

Country Guide

USA – Puerto Rico

Prepared by

McConnell Valdés LLC



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**A GUIDE TO DOING BUSINESS
IN PUERTO RICO
December 2016**

Prepared by:
McConnell Valdés LLC
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GUIDE TO DOING BUSINESS IN PUERTO RICO

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I. GEOGRAPHY, CLIMATE, CULTURE AND POPULATION

A. Geography

Puerto Rico forms part of the chain of islands separating the Atlantic Ocean from the Caribbean Sea which begins South of Florida and runs in an arc to the coast of Venezuela. Puerto Rico is located almost in the center of this arc, 1000 miles East-southeast of Miami, Florida and 1,800 miles Southeast of New York City in the Atlantic standard time zone, one hour ahead of the United States East coast. Puerto Rico does not use daylight savings time, so in the late spring, summer and early fall, Puerto Rico has the same time as the East coast of the United States.

The smallest of the Greater Antilles, Puerto Rico is rectangular in shape and measures 100 miles (160 km.) by 35 miles (56 km.). The mountainous interior of the island is surrounded on all sides by a wide coastal plain.

Puerto Rico also includes the islands of Vieques (51.7 sq. mi.) (135 sq. km.), and Culebra (10 sq. mi.) (26 sq. km.), approximately 17 miles (27 km.) to the east. Portions of both these islands were used by the United States Navy for training for more than 50 years, but training exercises have now ceased and most of the former Navy lands have been returned to the Puerto Rico government.

B. Climate

The climate is humid and tropical with mean temperatures in the summer of 80° F (26° C) and 75° F (25.5° C) in the winter. Mountain temperatures are considerably cooler. Almost constant North-Easterly trade winds contribute to a very agreeable climate. The Southern part of the island is somewhat drier and warmer than the North. Average annual rainfall is 69 inches (175 c.m.). The period from mid-January to mid-April tends to be the driest time, with plentiful rainfall possible at most other times.

C. Population

Puerto Rico has a population of approximately 3.5 million people, over 1,000 people per square mile (446 per sq. km.) making it one of the most densely populated places in the world. In addition, the more than 3 million Puerto Ricans living on the United States mainland tend to maintain family and other close ties with Puerto Rico.

D. Cultural/Ethnic Background

Puerto Ricans are proud of their country and their cultural traditions. Although English and Spanish are both official languages, and English is taught in the schools as a second language, Spanish remains the language of choice, except in a business context.

Ethnically, Puerto Ricans are descended primarily from Spaniards and Africans with some Taino Indian (the original inhabitants of the island), United States and European blood.

II. POLITICAL STATUS AND GOVERNMENT STRUCTURE

Puerto Rico was discovered by Columbus in 1493 and colonized by Spain. In 1898, the island was ceded by Spain to the United States at the end of the Spanish-American War. In 1917, Puerto Ricans became United States citizens and in 1952, the United States Congress enacted a law allowing the people of Puerto Rico to draft and approve their own constitution conferring a right of internal self-government. The United States retains control of foreign affairs, defense and immigration and United States laws apply in Puerto Rico unless Puerto Rico is specifically excluded.

The Constitution of the Commonwealth of Puerto Rico provides for a republican form of government composed of legislative, executive and judicial branches. The Legislative Branch is formed by a Legislative Assembly with two chambers, a Senate with 27 elected members and a House of Representatives with 51 elected members. The Executive Branch is led by an elected Governor. All elected officials are elected to 4 year terms. The elections are on the first Tuesday after the first Monday of November of leap years, on the same day as the election of the President of the United States. The judicial branch is led by a Supreme Court with between five and nine justices appointed by the Governor and confirmed by the Senate; it currently has nine justices. Puerto Rico has 78 municipalities created by law, which are led by an elected Mayor, with an elected Municipal Legislature, which are elected on the same day as the Governor and the members of the Legislative Assembly.

In general terms, the Government of the Commonwealth of Puerto Rico exercises virtually the same control over its internal affairs as do the 50 states of the United States. Recently, however, as a result of the current fiscal crisis that affects Puerto Rico, the United States Congress enacted the "Puerto Rico Oversight, Management and Economic Stability Act" or "PROMESA," establishing a Financial Oversight and Management Board with broad powers to exercise budgeting and financial controls over Puerto Rico's fiscal affairs.

III. INVESTMENT CLIMATE

For more than 50 years, the Puerto Rico government has promoted investment in Puerto Rico through financial and tax incentives aimed at establishing new businesses in Puerto Rico with a primary goal of creating new jobs. Until the late 1990s, the U.S. Congress provided special tax exemptions to new businesses from the U.S. established in Puerto Rico. Federal exemptions ended in 2005, and the Puerto Rico government has redoubled its efforts to create new employment by encouraging domestic and foreign investment.

Tax incentives include exemptions or partial exemptions from income, property, municipal gross receipts, construction and excise taxes for certain agricultural activities;

qualifying manufacturing activities, tourism development, motion picture film production, and service industries, such as banking, financial, insurance, auditing, computer, distribution and laboratories, when services are rendered in Puerto Rico exclusively for non-residents of Puerto Rico, provided that 80% of the employees of such service industries are residents of Puerto Rico.

As a general rule, in the case of most exempt corporations, dividends paid to shareholders are tax exempt in Puerto Rico. For more detailed information on tax incentives, credits and eligible businesses, see Taxation, *infra*, subhead Tax Incentives and Exemptions.

Among financial incentives offered are rentals of government manufacturing buildings at reasonable rates, payroll incentives and financing through tax exempt industrial revenue bonds and direct loans.

The Puerto Rico Industrial Development Company (PRIDCO)* is the government agency primarily responsible for assisting companies relocating to or expanding in Puerto Rico. PRIDCO coordinates and administers the government's incentives and other promotional programs and provides the following services to new or expanding businesses:

- (1) Serves as a liaison with government agencies offering incentives for new businesses or expansions;
- (2) Administers a streamlined process designed to speed up the permitting process for companies wishing to do business in Puerto Rico;
- (3) Offers support and participates in the negotiations with other government agencies for tax and financial incentives;
- (4) Offers orientation and support with respect to location of new enterprises;
- (5) Engages in the development of industrial parks and construction of buildings for sale or lease to new businesses, including buildings built to user specifications; and,
- (6) Manages a Foreign (Free) Trade Zone consisting of 4,400 acres (1,790 hectares) and more than 600 buildings owned by PRIDCO. (See § V B[6] below for discussion of foreign trade zones.)

* See Appendix *infra*, for reference information on PRIDCO and other agencies marked with an asterisk.

IV. BUSINESS ENTITIES

A. Corporations

(1) Corporation Law

The use of a corporation permits investors to limit their liability for acts of the corporation. This limitation of liability has a price: taxes are imposed at the corporate level on the earnings of the corporation, and at the investor level on the dividends paid to stockholders.

The Puerto Rico General Corporation Law (the "Corporation Law") is modeled after the Delaware Corporation Law. Failure to observe the statutory formalities as to formation and operation of a corporation could expose a stockholder to personal liability for acts of the corporation. Special laws apply to banks and insurance companies.

(2) Supervision

Corporations are supervised by the Corporate Division of the Secretary of State's Office (the "Corporate Division").*

(3) Incorporation

Any person or entity, whether or not a resident of Puerto Rico, may form a corporation. A Puerto Rico corporation is formed by filing articles of incorporation with the Corporate Division. The articles must be signed by the incorporator or incorporators and must include: (a) the corporate name, (b) the physical and postal address of the corporation, (c) the nature or purpose of the business, provided that it is sufficient to state that the corporation will dedicate itself "to any legitimate matter for which a corporation may be created under the General Law of Corporations of the Commonwealth of Puerto Rico", (d) the class or classes of stock, including total number of shares for each class, par values or a declaration that stock will have no par value, and statement of the powers, preferences and rights of each class of stock, (e) the name and address of any person acting as a director as of the date of incorporation, if the rights and the powers of incorporators end with the filing of the articles, and (f) the name of each incorporator and their physical and postal address. In addition, the articles may include any other information permissible under the Corporation Law. The initial Board of Directors of the Corporation may be named in the articles or appointed at a later date by the incorporator. The filing must be accompanied by a fee based on the number of authorized shares of capital stock. The minimum fee is \$100. Incorporation is effective as of the date of filing with the Corporate Division.

Articles may be amended by filing a certificate of amendment with the Corporate Division and payment of a fee. An amendment is initiated by resolution of the directors, followed by a vote of shareholders.

(4) By-laws

By-laws may be adopted or amended by the incorporators or by the board of directors, and after stock is issued by the stockholders, or by the directors if so authorized by the articles of incorporation.

(5) Stock

Capital stock of a corporation may be common, preferred or special, with or without par value. Restrictions on transferring of stocks are enforceable if noted conspicuously on the stock certificate or in a notice sent to the holders of uncertificated shares.

Shares of stock are personal property and may be issued only for cash, labor performed, personal property or real property.

(6) Meetings of Shareholders

The Corporation Law provides for a required annual meeting and for special meetings of shareholders. Meetings are not required for shareholder action if the requisite number of shareholders approves a particular action in writing.

(7) Directors and Officers

The regular business of a corporation is overseen by a board of directors. The board of directors may consist of one or more members. Directors must carry out their duties in good faith and without conflict of interest. Directors may be indemnified by the corporation. Directors are protected when they rely, in good faith, on the books of the corporation or upon representations of officers or employees. Officers of a corporation shall be provided for in the by-laws or by resolution of the board of directors and may be indemnified by the corporation, provided they act reasonably and in good faith.

(8) Principal Office and Agent

Corporations must maintain a designated principal office in Puerto Rico (which need not be the business office of the corporation) whose location may be changed by resolution of the board of directors duly certified and filed with the Corporate Division. Each corporation must have an agent, which may be a corporation or an individual, domiciled in Puerto Rico, whose address is the same as that of the designated principal office of the corporation. Service of process may be made on the registered agent.

(9) Annual Reports

Corporations must file an annual report on or before April 15. Annual reports must be signed by the authorized official, director, incorporator, or authorized signatories. In the case of a Puerto Rico corporation whose annual volume of business exceeds \$3,000,000,

its annual report must be accompanied by the corporation's balance sheet at the close of the preceding fiscal year, certified by a certified public accountant licensed in Puerto Rico who cannot be a stockholder or employee of the corporation. Failure to submit the annual report could lead to administrative penalties of up to \$2,000 from the Secretary of the Department of State. If the corporation fails to file its annual reports for 2 consecutive years, the Secretary of State may revoke its certificate of incorporation. Corporations incorporated outside Puerto Rico that file with the Corporate Division to do business in Puerto Rico as foreign corporations are subject to the same requirements. Each annual report must be filed electronically accompanied by a fee of \$150.

(10) Merger and Consolidation

Two or more corporations may merge or consolidate. In a merger, one of the corporations survives. In a consolidation, a new corporation is formed to operate the businesses of those consolidating. In either event, the stockholders and creditors of the non-survivor corporations become stockholders and creditors of the survivor, and the survivor succeeds to all of the rights and liabilities of the merged or consolidated corporations. Mergers and consolidations generally qualify for tax-free treatment.

A Puerto Rico corporation may also merge with a non-Puerto Rico corporation if the law of the place of incorporation of the latter permits. If the laws of the place where the non-Puerto Rico corporation is incorporated govern the survivor, an agent for service of process in Puerto Rico must be named and the survivor corporation must consent to service in Puerto Rico as to claims arising from business of the Puerto Rico corporation.

(11) Close Corporations

The Corporation Law permits the incorporation of "close corporations" where management is retained by the stockholders without need of a board of directors. These corporations must be identified as close corporations in the articles of incorporation. The stockholders are limited to a maximum of 75 natural persons; the corporation may establish types or classes of persons eligible to be stockholders; the corporation cannot sell stock in a public offering. Otherwise, the provisions of the Corporation Law apply as they do to other corporations, including the concept of limited liability for stockholders. A close corporation may convert to a regular corporation and vice-versa, by appropriate amendments to their articles of incorporation.

(12) Non-Profit Corporations

Although they are organized under the Corporation Law, non-profit corporations may not issue stock or make distributions to members, directors or officers, except as reasonable compensation for services.

Articles of incorporation must:

- (i) disclose the nature of the services to be rendered; and
- (ii) state whether the corporation will have members in addition to directors and officers.

Management structure is flexible but may follow that of a for profit corporation; quorum, however, for transaction of business must be not less than one-third of the members of the governing body.

The Puerto Rico Secretary of Justice has standing to file derivative actions against directors and members of a non-profit corporation.

