.2 Tax liability is as indicated by returns. Complete and correct copies provided.	
	.3 Timely payment of taxes shown on returns; no tax liability other than as disclosed in current financial statements.	
	.4 All required withholdings and remittances made.	
	.5 No property tax owing.	

	.6 Company (if an importer) has paid all customs, excise, and federal sales tax and none of its goods are affected by a notice of seizure.	
	.7 No elections have been made under <i>Income Tax Act</i> , s. 83 or 85.	
	.8 All elections required in connection with distributions have been made.	
	.9 No acquisitions of property from persons not at arm's length.	
	.10 No dispositions of property to persons not at arm's length.	
	.11 Adequate provision made for current tax liability.	
	.12 Company not aware of contingent liabilities or grounds for reassessment.	
	.13 Assessments issued up to a particular date; no actions, suits, proceedings, etc. regarding tax matters.	
	.14 No waiver of statutory time limits for assessments.	
6.18	Review the company's tax status with a tax advisor (consider which tax issues and attributes are most relevant to the business).	<input type="checkbox"/>
6.19	Vendor is not a "non-Canadian" within the meaning of <i>Investment Canada Act</i> , R.S.C. 1985, c. 28 (1st Supp.), s. 3.	<input type="checkbox"/>
6.20	Vendor is not a non-resident of Canada within the meaning of <i>Income Tax Act</i> , s. 116.	<input type="checkbox"/>
6.21	Vendor is a GST/HST "registrant" for the purposes of Part IX of the <i>Excise Tax Act</i> .	<input type="checkbox"/>
6.22	Consider application of the <i>Competition Act</i> , R.S.C. 1985, c. C-34, and any need for representations and warranties regarding the size of the vendor for the purpose of the pre-notification provisions of that Act. Consider application for an advance ruling certificate (<i>Competition Act</i> , s. 102).	<input type="checkbox"/>
6.23	Representations and warranties survive closing. Warranties and representations are made as at the date of execution and, subject to specified exceptions, will be true at the date of closing.	<input type="checkbox"/>
6.24	Time and dollar limits on representations and warranties. See item 13 in this checklist.	<input type="checkbox"/>
6.25	Incorporate recitals as appropriate.	<input type="checkbox"/>
	Some of the representations and warranties may need to be qualified by the phrase "except in the ordinary course of business" or with a materiality threshold or a knowledge qualifier. (Vendor's counsel will seek such qualifiers.) Compare also with item 5.4 in this checklist.	

7.	PURCHASER'S REPRESENTATIONS AND WARRANTIES	
7.1	Purchaser's corporate status.	<input type="checkbox"/>

	.1 Valid incorporation.	
	.2 Good standing.	
	.3 Status under the <i>Investment Canada Act</i> . (Give notice or apply for review pursuant to the <i>Investment Canada Act</i> , if foreign investment.)	
	.4 Consider size of the purchaser, as in item 6.2.1 (authorized shares) in this checklist for vendor.	
7.2	Purchaser's right to purchase.	<input type="checkbox"/>
	.1 No conflict with constating documents such as memorandum, notice of articles, and articles.	
	.2 No conflict with any agreement to which the purchaser is a party.	
	.3 No third-party consents are required to purchase shares.	
	.4 Purchase has been authorized by all necessary corporate action.	
7.3	Representations and warranties survive closing.	<input type="checkbox"/>

8.	VENDOR'S OBLIGATIONS—PRIOR TO CLOSING	
8.1	See matters listed in item 5.4 in this checklist.	<input type="checkbox"/>
8.2	Consider inclusion of break or termination fee (i.e., to cover cost and expenses of transaction) in case the vendor fails to complete the sale.	<input type="checkbox"/>

9.	CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER	
9.1	Accuracy of all representations and warranties as of closing date.	<input type="checkbox"/>
9.2	Vendor not in breach of any obligations and has performed its obligations.	<input type="checkbox"/>
9.3	Purchaser has received an opinion from a stipulated law firm asserting:	<input type="checkbox"/>
	.1 Valid incorporation of company.	
	.2 The company is in good standing.	
	.3 All necessary steps and proceedings have been taken to effect share transfer and appropriate transaction.	
	.4 Authorized and issued/outstanding capital share structure.	
	.5 Outstanding shares are validly issued, fully paid, and non-assessable.	