(13) Foreign Corporations

In order to do business in Puerto Rico, a corporation not organized under the laws of Puerto Rico must pay a fee of \$150 and file a certificate issued by an authorized officer of the jurisdiction of its incorporation evidencing its corporate existence, together with a certificate stating the name and address of its registered agent in Puerto Rico, the amount of its assets and the proposed business it plans to conduct in Puerto Rico. Any changes in the articles of incorporation, including mergers or consolidations, must be filed with the Corporate Division within 30 days of the amendment or merger.

A foreign corporation is not considered to be doing business in Puerto Rico if (a) it files, defends against or settles a judicial proceeding in Puerto Rico; (b) it conducts directors or shareholders meetings, or activities related to internal corporate matters in Puerto Rico; (c) it maintains bank accounts in Puerto Rico; (d) it maintains offices for the transfer, cancellation or recording of securities owned by the corporation, or maintains fiduciaries or depositories with respect to such securities in Puerto Rico; (e) it sells merchandise through independent contractors; (f) it obtains business orders by mail or through agents or employees or in any other manner if these orders are accepted outside of Puerto Rico and the products are shipped from outside of Puerto Rico; (g) it creates or acquires debts, mortgages or guarantees it creates, as a borrower or lender, or acquires evidences of debt, mortgages or other liens on real or personal property located in Puerto Rico; (h) it secures or collects debts or forecloses on mortgages or guarantees; (i) it holds title to real and personal property in Puerto Rico; or (j) it conducts an isolated business act in Puerto Rico which is completed within a term of 30 days and is not one of a series of acts of similar nature.

A foreign corporation conducting business in Puerto Rico without having qualified, may not file a judicial action or other proceeding in Puerto Rico.

B. Limited Liability Companies

(1) Introduction

Limited liability companies (“LLCs”) are authorized under the Corporation Act.

(2) Organization

One or more persons must execute the LLC’s Certificate of Formation and file it with the Puerto Rico Secretary of State. The Certificate must state the LLC’s name, address of its registered office and name and address of its resident agent for service of process, as well as other desired provisions. The Certificate of Formation may be amended by filing a Certificate of Amendment with the Secretary. The LLC’s name must include the words “Limited Liability Company”, or “*Compañía de Responsabilidad Limitada*”, or the designation “LLC” or “CRL”. The name cannot duplicate or imitate any other LLC, corporate or other entity’s name on file or reserved with the Secretary of State unless written consent is obtained from the other registrant.

(3) Purpose

An LLC may engage in any lawful business.

(4) Principal Office and Agent

Each LLC must maintain a registered office and a resident agent for service of process in Puerto Rico.

(5) LLC Agreement

The LLC Agreement (“Agreement”) is separate from the Certificate of Formation, would normally be prepared by or at the request of the persons organizing the LLC and need not be filed with the Secretary of State.

The Agreement sets out the duties of the LLC to its managers and members, and duties of these to the LLC and to each other, as well as the management structure of the LLC, the rights of the managers and members, and their respective shares of interest in the LLC profits and losses. The Agreement may be interpreted or enforced in the Court of First Instance.

(6) Limited Liability

Unless otherwise provided in the Agreement, no manager or member is personally liable for the LLC’s obligations solely by reason of being a manager or member of the LLC. Managers and members are protected by good faith reliance on the LLC’s records, and upon information presented to the LLC by any of its managers, members, officers, committees or employees, or by another person as to matters the manager or member reasonably believes are within such other person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the LLC.

(7) Merger and Consolidation

An LLC may merge or consolidate with one or more domestic or foreign LLCs or other business entity following the procedures set forth for corporate mergers or consolidations in the Corporation Law.

(8) Dissolution and Winding-Up

Dissolution and winding up of an LLC is accomplished following procedures established in Corporation Law. The Court of First Instance may order the dissolution and winding up of an LLC upon petition by a manager or member of the LLC should the court determine that it is not reasonably possible to continue the affairs of the LLC. Unlike ordinary corporations there is no set term of dissolution.

(9) Foreign LLC Qualifications

A foreign LLC may register in Puerto Rico by petition signed by an authorized person following the procedures specified in the Corporation Law and when registered shall have same powers as a domestic LLC, provided that a foreign LLC's internal affairs and the liability of its managers and members shall continue to be governed by laws of the jurisdiction where the LLC is organized.

C. Partnerships

(1) In General

With certain exceptions, partnerships in Puerto Rico are governed by civil law rather than common law principles. A Puerto Rico partnership is a juridical entity separate from its partners. Under the Internal Revenue Code for a New Puerto Rico (generally effective for taxable years commenced after December 31, 2010), a partnership is not considered a separate taxpaying entity. It operates as a conduit entity and the partners must take into account their "distributive shares" of a partnership profit or loss, regardless of whether the partnership makes actual distributions to them.

(2) Formal Requirements

Partnership agreements (except those for limited liability partnerships and special partnerships) need not comply with any statutory formalities and need not be recorded in the Department of State. However, a partnership owning real property must have its partnership agreement incorporated into a public deed which is a formal document prepared by a notary public and in which the notary participates.

(3) Liabilities of Partnerships and Partners

Normally, the liability of the individual partners is unlimited and joint with respect to losses, damages, disbursements and obligations of the partnership. However, a partner's liability in limited liability partnerships, second tier partners of limited partnerships and special partnerships is limited to his or her individual contributions towards these partnerships.

Management of the partnership is governed by the partnership agreement. A partner acting within the apparent scope of his authority under the partnership agreement can bind the partnership. Thus, the partnership is liable to a third party for the authorized acts of its partners.

(4) Limited Liability Partnerships

These partnerships are supervised by the Secretary of State, Corporate Division. They may be formed by two or more natural persons for any lawful purpose, including professional services, pursuant to a deed of constitution of partnership (if a Puerto Rico partnership) which must be filed with the Secretary. The name must contain the words "limited liability partnership" (*sociedad de responsabilidad limitada*) or "LLP", "L.L.P.", "SRL" or "S.R.L."

A partner is not liable for obligations of the partnership or for negligent or unlawful acts of another partner or employee not supervised by him, provided he had no prior knowledge of such acts.

A foreign limited partnership must qualify with the Secretary of State to do business in Puerto Rico.

(5) Limited Partnerships ("Sociedades en Comandita")

Limited partnerships have two classes of partners. The first class is subject to unlimited and joint liability for partnership debts and the second class has no responsibility for debts and losses, except as to the amount of capital they have subscribed. Limited partnerships must include in their name the names of one or more of the first class of partners, and also the words "and company" ("y Cía.") unless all of the first class of partners are named. The firm name must also conclude with the words "*Sociedad en Comandita*" (abbreviated as "S. en C.") or "Limited Partnership." Management of a limited partnership rests in the hands of the first class of partners and the rights of the second class of partners are limited as provided in the partnership agreement.

(6) Special Partnerships

Effective December 31, 2010, the Puerto Rico Treasury Department will not authorize new Special Partnerships. Current Special Partnerships entities will remain in effect. These entities are not subject to tax at the partnership level and, in addition, its partners enjoy

limited liability. However, the partners are taxed annually on their distributive shares of the net income of the partnership. To be eligible for special partnership status, a business must derive at least 70% of its gross income from Puerto Rico sources, except when the business conducted is the production of feature films. Also, special partnerships must derive at least 70% of their income from one or more of the following activities: tourism, agriculture, construction, land development, rehabilitation of buildings and structures, sale or rental of buildings or structures, film production, manufacturing which generates substantial employment and exporting of goods or services to foreign countries. If they meet the above conditions, a corporation and its shareholders may also qualify for special partnership treatment. Special partnership status is not automatic, it must be elected by the entity.

D. Sole Proprietorship

The term “sole proprietorship” refers to individuals who do not elect to do business as corporations, limited liability companies or partnerships. The business income of these persons is taxed at individual tax rates and their liability for debts and obligations of the business is unlimited. Businesses of this type are required to register in the Compulsory Business Registry which is discussed below.

E. Joint Ventures

Puerto Rico has no special statute governing joint ventures. Unless they are incorporated, these entities are treated as partnerships.

F. Alternatives

(1) Independent Distributors and Sales Representatives

A company may choose to sell its products and services in Puerto Rico using an independent distributor. The distributor will normally maintain a stock of inventory, establish terms of sale and sign sales contracts, deliver goods sold, assume any credit risk and be responsible for establishing a market for the principal’s products in Puerto Rico. This will not require that the principal register to do business in Puerto Rico and product sales will be made to the distributor outside of Puerto Rico thus avoiding Puerto Rico income tax. This course of action could, however, have serious consequences and should be fully explored before entering into such a relationship. The Puerto Rico Dealers Act prohibits termination, impairment or refusal to renew a distributor’s contract except for just cause and establishes damages for unjust termination.

Similar statutory provisions as to unjust termination, impairment or refusal to renew apply to a relationship with an independent sales representative. A sales representative works on commission and does not assume any inventory obligation or credit risk or sign sales contracts or deliver goods, but only markets the product and puts the buyer in touch with the principal. Once again the principal need not register to do business in Puerto Rico and is not

subject to Puerto Rico taxes, so long as the only activities in Puerto Rico are conducted by the sales representative and are limited to arranging sales and submitting purchase orders for approval outside of Puerto Rico.

(2) Employment of Salespersons

A third alternative would be to employ salespersons in Puerto Rico. This alternative avoids registration in Puerto Rico and Puerto Rico taxes on sales. However, the employment relationship is subject to the laws of Puerto Rico and sales orders are subject to acceptance outside of Puerto Rico.

(3) Branch Office

Establishment of a branch office in Puerto Rico requires registration to do business, subjects the company to Puerto Rico taxes on all Puerto Rico source income and requires compliance with all Puerto Rico laws pertaining to employees.

(4) Licensing and Franchising

There is no specific statutory regulation of franchising or licensing. Companies are free to enter into license or franchise agreements subject only to Federal Trade Commission Franchising Regulations (16 C.F.R. 436.1, et seq.) and to civil liability provisions of the Puerto Rico Civil Code.

V. TRADE REGULATIONS

A. Federal Antitrust Law

The antitrust laws of the U.S., which apply in Puerto Rico, are primarily reflected in five federal statutes: the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, and the Hart-Scott-Rodino Act.

(1) The Sherman Antitrust Act of 1890

The Sherman Act is divided into two primary sections. Section 1 prohibits contracts, combinations, and conspiracies made in restraint of trade. Section 2 prohibits unilateral and combined conduct that monopolizes or attempts to monopolize trade. Under the Sherman Act, some restraints are “per se” unreasonable (such as price-fixing agreements between competitors) and others are subject to analysis under a “rule of reason” (such as some restrictions placed on a distributor by a manufacturer). Restraints subject to the “per se” rule are never permitted, while those governed by the “rule of reason” test will be evaluated on a case-by-case basis.

(2) The Clayton Act of 1914

The Clayton Act prohibits certain specific anti-competitive activities. For example, the Act prohibits some corporate mergers, exclusive dealing contracts, and agreements under which one product is sold subject to the requirement that the purchaser also buy another product from the seller (known as a “tying” arrangement).

(3) The Robinson-Patman Act of 1936

The Robinson-Patman Act prohibits a seller from discriminating (or inducing others to discriminate) among competing purchasers in the price charged for commodities “of like grade and quality”. While the Act focuses on price discrimination, it also addresses other concerns such as discriminatory advertising allowances.

(4) The Federal Trade Commission Act

The FTC Act declares unlawful “unfair methods of competition” and “unfair or deceptive acts or practices.”

(5) The Hart-Scott-Rodino Antitrust Improvements Act of 1976

The Hart-Scott-Rodino Act requires that, under certain circumstances, a company proposing to merge with or acquire another company must give prior notice of the proposed acquisition to the Federal Trade Commission and the Justice Department. Failure to report may result in very substantial fines.

(6) Enforcement

Private individuals and corporations may bring lawsuits under the Sherman Act, the Clayton Act and the Robinson-Patman Act. Remedies may include injunctive relief, treble damages and attorney fees. The government may enforce the Sherman Act through criminal prosecutions and civil suits. In addition, the government may enforce the Clayton Act and the Robinson-Patman Act through the FTC or the Justice Department. Only the government can enforce the FTC Act and the Hart-Scott-Rodino Act.

B. Regulation of International Trade and Investment

Foreign investment in the U.S. and other international commercial activities involving U.S. entities are subject to a number of U.S. statutes and related regulations. The following discussion outlines some of the more important aspects of these laws which might be relevant to someone investing in or trading with entities located in the U.S.

(1) Restrictions on Foreign Investment

Under a statutory provision commonly referred to as the Exon-Florio Amendment (Section 721 of Title VII of the Defense Production Act of 1950, as added by Section 5021 of the Omnibus Trade and Competitiveness Act of 1988), the President has broad authority to investigate and prohibit any merger, acquisition or takeover by or with foreign persons which could result in foreign control of persons engaged in interstate commerce, if the President determines that such merger, acquisition or takeover constitutes a threat to the national security of the U.S. Congress has indicated that the term “national security” is to be interpreted broadly and that the application of the Exon-Florio Amendment should not be limited to any particular industry.

The statute sets out a timetable for investigations of transactions which can take up to 90 days to complete. The President or his designee has 30 days from the date of receipt of written notification of a proposed (or completed) transaction to decide whether to undertake a full-scale investigation of the transaction. The President has delegated the authority to make investigations pursuant to the Exon-Florio Amendment to the Committee on Foreign Investment in the U.S. (“CFIUS”), an interagency committee made up of representatives of various executive branch agencies. Notifications of transactions are not mandatory and may be made by one or more parties to a transaction or by any CFIUS member agency.

If at the end of the initial 30-day period after notification of a transaction, CFIUS decides that a full-scale investigation is warranted, it then has an additional 45 days to complete an investigation and make a recommendation to the President with respect to the transaction. The President then has 15 days in which to decide whether there is credible evidence that leads the President to believe that the foreign interest exercising control might take action to impair the national security. If the President makes such a determination, Exon-Florio empowers the President to take any action which he deems appropriate, to suspend or prohibit the transaction, including requiring divestment by the foreign entity if the transaction has already been consummated.

U.S. law also places certain restrictions on acquisitions of businesses which require a facility security clearance in order to perform contracts involving classified information. Under Department of Defense Regulations, foreign ownership may cause the Department to revoke a security clearance unless certain steps are taken to reduce the risk that a foreign owner will obtain access to classified information (DOD5220.22-R). Assuming that a foreign owner will be in a position to “effectively control or have a dominant influence over the business management of the U.S. firm,” the Department of Defense may require, as a condition to continuation of the Security clearance, that the foreign owner establish a voting trust agreement, a proxy agreement or a “special security agreement” approved by the Department of Defense and designed to preclude the disclosure of classified information to the foreign owner or other foreign interests.

(2) Reporting Requirements for Foreign Direct Investment

All foreign investments in a U.S. business enterprise which result in a foreign person owning a 10% or more voting interest (or the equivalent) in that enterprise are required to be reported to the Bureau of Economic Analysis (“BEA”), a part of the U.S. Department of Commerce. Pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108) and the regulations promulgated thereunder (15 C.F.R. 801.7), such reports must be made within 45 days after the investment transaction.

(3) The International Investment and Trade in Services Survey Act

The International Investment and Trade in Services Act (“IISA”), passed in 1976, authorizes the President to collect information and conduct surveys concerning the nature and amount of international investment in the U.S. The IISA’s primary function is to provide the federal government with the information necessary to formulate an informed national policy on foreign investments in the U.S. It is not intended to regulate or dissuade foreign investment but is merely a tool to obtain the data necessary to analyze the impact of such investments on U.S. interests.

Under the IISA, international investments are divided into two classifications – direct investments and portfolio investments. Congress has delegated its authority to collect information on both types of international investments to the President. In turn, the President has delegated the power to collect data on direct investments to the Bureau of Economic Analysis, a part of the Department of Commerce, and on portfolio investments to the Department of the Treasury.

A “foreign person” is any person who resides outside the U.S. or is subject to the jurisdiction of a country other than the U.S. A “direct investment” is defined as the ownership or control, directly or indirectly, by one person of 10% or more of the voting interests in any incorporated U.S. business enterprise or an equivalent interest in an unincorporated business enterprise. Because the IISA further defines “business enterprise” to include any ownership in real estate, any foreign investor’s direct or indirect ownership of U.S. real estate constitutes a “direct investment” and falls within the requirement that reports be filed with the BEA.

Unless an exemption applies, a report on Form BE-13 must be filed with the BEA within 45 days of the date on which a direct investment is made. The form collects certain financial and operating data about the investment, the identity of the acquiring entity and certain information about the ultimate beneficial owner. In addition, a Form BE-14 must be filed by any U.S. person assisting in a transaction which is reportable under Form BE-13. The purpose is, obviously, to ensure that those required to file a Form BE-13 do so.

(4) The Agricultural Foreign Investment Disclosure Act of 1978

The Agricultural Foreign Investment Disclosure Act (“AFIDA”) of 1978 requires all foreign individuals, corporations and other entities to report holdings, acquisitions and dispositions of U.S. agricultural land occurring on or after February 1, 1979. AFIDA contains no restrictions on foreign investment in U.S. agricultural land and is aimed only at gathering reliable data from reports filed with the Secretary of Agriculture to determine the nature and magnitude of this foreign investment. Unlike the reports filed under the International Investment Security Act of 1976, reports filed under AFIDA are not confidential but are available for public inspection.

For the purposes of AFIDA, a “foreign person” is (a) any individual who is not a citizen or national of the U.S.; (ii) a corporation or other legal entity organized under the laws of a foreign country; and (iii) a corporation or other legal entity organized in the U.S. in which a foreign entity, either directly or indirectly, holds 5% or more of an interest. The definition of “agricultural land” is any land in the U.S. which is used for agricultural, forestry or timber production. AFIDA requires a foreign person to submit a report on Form ASCS-153 to the Secretary of Agriculture any time he holds, acquires or transfers any interest, other than a security interest, in agricultural land. The report requires rather detailed information concerning such matters as the identity and country of organization of the owning entity, the nature of the interest held, the details of a purchase or transfer and the agricultural purposes for which the foreign person intends to use the land. In addition, the Secretary of Agriculture may require the identification of each foreign person holding more than 5% interest in the ownership entity.

(5) Export Controls

In general, U.S. export controls are more stringent and restrict a wider array of items than the export controls of most other countries. (See the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401-2420 and the regulations promulgated thereunder, 15 C.F.R. 730-799). Except for exports to U.S. territories and possessions, and in most cases, Canada, all exports from the U.S. are subject to an export “license”. An export license is an authorization which allows the export of particular goods or technical information. Two basic types of licenses exist, general licenses and individual validated licenses.

There are many types of general licenses. These are authorizations which are generally available for which it is not necessary to submit a formal application. They cover all exports which are not subject to a validated license requirement. Most exports can be made under one of these general classifications.

In contrast, individual validated licenses are required for those items for which the U.S. specifically controls the export for reasons of national security, foreign policy or short supply. If the export of a specific product to a specific destination is subject to an individual validated license requirement, it is necessary to apply for and obtain such a license from the Office of Export Administration, an office within the U.S. Department of Commerce, prior to the

export. Certain commodities cannot be exported to any country without an individual validated license, while certain other commodities may require a validated license only for shipment to specified countries.

For purposes of the U.S. export control regulations, an export of technical information occurs when the information is disclosed to a foreign national even if such disclosure occurs in the U.S. Thus, if disclosure of information is subject to a validated license requirement, the disclosure may not be made to a foreign national without first obtaining the necessary validated license, whether or not the disclosure is to occur outside the U.S.

(6) Foreign Trade Zones

Foreign trade zones are areas in or adjacent to ports of entry which are treated as outside the customs territory of the U.S. In order to expedite and encourage trade, goods admitted into a foreign trade zone are generally not subject to the customs laws of the U.S. until the goods are ready to be imported into the U.S. or exported.

These foreign trade zones are isolated, enclosed and policed areas which contain facilities for the handling, storing, manufacturing, exhibiting and reshipment of merchandise. Foreign trade zones are created pursuant to the Foreign Trade Zones Act (19 U.S.C. 81a-u) and are operated as public utilities under the supervision of the Foreign Trade Zones Board. Under the Foreign Trade Zones Act, the Board is authorized to grant to public or private corporations the privilege of establishing a zone. Regulations covering the establishment and operation of foreign trade zones are issued by the Foreign Trade Zones Board, while U.S. Customs Service regulations cover the customs requirements applicable to the entry of goods into and the removal of goods from these zones.

(7) Anti-dumping Law

The U.S. anti-dumping law (19 U.S.C. 1671-1677) provides that if a foreign manufacturer sells goods in the U.S. at less than fair value and such sales cause or threaten material injury to a U.S. industry, or materially retard the establishment of a U.S. industry, an additional duty in an amount equal to the "dumping margin" is to be imposed upon the imports of that product from the foreign country where such goods originated. Under the statute, sales are deemed to be made at less than fair value if they are sold at a price which is less than their "foreign market value" (which generally is equivalent to the amount charged for the goods in the home market). The dumping margin is equal to the amount by which the foreign market value exceeds the U.S. price.

The Secretary of Commerce is charged with determining whether merchandise is being sold at less than fair value in the U.S. The International Trade Commission makes the determination of whether such sales cause or threaten material injury to a U.S. industry.

(8) Trade Promotion Authority

The Trade Act of 2002 granted the president Trade Promotion Authority, which makes it easier for the U.S. to enter into free trade agreements. As such, Congress must now vote to accept or reject any trade agreements negotiated by the president in their entirety without the power to amend them. Trade Promotion Authority also requires the President to consult Congress regularly on matters of trade policy, and to review submissions from the public while negotiating trade agreements. This "fast-track" authority had been in place for twenty years after it was first granted in 1974, and was reinstated in June 2015. Since passage of the Act, the U.S. has signed free trade agreements with Chile and Singapore.

(9) Omnibus Trade and Competitiveness Act of 1988

The Act seeks to increase market access for U.S. exports by reducing barriers to trade and by taking actions against anti-competitive and trade-distorting practices. Title IA, Part 1 extends the "fast-track" negotiating authority of the President and gives him the power to alter existing import duties or to impose new ones. Title IB provides for U.S. ascension to the International Convention on the Harmonized Commodity Description and Coding System. The USTR is required, under Title IC, Part 1, to "take appropriate action to eliminate any foreign act, policy, or practice ...that is unreasonable or discriminatory and burdens or restricts U.S. commerce." Title IC, Part 2 allows downstream producers to petition for antidumping measures and creates new standards that can be considered when assessing the threat of material injury for antidumping cases. Under Title ID, Part 1, the President is required to take "appropriate action" to help an affected domestic industry to adjust to increased imports that cause serious injury (or the threat thereof).

(10) 2002 Bioterrorism Act

Under 21 U.S.C. § 350d(a), any facility engaged in "manufacturing, processing, packing, or holding food for consumption in the United States" must be registered with the Secretary of Health and Human Services. Registration requirements apply to both foreign and domestic facilities, and must be complied with as of December 12, 2003. For purposes of the Act, the term "facility" does not include "farms; restaurants; other retail food establishments; nonprofit food establishments in which food is prepared for or served directly to the consumer; or fishing vessels." See 21 U.S.C. § 350d(b)(1). Further, under 21 U.S.C. § 350d(b)(3) the term "foreign facility" applies only if food from such facility is exported to the United States without further processing or packaging outside the United States. Such further processing or packaging does not include labeling or similar activities of a de minimis nature.

Hence, a facility abroad that engages in manufacturing, processing, packing, or holding food for direct consumption in the United States must be registered. This entails submitting a registration to the Secretary of Health and Human Services that contains the name and address of each facility at which, and all trade names under which, the registrant conducts business. Upon receipt of a completed registration, under 21 U.S.C. § 350d(a)(3), the Secretary

of Health and Human Services shall notify the registrant of the receipt of such registration and assign a registration number to each registered facility.

C. Local Law Considerations

(1) Puerto Rico Anti-trust Law

Federal anti-trust laws and other statutes regulating trade apply in Puerto Rico. In addition, Puerto Rico has its own anti-trust laws which closely track the federal statutes. Local courts are often guided by federal judicial precedents in this area, but are not bound by them.

(2) Franchises

No specific statutory provisions. Federal Trade Commission Franchise Regulations apply in Puerto Rico. (15 C.F.R. 436.1 et seq.)

(3) Consumer Protection

(a) Puerto Rico Department of Consumer Affairs* has its primary purpose to defend and implement the rights of the consumer, restrain inflation and oversee prices on consumer goods and services. The Department has the power to impose administrative fines, issue subpoenas, and represent the public consumer.

There are statutes and regulations covering false advertising, warranties on household goods (manufacturer's warranty must apply to products sold in Puerto Rico), service contracts for household goods and consumer leases of personal property and imposing duties on credit reporting agencies and financial institutions. There is also a statute protecting buyers of motor vehicles with respect to warranties, warranty service and availability of spare parts. The law also requires vehicle manufacturers, authorized dealers and all sellers to arrange for adequate vehicle servicing.

(b) A secured creditor repossessing consumer goods must give prior notice of repossession and must hold repossessed property for 30 days within which the buyer can pay the total amount due and reclaim the property.