	.6 Agreement (and key ancillary agreement(s) if applicable, such as promissory notes) have been duly executed and delivered.	
	.7 Agreement is fully enforceable against the vendor (as well as any key ancillary agreements).	
	Some of these opinions will be resisted by vendor's counsel and may not be appropriate; see <i>Advising British Columbia Businesses</i> (CLEBC, 2006–) and <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–).	
	.8 Consider whether some of these opinions should also be obtained with respect to shareholders who are parties, or the vendor(s).	
9.4	Delivery of documents to the purchaser.	<input type="checkbox"/>
9.5	No laws are passed before closing that adversely affect the business of the company or the right of the purchaser to the full enjoyment of corporate assets.	<input type="checkbox"/>
9.6	Favourable review of acquisition of shares, if required by the <i>Investment Canada Act</i> or the <i>Competition Act</i> .	<input type="checkbox"/>
9.7	No adverse condition or action affecting the assets or business of the company that would materially adversely affect, or reduce the value of, those assets (as a whole) or business.	<input type="checkbox"/>
9.8	No damage by fire, negligence, or otherwise to the assets materially affecting the assets or business of the company.	<input type="checkbox"/>
9.9	No court action prohibiting purchase.	<input type="checkbox"/>
9.10	No court action materially prohibiting or adversely affecting the right of the company to carry on its business.	<input type="checkbox"/>
9.11	Statement that conditions precedent are for the sole benefit of the purchaser and can be waived by the purchaser without prejudice.	<input type="checkbox"/>
	Consider other major items that may be material to the transaction or the business.	

10. CONDITIONS PRECEDENT TO OBLIGATIONS OF VENDOR		
10.1	Accuracy of all representations and warranties as of the closing date.	<input type="checkbox"/>
10.2	Purchaser is not in breach of any obligations and has performed its obligations.	<input type="checkbox"/>
10.3	Production of certified cheque or bank draft (or other agreed form of payment) in required amount at closing.	<input type="checkbox"/>
10.4	Payment of escrowed funds into trust account by time of closing.	<input type="checkbox"/>

10.5	Release of vendor from obligations under specified guarantees of the indebtedness of the company (alternatives: pay off debts, indemnify vendor). Consider this for directors, officers, and shareholders, as applicable.	<input type="checkbox"/>
10.6	Purchaser puts up required security (if deferred payments).	<input type="checkbox"/>
10.7	Favourable review of acquisition of shares, if required by the <i>Investment Canada Act</i> or the <i>Competition Act</i> .	<input type="checkbox"/>
10.8	Opinion of purchaser's counsel, in form and substance satisfactory to vendor's counsel. (See item 9.3 in this checklist—including the cautionary note—as applied to the purchaser.)	<input type="checkbox"/>
10.9	Statement that conditions precedent are for the sole benefit of the vendor and can be waived by the vendor without prejudice.	<input type="checkbox"/>

11.	CLOSING	
11.1	Date, time, and place, or as the parties otherwise agree in writing. Consider electronic closing through exchange of documents between legal counsel and applicable written undertaking arrangements between counsel. See <i>BC Code</i> rule 7.2-11 (Undertakings and Trust Conditions).	<input type="checkbox"/>
11.2	Right of the parties to defer closing until a certain date, as agreed.	<input type="checkbox"/>
11.3	Exchange of documents (electronic closing if applicable).	<input type="checkbox"/>
	.1 Existing share certificates endorsed for transfer (or with appropriate instrument of transfer). New shares (certificates, acknowledgments, or notices if uncertificated) issued in the purchaser's name.	
	.2 Resignations of officers and directors (and releases, if required by vendor or purchaser or both). Consents to act and appointments of new directors and officers.	
	.3 Books, records, and company seal.	
	.4 Minutes of directors' meetings or unanimous directors' resolutions in writing authorizing transfer of shares and the transaction. Consider similar resolutions for corporate vendor, together with shareholders' resolution (if applicable).	
	.5 Title documents for corporate assets.	
	.6 Certificates of accuracy of representations and warranties.	
	.7 Certificate under <i>Income Tax Act</i> , s. 116(2) or (4) (non-resident vendor only).	
	.8 Assignment of vendor's loans.	
	.9 Discharges of security to be discharged on closing.	
	.10 Opinions of solicitors.	

	.11 Evidence of compliance with the <i>Investment Canada Act</i> , <i>Competition Act</i> , and other statutes, as required.	
	.12 Any additional contracts contemplated in the agreement (for example, any employment agreement amendments).	
	.13 Consents and approvals (including from third parties such as landlords).	
	.14 All other documents required by the purchaser.	
11.4	Payment of purchase price.	<input type="checkbox"/>

12.	LOSS OR DAMAGE PRIOR TO CLOSING	
12.1	If the loss or damage materially affects the assets or business of the company.	<input type="checkbox"/>
	.1 Terminate the contract (consider disposition of deposit).	
	.2 Complete the contract.	
	(a) Pay the insurance proceeds to the purchaser.	
	(b) Assign the insurance proceeds to the purchaser.	
	.3 Adjust the purchase price.	