(c) Although Puerto Rico has no "plain language" statute, certain contracts, including insurance policies and retail installment sales, must be available for signature in Spanish.

(d) In order to protect citizens from actions taken by government agencies or employees, Puerto Rico has a "Citizens' Investigation Official" (Ombudsman)* with broad powers to investigate citizen complaints as to acts of government agencies or employees that include those which are contrary to the law, unreasonable, unjust, arbitrary, offensive or discriminatory. The Ombudsman has subpoena power and the power to impose fines

VI. TAXATION

A. Federal Taxation

Puerto Rico is generally treated as a foreign country for purposes of the U.S. Internal Revenue Code (“IRC”). U.S. citizens residing in Puerto Rico, including those born in Puerto Rico, although generally exempted by the IRC from income taxes on Puerto Rico source income, are subject to U.S. tax on most U.S. and foreign source income.

B. Puerto Rico Taxation

(1) **Income Tax**

The Puerto Rico Internal Revenue Code is based on the IRC. Resident individuals (those domiciled in Puerto Rico) and domestic corporations (those organized under the laws of Puerto Rico) are taxed on their worldwide income, unless expressly exempted. Non-resident individuals and foreign corporations are taxed only on Puerto Rico source income or income effectively connected with the conduct of a trade or business in Puerto Rico (“ECI”). Normally, non-Puerto Rico source income is not ECI, but such income constitutes ECI if (1) the non-resident individual or foreign corporation is engaged in a trade or business in Puerto Rico through an office or other fixed place of business in Puerto Rico; (2) the foreign source income is attributable to such Puerto Rico office; and (3) the foreign source income consists of (a) royalties on intangibles derived from the active conduct of such Puerto Rico business, (b) dividends, interest or gain or loss from sale of securities in a banking or finance business or income received by a corporation whose principal business is trading securities for its own account, and (c) income received from the sale of goods outside of Puerto Rico through the Puerto Rico office (unless the goods are manufactured outside Puerto Rico by the non-resident individual or foreign corporation, or a related person, and is sold for use, consumption or disposition outside of Puerto Rico).

(2) **Income Tax Rates**

(a) **Individuals, Trust and Estates**

Taxable Income:	Tax Rate:
\$9,000 or less	0%
Portion over \$9,000 but not over \$25,000	7%
Portion over \$25,000 but not over \$41,500	14%
Portion over \$41,500 but not over \$61,500	25%
Portion over \$61,500	33%

A 5% add-on tax applies to net income in excess of \$500,000. The tax is limited to an amount that will result in a flat tax, at the maximum rate in effect, on the taxpayer's entire taxable income increased by his personal and dependent exemptions.

The income tax payable by individuals is the higher of the regular tax or the alternate basic tax ("ABT"). ABT applies only to net income subject ABT in excess of \$150,000. ABT rates are as follows:

Tax Bracket	Rate
\$150,000 - \$200,000	10%
\$200,000 - \$300,000	15%
over \$300,000	24%

Social Security payments for employers and employees must be made at 12.4% of wages up to an annual wage of \$118,500, plus a tax of 1.45% of total wages (7.65% withheld from the employee, and an additional 7.65% paid by the employer). Wages over \$200,000 are subject to an additional .09% Medicare tax, withheld from the employee.

Preferential Tax Rates

Net long term capital gains are subject to a 15% tax rate, but the taxpayer may elect the regular rate if lower.

Dividend distributions by domestic corporations and other entities subject to taxation as corporations, as well as by foreign corporations whose Puerto Rico source income or ECI is at least 80% of the total gross income of such foreign corporation or partnership for the prior three taxable years, are taxed at a 15% tax rate.

An alternative tax rate of 10% applies to non-exempt interest paid or credited on interest bearing deposits (or those registered with a brokerage house as nominee) in certain local financial institutions; a 17% tax rate applies to interest paid or distributed by an individual retirement account. An alternative tax rate of 10% is imposed on interest accrued or paid on obligations issued by domestic corporations or by foreign corporations whose Puerto Rico source income or ECI is at least 80% of the total gross income of such foreign corporation for the prior three taxable years. This 10% alternative tax rate also applies to interest paid on certain mortgages on residential property located in Puerto Rico. These alternative tax rates are available only if the individual agrees to have withholding done at the source of the tax. Also, the individual may elect to apply the normal tax rates if such tax rates are more beneficial than the alternative tax rates.

Non-resident U.S. citizens are subject to Puerto Rico income taxation at the same income tax rates that apply to Puerto Rico residents, but only on Puerto Rico source income. Certain payments of Puerto Rico source income are subject to a 20% withholding tax. Proceeds from the sale or exchange of stock (if Puerto Rico source income) and real estate located in Puerto Rico are subject to a 15% withholding tax rate.

See Tax Incentives, *infra*, for further exemptions and benefits.

(b) Corporations

Corporations are subject to income taxation on their net income at a normal tax rate of 20%. In addition to the normal tax, a surtax applies on net income in excess of \$25,000 at the following tax rates;

If Net Income Subject to Surtax is	Surtax Rate
Not higher than \$75,000	5%
In excess of \$75,000, but not higher than \$125,000	\$3,750 plus 15% of the excess over \$75,000
In excess of \$125,000, but not higher than \$175,000	\$11,250 plus 16% of the excess over \$125,000
In excess of \$175,000, but not higher than \$225,000	\$19,250 plus 17% of the excess over \$175,000
In excess of \$225,000, but not higher than \$275,000	\$27,750 plus 18% of the excess over \$225,000
In excess of \$275,000	\$36,750 plus 19% of the excess over \$275,000

Unless otherwise exempt, corporations and other entities subject to taxation as corporations are also subject to an alternative minimum tax (“AMT”) of 30% on the alternative minimum taxable income (“AMTI”) The AMTI is calculated by making various adjustments to the regular taxable income, which has the effect of accelerating the recognition of income. The tax liability is the greater of the AMT or the regular tax liability.

Net long term capital gains are subject to an alternative tax rate of 20%, but the taxpayer may elect the regular rate if lower.

(c) Partnerships

No table of contents entries found.

A partnership is not considered a separate taxpayer for income tax purposes: it is a conduit entity whose partners must account for their “distributable share” of

partnership items of profits, gains, losses, deductions or credits in the determination of their respective income tax liabilities.

(d) Foreign corporations

Foreign corporations engaged in trade or business in Puerto Rico are subject to taxation on their net ECI at the same tax rates that apply to domestic corporations. If these corporations derive less than 80% of their gross income from Puerto Rico sources during the three-year period ending with the taxable year, a 10% branch profits tax will apply to the dividend equivalent amount of the Puerto Rico branch. Corporations that enjoy tax exemption under the provisions of a tax grant (discussed under Tax Incentives below) are not subject to the branch profits tax.

(e) Corporation of Individuals

A corporation of individuals is an income tax classification election available to certain entities, otherwise classified as corporations, in which corporate income, losses, deductions or credits flow through to their shareholders for income tax purposes. It is analogous to an S Corporation election under the IRC.

(f) Limited Liability Companies

A limited liability company is taxed as a corporation, unless it elects to be taxed as a partnership. However, a limited liability company with a flow through or disregarded treatment election in a foreign jurisdiction is generally treated as partnership for Puerto Rico income tax purposes.

(3) Municipal Taxes; Property Taxes

(a) Municipal License Tax

The municipal license tax ("*patente*") is imposed on the gross receipts of a business conducted in a municipality. The tax rate, which is set by each municipality, cannot exceed 1.5% for a financial business and 0.5% for all other types of businesses. A foreign tax credit is available in the case of financial businesses or other industries with branches outside of Puerto Rico that are subject to a similar tax in other jurisdictions on the same volume of business. Other credits and exemptions are available. A 5% discount is granted if the tax is paid with the timely filing of the Volume of Business Declaration.

(b) Construction Tax

Most municipalities impose a construction tax on new construction and demolitions based on the cost of the work. Tax rates vary depending on the municipal ordinance pursuant to which the construction tax is imposed.

(c) Property Tax

A property tax on real and personal property is payable to the Municipal Revenue Collection Center (“CRIM” for its Spanish acronym). Municipal property tax rates vary among the 78 municipalities in Puerto Rico; effective rates range from \$5.80 to \$9.83 per \$100 of reported value of personal property for fiscal year 2016-2017. Personal property is self-assessed by the taxpayer. Real property is assessed by the CRIM based on 1957/58 fiscal year values, which are well below present market values.

(4) Franchise, Sales, Use and Excise Taxes

(a) Franchise Tax

Puerto Rico does not have a franchise tax.

(b) Sales and Use Tax

A general sales and use tax of 11.5% (10.5% state portion and 1% municipal portion) is imposed on the retail sale, use, consumption or storage of taxable items in Puerto Rico. A special 4% sales and use tax is imposed on certain services. The general and special sales tax generally must be paid by the purchaser of the goods or services at the time of sale. But in some instances, the general or special sales and use tax must be self-assessed. Taxable items include tangible personal property, taxable services, admission fees, and bundled transactions.

(c) Excise Tax

Special excise taxes apply upon the introduction, sale, consumption, use, transfer or acquisition of cement, cigarettes, petroleum, gas oil, jet fuel, diesel oil, petroleum products, motor vehicles, sugar, alcoholic beverages, vessels, heavy duty equipment and certain plastic products manufactured outside of Puerto Rico that do not comply with certain specifications. The excise tax is to be paid only once. Licences are required for the sale of certain products and services, as follows: (i) cigarettes; (ii) vehicles and parts; (iii) gasoline; (iv) cement; (v) oil importer, distributor or retailer; (vi) public events promoter; (vii) arms and ammunition; (viii) the operation of coin-operated and entertainment machines; (ix) sea, air and land carriers; (x) duty-free retailers in air or maritime terminals; (xi) precious metals; and (xii) public bonded warehouses.

(d) Act No. 154

A foreign entity will be deemed to be engaged in trade or business in Puerto Rico and therefore subject to Puerto Rico taxation under special rules if it purchases certain tangible property manufactured by a member of the controlled group in Puerto Rico and certain thresholds are met. If the local manufacturing entity member of the controlled group has

gross receipts in excess of \$75,000,000, the special income tax rules will not apply, and instead an excise tax of 4% on purchases between affiliates will apply. The 4% excise tax sunsets in 2017, but the special income tax rules do not expire.

(5) Tax Incentives and Exemptions

(a) Agriculture

Qualifying agricultural activities are eligible for 90% income tax exemption and 100% exemption on real and personal property, municipal license, and excise taxes. Qualifying agricultural businesses include cultivation of land to produce food for human and animal consumption; breeding of certain animals; commercial fishing; cultivation of ornamental plants and flowers; and agro-industrial businesses for cattle and livestock, including milk products, among others. These incentives are available pursuant to a certification issued by the Department of Agriculture for a term of 4 years, which may be renewed. To qualify, the business must generate at least 50% of its income as operator, owner or lessee of the agricultural business.

(b) Private Equity Funds

Domestic and foreign investment vehicles structured as partnerships or limited liability companies can elect to be treated as a fund taxable as a partnership for Puerto Rico income tax purposes, and obtain tax benefits for the investors in the fund. For investors, interest and dividend income received from the fund is taxed at a fixed income tax rate of 10%, while capital gains are exempt from tax. Interest and dividend income received by general partners, registered investment advisors, and private equity funds are taxed at a rate of 5%, while capital gains are taxed at a rate of 2.5%.

(c) Feature Films

Businesses in the film industry may enjoy an income tax rate ranging from 4% to 10% on certain eligible income. Dividend distributions derived from these activities are tax exempt. These businesses also enjoy 90% real and personal property tax exemption, and 100% municipal license and excise tax exemptions on certain articles. They may be entitled to a tax credit that cannot exceed 90% of the Puerto Rico production costs, or 25% of certain amounts related to development or expansion of certain infrastructure projects. The Government may issue tax credits up to \$50,000,000 annually, which may be increased in certain situations. These incentives are available pursuant to a grant for 15 years, or for the duration of the project.

(d) International Banking

Banking entities engaged in certain activities generally for persons located outside Puerto Rico, are eligible for a special income tax rate of 4% on the net income

derived from these activities, and for a 100% exemption on personal and real property and municipal license taxes. In addition, dividend distributions derived from qualifying activities made to non-residents are tax exempt. These incentives are available pursuant to a grant for a term of 15 years, which may be extended for additional periods.

(e) International Insurers

International Insurers and their qualified holding companies are subject to a 4% income tax rate on net income in excess of \$1.2 million. They are 100% exempt from property and municipal license taxes, and their dividends are also 100% exempt. These incentives are available pursuant to a grant of tax exemption for a period of 15 years, renewable for two additional 15-year periods.