13.	INDEMNIFICATION	
13.1	Vendor will indemnify purchaser for breach of representation, warranty, or covenant.	<input type="checkbox"/>
13.2	Purchaser will indemnify vendor for breach of representation, warranty, or covenant.	<input type="checkbox"/>
13.3	Indemnities to survive closing.	<input type="checkbox"/>
13.4	Consider duration of survival, caps, and other limitations on indemnities; see <i>Buying and Selling a Business: Annotated Precedents</i> (CLEBC, 2000–).	<input type="checkbox"/>

14.	VENDOR'S OBLIGATIONS—POST-CLOSING	
14.1	Promise not to compete with business presently carried on by company.	<input type="checkbox"/>
	.1 Scope (specify reasonable time and geographic limits).	
	.2 Employment, investment, or other association with competing corporations or firms prohibited.	

15. GENERAL PROVISIONS		
15.1	Further assurances.	<input type="checkbox"/>
15.2	Entire agreement (supersedes any letter of intent, etc.).	<input type="checkbox"/>
15.3	Merger of oral representations.	<input type="checkbox"/>
15.4	No collateral agreements.	<input type="checkbox"/>
15.5	Termination, modification, or waiver in writing only, signed by the parties.	<input type="checkbox"/>
15.6	Survival (representations, warranties, but consider other clauses that should survive closing or a termination of the agreement).	<input type="checkbox"/>
15.7	Successors and assigns.	<input type="checkbox"/>
15.8	Limitations on assignability.	<input type="checkbox"/>
15.9	Choice of law and attornment to jurisdiction.	<input type="checkbox"/>
15.10	Choice of exclusive forum. If selecting arbitration, include appropriate terms, with reference to the applicable legislation.	<input type="checkbox"/>
15.11	Liquidated damages, if applicable.	<input type="checkbox"/>
15.12	Joint and several liability of vendors (if more than one).	<input type="checkbox"/>
15.13	Time of essence, if considered desirable.	<input type="checkbox"/>
15.14	Notices.	<input type="checkbox"/>
	.1 Addresses for service.	
	.2 Prepaid registered mail or other arrangement.	
	.3 Deemed date of receipt.	
15.15	Nominees.	<input type="checkbox"/>
15.16	Publicity.	<input type="checkbox"/>
	.1 Press releases.	
	.2 Confidentiality of transaction details and agreement provisions both before and after closing, to include directors, officers, customers, suppliers, and employees of all companies involved.	

15.17	Default.	<input type="checkbox"/>
	.1 Terminate the contract.	
	.2 Adjust the purchase price.	
	.3 Provide for waiver of default.	
15.18	Severability of unenforceable clauses.	<input type="checkbox"/>
15.19	General interpretation and construction.	<input type="checkbox"/>
	.1 Principles that govern the interpretation of the agreement.	
	(a) Insertion of headings for convenience only.	
	(b) Masculine/feminine form.	
	(c) Singular/plural form.	
	(d) Use of the word “includes”.	
	(e) No <i>contra proferentem</i> .	
	.2 Reference to currency.	
	.3 Reference to time.	
	.4 Schedules are part of the agreement.	
15.20	Costs of the transaction.	<input type="checkbox"/>
15.21	Counterparts and electronic delivery.	<input type="checkbox"/>

16.	SCHEDULES	
	Example schedules; actual schedules subject to provisions of agreement.	
16.1	Audited Financial Statements.	<input type="checkbox"/>
16.2	Unaudited Financial Statements.	<input type="checkbox"/>
16.3	Company Assets.	<input type="checkbox"/>
16.4	Material Contracts.	<input type="checkbox"/>
16.5	Accounting Principles.	<input type="checkbox"/>

16.6	Permitted Encumbrances.	<input type="checkbox"/>
16.7	Leases, Licences and Permits.	<input type="checkbox"/>
16.8	Employees.	<input type="checkbox"/>
16.9	Pension and Benefit Plans, and Incentive Arrangements.	<input type="checkbox"/>
16.10	Environmental Compliance Exemptions.	<input type="checkbox"/>
16.11	Other schedules as necessary.	<input type="checkbox"/>