(f) Manufacturing and Key Suppliers

Certain manufacturing industries and key suppliers are eligible for a 4% income tax rate on the net income generated by these activities. These companies can enjoy special deductions for investment in buildings, structures, and machinery and equipment, as well as tax credits for the creation of jobs and research and development expenses, among others. Dividends distributed from these activities are tax free. These entities also are entitled to 90% tax exemption on real and personal property taxes, and 60% exemption on municipal license taxes. These incentives are available pursuant to a grant of tax exemption for a term of 15 years, which can be renegotiated for additional periods.

(g) Export Services

Legal entities engaged in various service activities for customers located outside of Puerto Rico are eligible for a 4% fixed income tax rate, and 60% exemption from municipal license taxes. The real and personal property used in certain service activities qualifies for 100% exemption for five years, and 90% exemption thereafter. Dividends of income from these activities are 100% tax exempt. These incentives are available pursuant to a grant of tax exemption for a period of 20 years, which may be extended for an additional 10 years.

(h) Individual Investors Act

An individual investor who becomes a resident of Puerto Rico on or before the taxable year ending on December 31, 2035 qualifies for special exemptions. The individual must not have been a resident of Puerto Rico at any time from January 16, 2006 until January 16, 2012. A Puerto Rico resident is an individual domiciled in Puerto Rico. Physical presence in Puerto Rico for a period of 183 days during the taxable year will create a presumption of residence. The individual is eligible for 100% exemption from Puerto Rico income taxes on interest and dividends, and on certain capital gains realized or accrued after

the individual becomes a bona fide resident of Puerto Rico. These incentives are available pursuant to a grant of tax exemption and will expire on December 31, 2035.

(i) Tourism Development Activities

A 90% or 100% ten-year income tax exemption is generally available to businesses investing in eligible tourism development activities in Puerto Rico. These businesses also qualify for (i) total or partial exemptions from certain other local taxes, including property taxes, municipal taxes, excise taxes and certain sales and use taxes, as well as for (ii) alternate tax credits of up to 10%, 30% or 40% of their eligible project costs.

VII. LABOR AND EMPLOYMENT

A. Federal Considerations

(1) Immigration

U.S. immigration laws are fully applicable in P.R. With the globalization of world markets, employers located in the U.S. (including Puerto Rico) often seek to employ foreign nationals. A variety of permanent and temporary work visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the U.S. (Puerto Rico) employer and the foreign employee. U.S. permanent residents are authorized to stay and work for indefinite terms in the U.S. where and for whom they wish. Temporary visa holders have authorization to remain in the U.S. for a temporary time and often the employment authorization is limited to a specific employer, job, and even specific work sites.

(a) Permanent Residency (the "green card")

Permanent residency is most commonly based on family relationships, such as marriage to a U.S. citizen, or offer of employment. Permanent residence gained through employment may involve a multi-phase, time-consuming process that can take several years. Therefore, employers considering the permanent residence avenue for an alien employee should ascertain the requirements for that immigration filing prior to bringing the employee to the U.S. and/or extending an indefinite term employment offer.

(b) Temporary Visas

The following are the most commonly used temporary visas:

(i) E-1 Treaty Trader, E-2 Treaty Investor Visas, and E-3 Specialty Occupation for Professionals from Australia

These are temporary visas for persons in managerial, executive or essential skills capacities who individually qualify for or are employed by companies that engage in substantial trade with or investment in the U.S. E

visas are commonly used to transfer managers, executives or technicians with specialized knowledge about the proprietary processes or practices of a foreign company to assist the company at its U.S. location. Generally, E visa holders receive a five-year visa stamp but only one-year entries at any time. To qualify for this visa, a treaty of commerce or investment must exist between the U.S. and the country of nationality of the foreign company or investor. The E-3 visa applies only to Australian nationals planning on coming to the U.S. to perform services in a specialty occupation. In order to obtain this visa, the Australian applicant must establish a high degree of knowledge in his professional field with the attainment of a bachelor's degree, or its equivalent, as a minimum for entry into the occupation in the U.S.

(ii) H-1B, H-2A, and H-2B Specialty Occupation Visas

H-1B visas are for persons in professional and specialty occupations that require at least a U.S. bachelor's degree or its equivalent. Examples of such professionals are engineers, computer professionals, architects, accountants, and, on occasion, business persons. However, it also applies to people who wish to perform services of exceptional merit and ability relating to cooperative research and project development with the Department of Defense (DOD), as well as to fashion models of distinguished ability. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer and job specific.

H-2A visas are for temporary agricultural workers only. The H-2A visa classification will only apply when U.S. workers are not available for such jobs. The H-2B visa enables U.S. employers to bring foreign nationals to the U.S. to occupy temporary non-agricultural jobs. H-1B visas are subject to annual numerical caps that may be reached well before the fiscal year ends. Therefore, before an employer considers this option, it should ascertain the availability of these visas.

(iii) H-3 Nonimmigrant Trainee or Special Education Exchange Visitor

The H-3 visa enables an alien to come temporarily to the U.S. as either a Trainee, to receive training (other than graduate or medical education training) that is not available in the alien's home country, or as a Special Education Exchange Visitor, to participate in a special education exchange visitor training program for children with physical, mental, or emotional disabilities.

(iv) L-1A and L-1B Intracompany Transferee Visas

L-1A visas are most often utilized in the transfer of executives and managers from international companies to U.S. related companies, while L-1B visas are utilized in the transfer of people with specialized knowledge with the same purpose. L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to five years for those with specialized knowledge and seven years for executives and managers. As in the case of certain E visa capacities, some L managers or executives may qualify for a shortcut in any permanent residence filings due to their first preference category (unlike H-1 visa holders).

(v) B-1 Business Visitors and B-2 Visitors for Pleasure

These visas are commonly utilized for brief visits to the U.S. of six months or less. Neither visa authorizes employment in the U.S. B-1 business visitors are often sent by their overseas employers to negotiate contracts, to attend business conferences or board meetings, or to fill contractual obligations such as repairing equipment for brief periods in the U.S. B-1 and B-2 visitors cannot be on the U.S. payroll or receive U.S. source remuneration.

(vi) TN NAFTA Professionals

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify and fill specific defined professional positions can qualify for TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN holders may work in the U.S. indefinitely although they are granted one-year increments of stay for specific employers and other employment is not allowed without prior Citizenship and Immigration Services (CIS) approval. Particularly with regard to Canadians, paperwork required for filing these requests is minimal. TN professionals, however, must follow processes very similar to those required of H-1B professionals.

(vii) I-1 Representatives of Foreign Media

This visa category is for representatives of a foreign media outlet (press, radio, film, or other foreign information media) and people coming to the U.S. to engage in this profession. The visa is designed for reporters, film crews, editors and other similar occupations.

(viii) F-1 Academic Student Visas Including Practical Training

Often foreign students come to the U.S. in F-1 status for academic training or M-1 status for vocational training. Students in F-1 status can often engage, within certain constraints, in on-campus employment and/or off-campus curricular or optional practical training for limited periods of time of one or two years. Vocational students cannot obtain curricular work authorization but may receive some post-completion practical training in limited instances.

(ix) Q Cultural Exchange Visas

The Q visa is for people interested in participating in international cultural exchange programs designated by U. S. Citizenship and Immigration Services through practical training and employment. Q nonimmigrant exchange programs are for the purpose of providing practical training and employment, and to share the history, culture, and traditions of the applicant's foreign country with the U.S. The period of stay is limited to a maximum of 15 months.

(x) J Exchange Visitor Visas

These visas are for academic students, scholars, researchers and teachers traveling to the U.S. to participate in an approved exchange program. Training, not employment, is authorized. Potential employers should note that some J exchange visitors and their dependents are subject to a two-year foreign residence requirement abroad before being allowed to change status and remain or return to the U.S. unless a waiver is obtained.

(xi) R-1 Visa for Temporary Nonimmigrant Religious Workers

The R-1 visa allows for a foreign national to be employed at least part-time by a non-profit religious organization in the U.S., or by an organization affiliated with the religious denomination in the U.S., to work as a minister or in a religious occupation in the U.S.

(xii) O-1 and O-2 Visas for Extraordinary Ability Persons

O-1 and O-2 visas are for persons who have extraordinary abilities in the sciences, arts, education, business or athletics and sustained national or international acclaim. Also included in this category are those persons who assist in such O-1 artistic or athletic performances.

(xiii) P-1 Athletes/Group Entertainers, P-2 Reciprocal Exchange Visitor Visas, and P-3 Artist or Entertainer Coming to Be Part of a Culturally Unique Program

These temporary visas allow certain athletes who compete at internationally recognized levels or artists and entertainment groups who have been internationally recognized as outstanding for a substantial period of time, to come to the U.S. and work. Essential support personnel can also be included in this category. P-3 allows for artists or entertainers to come to the U.S. to perform, teach, or coach, individually or as part of a group, under a program that is culturally unique.

(xiv) There are a number of other non-immigrant visas categories that may apply to specific desired entries

When planning to bring foreign personnel to the U.S. (Puerto Rico), employers should allow several months for processing by the CIS, as well as by the Department of State and Department of Labor. Furthermore, employers should be aware that certain corporate changes, including stock or asset sales, job position restructuring, and changes in job duties and worksites, may dramatically affect (if not invalidate) the employment authorization of foreign employees. Also, employees who continue working in the U.S. beyond the dated authorized stay under the applicable visa category may be subject to subsequent bars to U.S. admission. Employers also become liable for employment of unauthorized alien workers.

(2) Labor and Employment Statutes

(a) Age Discrimination in Employment Act ("ADEA")

The ADEA forbids discrimination based on age in employment decisions. The ADEA applies to employers engaged in interstate commerce who have twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

(b) Americans with Disabilities Act ("ADA")

The ADA proscribes disability-based discrimination in employment. Furthermore, the Act requires that employers take reasonable steps to accommodate disabled individuals in the workplace. This Act applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

(c) Employee Polygraph Protection Act ("EPPA")

The EPPA greatly restricts polygraph testing of employees. The Act applies to all employers engaged in interstate commerce. Exempted are employers whose primary business purpose is running a security service or manufacturing, distributing or dispensing a controlled substance.

(d) Fair Labor Standards Act ("FLSA")

The FLSA establishes the minimum wage and weekly overtime for employers engaged in industries affecting interstate commerce, regardless of the number of employees.

(e) Equal Pay Act ("EPA")

The EPA was an amendment to the FLSA and is designed to promote equal pay for men and women who do the same jobs. Therefore, if the minimum wage provision of the FLSA is applicable to one's business, then the EPA is applicable as well.

(f) Family and Medical Leave Act ("FMLA")

The FMLA requires that eligible employees be allowed to take up to twelve weeks of unpaid leave per year for the birth or adoption of a child or the serious health condition of the employee or the spouse, parent or child of the employee. The FMLA also provides certain military family leave entitlements. Eligible employees may take FMLA leave for certain military deployments of their family members. Additionally, they may take up to 26 weeks of FMLA leave in a single 12-month period to care for a covered service member with a serious service related injury or illness. This Act applies to all employers engaged in commerce where the employer employees fifty or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

(g) Federal Contractors

Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations under Executive Order 11246 and the Vocational Rehabilitation Act. Certain federal contractors are also covered by the Drug-Free Workplace Act.

(h) Other Federal Regulations

Many employers operate in industries that are regulated by federal agencies. For example, the Department of Transportation requires employers to drug test employees who drive motor vehicles of over 26,000 pounds. Employers in regulated industries must be aware of any requirements imposed by federal or state regulations.

(i) National Labor Relations Act and Labor Management Reporting and Disclosure Act

These statutes set forth the guidelines governing labor-management relations. They apply to all employers who are engaged in any industry in or affecting interstate commerce, regardless of the number of employees. Employers who operate under the Railway Labor Act are not subject to these Acts.

(j) Occupational Safety and Health Act ("OSHA")

OSHA is the act that established the mechanism for establishing and enforcing safety regulations in the workplace. It applies to all employers who are engaged in an industry affecting commerce, regardless of the number of employees.

(k) Title VII

Title VII is the broad civil rights statute that forbids discrimination based on race, color, religion, sex or national origin. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

(l) Worker Adjustment Retraining and Notification Act ("WARN")

WARN requires employers to give sixty days' notice to their employees of plant closings or mass layoffs. This Act applies to all businesses that employ 100 or more employees, excluding part-time employees, who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime).

(m) Immigration Reform and Control Act ("IRCA")

IRCA requires that employers verify employment authorization for all employees hired on or after November 6, 1991. Employers are subject to significant fines and penalties for failure to comply with documentation requirements under IRCA, as well as for hiring unauthorized workers or discriminating against persons who appear or sound foreign.

(3) Employee Benefits

(a) Employee Retirement Income Security Act of 1974 ("ERISA")

ERISA governs implementation and maintenance of most types of employee benefit plans, including most retirement programs, life and disability insurance programs, medical reimbursement plans, health care plans, and severance policies. ERISA sets out a detailed regulatory scheme mandating certain reporting and disclosure requirements, setting forth fiduciary obligations and, in most types of retirement plans, coverage, vesting and

funding requirements. ERISA generally preempts state laws governing employee plans and arrangements.

(b) Consolidated Omnibus Budget Reconciliation Act ("COBRA")

COBRA requires employers to make continuing coverage under medical reimbursement and health care plans available to certain terminated employees, at the cost of the employees. The usual period, commencing upon termination of employment, for which this coverage must be continued is eighteen months. COBRA contains very specific procedures for notifying terminated employees of their COBRA rights.

(c) Health Insurance Portability and Accountability Act ("HIPAA")

HIPAA provides standards for electronic health transactions, national identifiers for health care providers and standards for the privacy and security of health data. HIPAA also provides portability rights to employees that change jobs. This is meant to make it easier for new or existing employees to continue health coverage. HIPAA regulations also contain specific provisions protecting employees against exclusions in health plans, for example, allowing employees who previously declined coverage by a health plan to join it due to changed circumstances and allowing retirees covered by a health plan to add dependents to the plan.

B. Local Considerations

In addition to being subject to the U.S. labor and employment legislation described above, Puerto Rico has its own statutory and regulatory labor rules whose implementation falls primarily under the jurisdiction of the Puerto Rico Department of Labor and Human Resources*, supplemented by agencies or bureaus charged with administering arbitration and mediation, chauffeurs' social security, unemployment and disability benefits, occupational safety and health, employment standards, anti-discrimination, accident compensation and labor relations.

(1) PR Act. No. 100

Act No. 100 prohibits discrimination in employment decisions because of a person's sex, age, race, color, national or social origin, social condition, marriage, political or religious ideas, sexual orientation or gender identity or being a victim or being perceived as a victim of domestic violence, sexual aggression or stalking.

(2) PR Act No. 17

Act No. 17 prohibits sexual harassment in an employment context. Sexual harassment is defined as any type of unwelcome sexual advance, even through electronic means, if (i) sexual favors are made a condition of employment, or (ii) serve as the basis for making employment decisions, or (iii) a hostile environment is created.

Where employment opportunities or benefits have been granted to one employee because of submission to sexual advances, other employees not so favored may have a cause of action.

(3) PR Act No. 44

Act No. 44 prohibits discrimination by reason of physical and mental disability by any public or private entity. Act No. 44 provides for a cause of action against the employer due to discrimination and/or failure to provide reasonable accommodation.

(4) PR Act No. 115

Act No 115 provides that the collaboration with, or the expressions made by an employee before any administrative, judiciary or legislative forum in Puerto Rico and expressions made by an employee using the internal procedures established by the employer or before any employee or employer's representative, holding a position of authority are protected from retaliation.

(5) Working Hours

Regular hours are 8 hours per day and 40 hours per week. Overtime for FLSA covered employees is normally paid at time and one half. Flexible schedules are available in certain cases. Employees are entitled to a one-hour meal period with certain reductions permitted. Special rules, including pay at double time, apply to work performed on a seventh consecutive day. Mandatory holidays do not apply in the private sector except to employees who work in retail for employers subject to the Closing Law in P.R. Persons age 14 to 18 may be employed but subject to certain restrictive rules.

(6) Wages

Hourly wages may be paid by check, direct deposit or electronic transfer, and must be paid at least every 15 days. U.S. minimum wage applies.

(7) Employee Benefits

(a) Vacation and Sick Leave

Hourly employees are entitled to paid vacation and sick leave generally 1.25 days and one day per month, respectively, provided the employee works at least 115 hours in a month.

(b) Annual Bonus

Employers are required to pay a mandatory bonus during the period from December 1 to December 15 each year to each employee who works at least 700 hours during

the 12-month period commencing October 1 of each calendar year. The bonus payment ranges from 3% to 6% of total wages up to a maximum wage of \$10,000. The higher rates are applicable to employers with more than 15 employees. Employers who fail to make timely payment are subject to fines up to the full amount of the bonus payable. Certain credits may be available and each employer's aggregate annual bonus need not exceed 15% of net profits for each year.

(c) Maternity Leave

Female employees are generally entitled to an eight-week maternity (including adoption) leave with full pay. Upon return to work, female employees are entitled to 1 hour of each full working day, which may be divided into two 30 minute breaks, or three 20 minutes breaks to breast feed for a maximum period of 1 year.

(d) Jury Duty and Witness Leave

Jury Duty and Witness Leave, in criminal cases only, with pay are mandatory. Employees on jury duty are entitled to paid leave up to 15 days. Witnesses in criminal cases must continue to receive pay for actual time spent in court. In both cases reinstatement is protected.

(e) Workers' Accident Compensation

All employers must obtain workmen compensation insurance from the State Insurance Fund. This mandatory insurance provides compensation and medical treatment to employees (with certain minor exceptions) for work related accidents or conditions, including occupational diseases. A covered employer is generally not subject to suits for employment related accidents. The Act provides employees a leave of absence and protects the employee's right to reinstatement for 12 months after an accident or the commencement of the occupational illness.

(f) Severance Pay

An employee hired for an indefinite term who is discharged without just cause is entitled to severance pay. Severance pay is calculated as follows: 2 month's pay plus 1 week of pay for each full year of service, if the employee has less than five years of service. If the employee has at least five but less than fifteen years of service, he is entitled to receive 3 months' pay plus 2 weeks per year of service, and if more than fifteen years of service, the employee is entitled to receive 6 months' pay plus 3 weeks per year of service. Newly hired employees on a probationary period are not covered, provided their contract is in writing and probation does not exceed 3 months. Just cause is defined as follows:

- (i) The employee's engaging in a pattern of improper or disorderly conduct.
- (ii) The employee's not working in an efficient manner, or working belatedly and negligently, or in violation of the standards of quality of the product (or services) produced or handled by the establishment.
- (iii) The employee's repeated violations of reasonable rules established for the operation of the establishment, provided a written copy of the rules had been given to the employee.
- (iv) Full, temporary, or partial closing of the operations of the establishment.
- (v) Technological or reorganizational changes, as well as changes of style, design or the nature of the product made or handled by the establishment and in the services rendered to the public.
- (vi) Reductions in employment made necessary by a reduction in the volume of production, sales or profits, anticipated or prevalent at the time of the discharge.

(g) Closing Law

The Closing Law of Puerto Rico requires the closing, during certain holidays and on Sundays from 5:00 to 11:00 A.M., of certain retail establishments opened to the general public. If employees of retailers covered by this law perform work during mandatory closing hours they must be paid at a double rate.

VIII. ENVIRONMENTAL LAW

A. Federal Considerations (References to "state" include Puerto Rico)

(1) Resource Conservation and Recovery Act ("RCRA")

42 U.S.C. 6901, et seq. The RCRA's primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. The administration of RCRA has been delegated to a number of states by statute and, therefore, the states regulate most aspects of hazardous waste management within their borders.

By statute, the disposal of hazardous waste is prohibited unless the entity handling hazardous substances has received the necessary permits. Section 6973 of the RCRA authorizes the Administrator of the U.S Environmental Protection Agency (EPA) to bring suit against any person or entity contributing to the handling, storage, treatment or disposal of a hazardous waste in a manner that causes an imminent and substantial endangerment to health or the environment.

The RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984, which added new requirements pertaining to groundwater contamination. Currently, a permit for a treatment, storage or disposal facility must detail required corrective action for any release of hazardous waste from any solid waste management unit, regardless of when the waste was placed on the site.

(2) The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”)

42 U.S.C. § 9601, et. seq. CERCLA, or Superfund as it is commonly called, was enacted in 1980 to provide for the clean-up of abandoned disposal sites. It also provides a vehicle for the EPA to recover for damage caused to natural resources by the releases of hazardous substances.

CERCLA allows the government and private parties to sue “potentially responsible parties,” or “PRPs” to clean up a contaminated area or reimburse the government for clean-up costs resulting from actual or threatened releases of hazardous substances. Liability is strict, joint and several, with little or no regard for causation. Section 9607 sets forth the four categories of persons liable for clean-up costs:

(a) “Owners or Operators” of the Contaminated Facility

A “facility” is any place in which a hazardous substance is found. The current owner or operator is liable, regardless of whether the present owner or operator did anything to contribute to the release, and regardless of when the hazardous substance was disposed of at the facility.

(b) “Owners or Operators” of the Facility at the Time the Hazardous Substance was Released

(c) Agents Handling or Disposing Hazardous Waste

Any person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport, disposal or treatment of hazardous substances owned by such person, or by any other party and entity.

(d) Transporters of Hazardous Substances

Any person who accepts or accepted hazardous substances for transport to disposal or treatment facilities, from which there is a release, or a threatened release, which causes the incurrence of response costs.

There are limited defenses under CERCLA that are narrowly construed. A PRP can escape liability if it can establish that the hazardous substance release was caused solely by an act of war, an act of God, or an act of an unrelated third party. This latter “third

party” defense does not apply if the damage from hazardous substances was caused by an employee or agent of the PRP, or by a third party acting in connection with a contract with the PRP.

An owner may also escape liability by establishing that he or she had “no reason to know” the facility was contaminated after conducting “all appropriate inquiries” on the facility’s prior uses before the purchase or operation of the facility. This is also known as the “Innocent Landowner Defense.” When the “no reason to know” exclusion is shown, a contractual relationship does not disqualify the owner or operator from relying on the “third party” defense. The statute also protects a property owner if he or she did not cause the contamination, is not affiliated with a PRP, and cooperates during a cleanup action. In addition, “bona fide” prospective purchasers of contaminated property are protected if they can demonstrate that they made “all appropriate inquiries” and cooperate fully during a cleanup action.

(3) The Clean Air Act

42 U.S.C. § 7401, et seq. The Clean Air Act (“CAA”) regulates air pollutants emitted from stationary and mobile sources under federal standards, which are enforced by the states. The Act includes programs for acid rain control, stratospheric ozone protection, national ambient air quality standards (NAAQS) and for the reduction of hazardous air pollutant emissions.

Under the CAA, air emissions are regulated through various controls. The EPA has set national air quality standards (NAAQS) for six pollutants considered harmful to public health and the environment: sulphur dioxide, particulate matter, nitrogen oxide, carbon monoxide, ozone and lead. To implement the standards, the EPA conducts ambient monitoring to identify areas in the country that exceed NAAQS levels, and reviews air quality rules established by the states in implementation plans (SIPs), which are designed to attain or maintain NAAQS.

The CAA distinguishes between clean air areas (attainment) and dirty air areas (non-attainment) throughout the U.S. New Source Review (NSR) analysis is required before a new major stationary source is constructed or before an existing major stationary source undertakes a major modification in an attainment or non-attainment area.

The CAA has also established New Source Performance Standards (NSPS), which are technology-based emission standards for specific industry source categories. These standards are not dependent on the ambient air quality of an area but do require new or modified stationary sources subject to a NSPS to employ the best available control technology.

All major and industrial sources that emit Hazardous Air Pollutants (“HAPs”) are required to develop technology based standards known as “maximum achievable control technology” (“MACT”). A major source is one that emits or has the potential to emit, considering controls, 10 tons per year or more of any combination of HAPs. Many MACT standards for

specific industries exist, although some are not yet final. Pollutants may be regulated under one or more of these standards.

The CAA, as amended, requires a new operating permit for all “major” air sources, with state administration and enforcement. A significant feature is a permit fee based on tons of pollutants emitted on an annual basis; the permit fees are to fund and support the state operating permit programs.

(4) The Clean Water Act

33 U.S.C. § 1251, et seq. The Clean Water Act (“CWA”) regulates the discharge of pollutants into all navigable waters. The CWA prohibits the discharge of any pollutant into the water of the U.S. unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit. Permits are issued by either the state under an approved state program or by the EPA if the state program has not been approved. Puerto Rico does not yet have an approved program. The permit limits are based upon EPA’s effluent limitation regulations.

The CWA effluent limitations for industrial discharges also specify standards for pre-treatment for those who discharge to a publicly owned treatment facility. EPA rules also cover permits for storm water discharges under the NPDES permit program.

(5) The Emergency Planning and Community Right-to-Know Act

42 U.S.C. §11001, et seq. The Emergency Planning and Community Right-to-Know Act (“EPCRA”) was enacted to provide knowledge and access to the government and to the public on information regarding the use and storage of hazardous substances at industries and the risk of releases of these substances into the environment. The owners or operators of facilities that handle certain extremely hazardous substances above specific thresholds listed in EPCRA, are required to develop emergency plans and to submit periodic reporting of the substances that they handle to the government and the public with the purpose to improve safety and protect public health and the environment.

B. Puerto Rico Law

(1) Environmental Supervision

Although the EPA has the authority to enforce federal programs in Puerto Rico, it has delegated certain responsibilities to the Puerto Rico Environmental Quality Board (EQB) which develops, enforces and regulates the environmental public policy of Puerto Rico. The EQB also has its own set of laws and regulations similar to the major federal environmental laws, which include local permit programs under these laws covering most industries and commercial activities.

The Puerto Rico Department of Natural and Environmental Resources (DNER) is charged with supervising coastal, mineral and water resources, and the Puerto Solid Waste Management Authority has local responsibility for managing and reducing the island's solid and hazardous waste. Other Puerto Rico government agencies are charged with regulating the transport of hazardous materials, land use planning, construction and bill boards.

IX. INTELLECTUAL PROPERTY

A. Copyright and Moral Rights - This area is governed by both U.S. and Puerto Rico law. Title 17 U.S.C.; Title 31 P.R. Laws.

(1) In General

Copyright law provides the author of a copyrightable work (or such person's employer in the case of a "work made for hire") with certain exclusive rights, including to use, distribute, modify and display the work. Generally, works are entitled to copyright protection for the life of the author plus 70 years. However, as to works made for hire, copyright protection is for the shorter of 95 years from the date of first publication or 120 years from the creation of the work. Anyone who without authority exercises the rights reserved exclusively for the copyright owner is considered to infringe on the copyright and may be subject to injunctive relief and liability for actual or statutory damages.

(2) Copyrightable Works

Works of authorship that qualify for copyright protection include literary, musical (including lyrics), dramatic, choreographic, audiovisual, pictorial, graphic, sculptural and architectural works, as well as sound recordings. The Copyright Act, as amended, protects computer software as "literary works." All works eligible for copyright protection must meet two specific requirements. First, the work must be fixed in some tangible form from which it can be reproduced or otherwise communicated. Second, the work must be the result of original and independent authorship. The concept of originality does not require that the work entail novelty or ingenuity, concepts of importance to patentability.

(3) The Visual Artists Rights Act ("VARA")

VARA protects only authors of "visual art" --a class of art narrower than the "pictorial, graphic and sculptural works" that also qualify for copyright protection. "Visual art" includes paintings, drawings, prints, sculptures, or photographs produced for exhibition purposes, existing in a single copy or a limited edition of 200 or fewer copies signed and consecutively numbered by the author.

VARA expressly creates rights of "attribution and integrity, which allow authors of works of visual art to claim authorship of the works; to prevent the use of their names as the authors of works that they did not create; and to prevent the use of their names in association with works of their authorship that have been distorted, mutilated, or modified in ways that would be prejudicial to the artists' honor or reputations. VARA does not protect art reproductions or "works made for hire."

VARA's protection generally applies for the life of the author or, in the case of joint works, for the life of the last surviving author. Works created before VARA's effective date (that is, before June 1, 1991) are protected by VARA for the same length of time as other rights created in the copyright law.

(4) Advantages of Copyright Registration

Copyright protection automatically attaches to a work the moment it is created. However, registration of the work with the U.S. Copyright Office provides advantages. A certificate of registration is prima facie evidence of the copyright's validity, provided that registration occurs no later than five years after first publication. With respect to works whose country of origin is the United States, registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, statutory damages and attorneys' fees may not be awarded in certain infringement actions. Registration is also a useful means of providing actual notice of copyright ownership to those who search the copyright records.

(5) Copyright Registration Application Process

In order to register a copyright, an application for registration and a copy of the work must be submitted to the U.S. Copyright Office. In the case of a "work made for hire," a statement identifying the work as such must be included. If the copyright claimant is not the author, a brief statement regarding how the claimant obtained ownership of the copyright must be included.

(6) Copyright Notice

Until 1989, all publicly distributed copies of works protected by copyright and published by the authority of the copyright owner were required to bear a notice of copyright. Although no longer mandatory, placing a copyright notice on the work remains advantageous. For example, the defense of "innocent infringement" is generally unavailable to an alleged infringer if a copyright notice was placed on the work.

If a copyright notice is used, the notice should be located in such a manner and location as to reasonably give notice of the copyright claim. The notice should consist of three elements. First, the symbol of an encircled "C", or the word "Copyright", or the abbreviation "Copr." Second, the year of the work's first publication. And, third, the name of the copyright owner.

(7) Works Made for Hire

The term "work made for hire" applies to any work created by an employee within the scope of employment. In the case of a "work made for hire," the person for whom the work was prepared is presumed to be the author and owner of the rights comprised in the copyright, unless the parties expressly agreed otherwise in writing. Authorship is significant because a copyright initially vests in the author. To avoid disputes as to whether a work created by an employee was "made for hire," employers often require execution of a formal employment agreement under which employees expressly agree that the copyright in and to all works created during the term of employment belong to the employer. Signing a similar agreement is also advisable when engaging independent contractors to create copyrightable works, of which only certain types may be considered "works made for hire." If the particular work cannot be "made for hire," the employer should negotiate an agreement with the independent contractor for the assignment of the copyright.

(8) Copyright Protection of Foreign Authors

Copyright protection is available under U.S. law for foreign authors' unpublished works if the authors are domiciled in, or are nationals or habitual residents of, the U.S. Continued U.S. copyright protection will be available after a work's first publication if it occurs in the U.S.; or simultaneously in the U.S. and in a country that is either a party to the Universal Copyright Convention or to the Berne Convention, or named in a presidential copyright proclamation. If the work is first published outside the U.S., continued copyright protection in the U.S. is only available if the foreign author is either a domiciliary of the U.S. or a national or domiciliary of a country that is party to a copyright treaty to which the U.S. is also a party. A person is generally a domiciliary of the country in which the person resides with the intention to remain permanently.

(9) The Puerto Rico Moral Rights Act

The salient aspects of the Puerto Rico Moral Rights Act, Act 55 of March 9, 2012, are the following;

- Moral rights are the exclusive rights of an author over his work that exist by virtue of the personal relationship between the author and his work. They arise at the very moment that the author fixes the original work in a tangible means of expression. They include the following rights: 1) attribution – recognition as the author; 2) withdrawal – relinquish the authorship; 3) integrity; and 4) access.
- The moral rights will last the lifetime of the author plus 70 years after his death or until the work enters the public domain, whichever occurs first.
- The author of any work produced as an employee or as an independent contractor (work-for-hire) cannot claim moral rights over that work unless the parties consent in writing.

- Moral rights are not transferable and cannot be waived. However, the right to integrity can be waived, in whole or in part, by the author in writing. Said waiver can be signed using an electronic signature.
- The author cannot claim violation of the moral rights when the work is used for critique, parody, commentary, newscasts, educational or investigative purposes.
- When there is a moral rights violation, the author is entitled to injunctive relief to vindicate his rights and to monetary compensation.
- If the work is registered in Puerto Rico and the unauthorized use was for commercial purposes, the author can request statutory damages ranging between \$750 and \$20,000 per violation.
- The statute of limitations is three (3) years from the date that the author learned of the infringement of his moral rights.

B. Patents - This area is governed exclusively by U.S. federal laws. Title 35 U.S.C.

(1) In General

Applications for and issuance of patents are governed exclusively by the laws of the United States: Title 35 U.S.C. Ownership of a patent is governed by state law and, a claim of patent infringement raised as a counterclaim in a suit under state law may be decided under state law. One who invents a new machine, device or manufacturing process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right to exclude others from making, using, offering for sale, or importing into the U.S., the patented invention. In general, these patent rights protect the invention, even if another party independently conceived an identical invention, beginning on the date on which the patent issues and ending 20 years from the earliest date on which the patent application was filed. The patent term is subject to adjustments for certain delays. A design patent, which covers the design or appearance of an article of manufacture, is enforceable for 14 years from the granting date of the patent. A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to 12 months to further develop the invention without filing a regular patent application. Anyone without authority from the patent holder who makes, uses, imports, or sells in the U.S. the patented invention during the life of the patent is considered to infringe the patent and may be liable for damages.

(2) Effect of Foreign Patents

A foreign patent is generally not enforceable in the U.S. Furthermore, an invention that is the subject of a foreign patent cannot be the subject of a U.S. patent, unless an application for a U.S. patent is filed within one year following issuance of the foreign patent. Accordingly, an inventor who holds a foreign patent and who fails to apply for a U.S. patent

within one year from the date of issuance of a foreign patent, will usually have no recourse against others who use the invention in the U.S.

(3) Patentability under Federal Patent Statutes

To be eligible for a federal utility patent, an invention must fall into one of the classes of patentable subject matter set forth in the U.S. patent statutes. These classes are machines (e.g., a mechanism with moving parts), articles of manufacture (e.g., hand tool), compositions of matter (e.g., a plastic), and processes (e.g., a method of refining). An improvement falling within any of these classes may also be patentable. Discoveries falling outside these categories are not patentable, unless some other statutory provision applies.

In addition to being within one of the four classes, a utility invention must also be:

- (a) "novel," in that it was not previously known to or used by others in the U.S. or printed or described in a printed publication anywhere;
 - (b) "non-obvious" to a person having ordinary skill in the relevant art;
- and,
- (c) "useful," in that it has utility and actually works.

In order to determine novelty and, hence, patentability of an invention, it is often useful to search the records of the U.S. Patent and Trademark Office. There, one may examine all U.S. patents, many foreign patents, and a large number of technical publications. A patent search is customarily performed by a patent attorney or by an individual with similar technical training, sometimes referred to as a patent agent. A patent attorney or patent agent may be asked to render an opinion regarding the patentability of a particular invention. An inventor can then make an informed decision as to whether to proceed with the cost of an actual patent application.

A design patent may be obtained for the ornamental design of an article of manufacture. A design patent offers less protection than a utility patent, because the patent protects only the appearance of an article, and not its construction or function. A plant patent may be obtained by anyone developing a new variety of asexually reproduced plant, other than a tuber propagated plant or a plant found in an uncultivated state. Some plants may also be protectable with a utility patent or under the Plant Variety Protection Act, administered by the U.S. Department of Agriculture.

(4) Patent Application Process

A U.S. patent application must be filed with the U.S. Patent and Trademark Office. A complete patent application includes three elements and must be accompanied by a fee. First, the application must include the "specification," which is a description of what the

invention is and what it does. Second, the application must include an oath or declaration. The oath or declaration certifies that the inventor believes himself or herself to be the first and original inventor. If the inventor does not understand English, the oath or declaration must be in a language that the inventor understands. Third, the application must include drawings if essential for the understanding of the invention.

After a proper application is filed, the application is assigned to an examiner with knowledge of the particular subject matter. The examiner makes a thorough review of the application and the status of existing concepts in the relevant area to determine whether the invention meets the requirements of patentability. The patent review process takes from 18 months to three years. Rejection of a patent application by the examiner may be appealed to the Board of Patent Appeals. Decisions of the Board of Patent Appeals may be appealed to the U.S. Court of Appeals for the Federal Circuit.

Provisional patent application requirements are less stringent than a regular patent application. The oath or declaration of the inventor and claims are not required and the application is held for a 12-month period without examination.

(5) Markings

After a patent application has been filed, the product made in accordance with the invention may be marked with the legend "patent pending" or "patent applied for." After a patent is issued, products may be marked "patented" or "pat.," together with the U.S. patent number. Marking is not required, but it may be necessary to prove marking in order to recover damages in an infringement action.

(6) Rights to Patented Inventions

Disputes sometimes arise between employers and employees over the rights to inventions made by employees during the course of employment. Because of this, employers often require employees to execute formal agreements under which each signing employee agrees that all rights to any invention made by the employee during the term of employment will belong to the employer.

C. Trademarks - This area is governed by both U.S. federal and Puerto Rico law. Title 15 U.S.C.; Title 10 P.R. Laws.

(1) In General

A trademark or service mark is a designation used by a business to identify its goods and services and to distinguish them from those of others. A mark can be a name, number, slogan, symbol, device, logo, trade dress, color, sound, scent or combination of any of those. A trade mark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade name refers to a business title or

the name of a business; a trademark is used to identify the goods or services offered by the business. Generally, service marks and trademarks receive the same legal treatment.

(2) Selection of Trademark

A business should carefully consider the trademark to be used on its goods or services. The level of protection of a trademark against infringement varies with the "strength" of the trademark. "Descriptive" marks are the weakest. A descriptive trademark is a name that describes some characteristic, function, or quality of the goods or services. A "fanciful" mark, the strongest type of mark, is a coined name that has no dictionary definition.

Evaluation should also include consideration of the likelihood of success in obtaining federal and state registrations of the trademark. For example, a trademark that is "merely descriptive" cannot be registered under either federal or Puerto Rico law. Selection of a trademark should be accompanied by a trademark search to determine whether another business is using or intends to use a mark that is the same as or similar to the one desired. The website of the U.S. Patent and Trademark Office (www.uspto.gov) offers access to federal registration records. The Puerto Rico State Department's website (www.estado.gobierno.pr) also contains some registration information. Counsel can assist with the search and evaluation process, as well as render an opinion as to registrability of a mark.

Actual and potential trademark conflicts should be avoided lest the business becomes involved in an expensive infringement lawsuit. Of even greater concern is the potential loss of the right to use a mark after considerable expenditure in advertising goods or services bearing the mark.

(3) Advantages of Trademark Registration

Under the trademark laws of the U.S. and Puerto Rico, the principal method of establishing rights in a trademark is actual use of the trademark. "Registration" of a trademark is not legally required but can provide certain advantages.

Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant's exclusive right to use the mark in interstate commerce (which includes Puerto Rico), strengthening the registrant's position.

After five years of continued use of the mark following federal or local registration and upon submission of a particular affidavit, the registrant's exclusive right to use the trademark becomes virtually conclusive. Federal registration may assist in preventing the importation into the U.S. of foreign goods that bear an infringing trademark. There are also other less tangible advantages of registration, such as the goodwill arising out of the implication of government approval of the trademark.

(4) Federal Registration Application Process

Federal trademark registration requires that a trademark application be filed with the U.S. Patent and Trademark Office. The application must identify the mark and the goods or services with which the mark is used or is proposed to be used, the date of first use, and the manner in which it is used or to be used. The application must be accompanied by payment of the requisite fee, a drawing depicting the mark, and a specimen of the mark as it is actually used or will be used. After the application is filed, it is reviewed by an examiner who evaluates, among other matters, the mark's validity and the likelihood of confusion with other registered marks. If the examiner rejects the application, the examiner's decision can be appealed to the Trademark Trial and Appeals Board. An adverse decision by that body can be appealed to the U.S. Court of Appeals for the Federal Circuit.

If the application is approved, the mark is published in an official publication of the Patent and Trademark Office. Opponents of the registration have 30 days after publication, or such additional time as may be granted, to challenge the registration. If no opposition is raised, or if the opponent's claims are rejected, an applicant whose mark is already in use receives a "certificate of registration."

An applicant whose trademark is not yet in use receives, upon approval of the application, a "notice of allowance." An applicant who receives a notice of allowance must, within 6 months of the receipt of the notice, furnish evidence of the actual use of the trademark or request an extension for an additional 6 month period. An applicant may request up to 5 additional extensions. The applicant then is entitled to a certificate of registration. Failure to furnish evidence of the actual use of the mark within the time allowed results in rejection of the application.

A certificate of trademark registration issued by the U.S. Patent and Trademark Office remains in effect for 10 years. However, registration expires at the end of the sixth year, unless the registrant furnishes evidence of continued use of the trademark between the fifth and sixth year after registration. The 10-year term of a certificate of registration can be renewed within the term's last 6 months for an additional 10-year term by furnishing evidence of continued use of the mark and paying a fee.

After at least 5 years of continuous use of a trademark following the receipt of a certificate of registration, a registrant can seek to have the status of the registration elevated from "presumptive" evidence of the registrant's exclusive right to conclusive evidence. To do so, the registrant must furnish the U.S. Patent and Trademark Office with evidence of continuous use of the trademark for at least 5 years. Additionally, there must not be any outstanding lawsuit or claim that challenges the registrant's rights to the mark.

(5) Puerto Rico Law

(a) Trademarks

The following marks may not be registered: (1) if contrary to law; (2) contain the flag, coat of arms or other insignia of Puerto Rico, of the U.S. or of any state, municipality or nation, or an imitation thereof; (3) a person's name, nickname, picture or signature unless consent is obtained; (4) words descriptive of products or services with which the mark is used; (5) words indicating the type, nature or physical appearance of the product or service; (6) geographic names or terms indicating the origin of the product or services; (7) a mark that is identical to another registered or known mark used for the same type of product or service; (8) a mark so similar to another that its use will cause confusion or deception in the public mind; (9) a mark that is identical or similar to a registered or pending registration mark, that is likely to cause confusion or error in the public's mind. As an exception to clauses 4, 5 and 6 above, such marks may be registered if they have acquired a distinctive character through the use they have been given for the products or services for which registration is requested. As a general rule local registration of a mark is advisable.

Registration of a trademark is accomplished by filing an application with the Puerto Rico Secretary of State, under penalty of perjury as to the applicant's right to use the mark, a facsimile of the mark as used or proposed to be used, and payment of a \$150 fee. Applicants are also required to provide one facsimile of the mark as used, or proposed to be used, in commerce. Registration is valid for 10 years after the filing date and may be renewed for successive 10-year periods thereafter, provided that the owner of the mark must file a statement of use under penalty of perjury within 3 years of the application filing date, if the mark was registered based on intent to use. For just cause, such term may be extended for up to 1 year at the request of the registrant. In addition, a statement of use under penalty of perjury must be filed between the fifth and sixth year after registration to attest continued use of the mark in commerce in Puerto Rico, and between the ninth and tenth year, along with the renewal petition. A grace period of sixth months is provided for filing the statement of use only for marks registered prior to the enactment of the new Trademark Act on December 16, 2009. A grace period is provided for the renewal of a registration within the first six months after its 10-year expiration date. Otherwise, the registration lapses. .

A Puerto Rico certificate of registration of the mark constitutes prima facie evidence of the validity of the registered mark. It also constitutes prima facie evidence of the ownership of the mark in favor of the owner of record and of the exclusive right to use the mark in commerce. Furthermore, the Puerto Rico Trademarks Act does not require a registrant to post a bond in order to obtain a preliminary injunction or an order for the seizure of infringing goods so long as the registrant submits to the court a certified copy of the registrant's Puerto Rico certificate of registration. Moreover, the Puerto Rico Trademarks Act provides for the issuance of the preliminary injunction in favor of the owner of the registered mark and provides for damages to victorious registrants.

The Trademarks Act provides that the court may fix the amount of damages in an amount not to exceed 3 times the profits of the defendant and/or the loss of the plaintiff when the violation was intentional or in bad faith. When the mark is registered with the Puerto Rico Trademarks Office, the court may award statutory damages in an amount between \$750 and \$30,000 per violation. When the court finds that the violation was intentional or in bad faith, the court may increase the amount of statutory damages up to \$150,000 per violation but, if the court finds that the violation was innocent, the court may reduce the amount of statutory damages to \$500 per violation. In addition, if the court rules in favor of the registrant, it has to order the defendant to reimburse the costs and attorney's fees spent by the plaintiff.

Registration with the U.S. Patent and Trademark Office protects marks used in interstate commerce in Puerto Rico but not in some situations where infringement is strictly intrastate.

(b) Trade names

Trade names may be registered with the Department of State by submitting an application stating the business activity covered by the name, facsimiles of the name as used or proposed to be used, a statement under penalty of perjury to the effect that no other person is entitled to use the name in Puerto Rico, evidence that the applicant has applied for or obtained municipal or other licenses or permits required by law to engage in such business and payment of a \$150 fee. Similar or confusing names may not be registered.

(c) Trade Secrets Act

The Industrial and Trade Secret Protection Act of Puerto Rico, Act 80 of June 3, 2011, regulates the use and protection of industrial or trade secrets. An industrial or trade secret is deemed to be any confidential information with trade or industrial value, which its owner reasonably protects to prevent its disclosure. Industrial or trade secrets have a distinctive feature, since these do not require registration or compliance with any formalities in order to be protected.

In high-technology industrial and trade sectors, the trade secrets protect: (1) a patent-worthy invention, during the patent application process; (2) information not subject to a patent; or (3) information that simply cannot be patented, as well as processes, methods or mechanisms. These may be a process to manufacture, treat or preserve materials, a formula or a recipe, a project or a pattern to develop machinery, or simply a list of specialized clients that constitute a specific market, which provide the owner with an advantage over his/her competitors.

The Act only covers trade secrets that have been protected by reasonable security measures such as requiring employees to sign confidentiality agreements and marking trade secrets as "confidential" information. Persons who inappropriately use or acquire trade secrets may be subject to injunctive relief and liable for damages. Claims under

the Act must be brought within 3 years of the date when the trade secret owner knew or should have known about the violation. Also, Rule 23.2(g) of the Puerto Rico Rules of Civil Procedure allows protective orders to prevent disclosure of trade secrets.

(d) Right of Publicity

A person's right to control the use of his/her image for commercial purposes, known as right of publicity, is governed by Act 139 of July 13, 2011, "The Right of Publicity Act." For purposes of the Act, a person's image includes the person's name, photo, portrait, voice, signature, and distinctive characteristics. The Right of Publicity Act protects a person's image from being used, without his/her authorization, for commercial purposes and creates a cause of action for the violation of such right. The Act allows the person whose image was unlawfully used for commercial purposes to seek statutory damages ranging from \$750 to \$20,000, or up to \$100,000 if the infringement was intentional, plus attorney's fees and costs. The statute of limitations for filing an action for violation of the Right of Publicity Act is one year from the time the person learns about the infringement. Moreover, a person's right of publicity extends 25 years after the person's death.

The Right of Publicity Act recognizes four exceptions in which a person's image can be used without constituting a violation to the Act: (1) when the person's image is used as part of a news report, political expression, broadcast of a sports or artistic event or when the use has a legitimate public interest and the image is not used for commercial or publicity purposes; (2) when the image is used in a satire or parody in which the main purpose of the use of the image is not commercial or publicity; (3) when the image is used for purposes of academic or investigative critique or comment, as long as the use does not constitute an exploitation of the image; and (4) when the image is not used as the main focus of the communication, but as part of a group or background figure.

X. DISPUTE RESOLUTION

A. Federal Court System

The trial courts of the federal court systems are the U.S. District Courts. Currently, Puerto Rico has nine federal district court judges who are appointed by the President for life terms upon confirmation by the United States Senate. The federal district court for the district of Puerto Rico sits in San Juan. Jurisdiction is the same as any other U.S. district court, English is required and the filing fees are those established by the U.S. Judicial Code. Appeals from the Puerto Rico district court decisions are to the First Circuit Court of Appeals.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are mandated by both the U.S. Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, federal antitrust, postal matters, federal internal revenue, admiralty,

federal crimes, federal torts, and customs. See also IX.A(1)(i) supra as to patent and copyright matters. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens of different states with an amount in controversy exceeding \$75,000. To be brought in federal court, there must be complete diversity, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second primary basis involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or treaties of the United States. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure and of Criminal Procedure, promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are a uniform body of procedural rules applicable to every federal district court. Each federal district court also establishes its own rules applicable to the procedure in that district court.

These rules often set forth very specific guidelines for the handling of an action, and close attention must be paid to them. One of the local rules provides court-annexed non-binding mediation for which all civil cases are eligible.

B. Puerto Rico Court System

(1) General Court of Justice

All judicial power is vested in the General Court of Justice composed of a Supreme Court, a Court of Appeals and a Court of First Instance.

(2) The Supreme Court

The Supreme Court sits in San Juan and has final appellate jurisdiction from the courts below. It also reviews decisions of the Registrars of Property and may in its discretion review other extraordinary matters.

(3) The Court of Appeals

The Court of Appeals is the intermediate appellate court between the Court of First Instance and the Supreme Court and also reviews administrative decisions and regulations. It sits in San Juan and may have sessions in all 13 judicial regions of Puerto Rico, depending upon where the issue originated.

(4) The Court of First Instance

The Court of First Instance is the court of original jurisdiction and has parts in 13 judicial regions. It entertains all civil matters, including tax cases, eminent domain, estate and

family matters, government agency, administrative orders, arbitration awards, and all criminal and juvenile matters.

(5) Venue

Under the local rules of civil procedure, no cause may be dismissed for improper venue. Cases are tried in the judicial region where the action arose, or where the defendants or plaintiffs reside, depending on the facts. Corporations reside where their headquarters are located. The trial court in its discretion may direct a change of venue.

(6) Alternate Methods of Dispute Resolution (ADR)

A Bureau on ADR exists to train neutrals and supervise all ADR programs. Local courts can refer cases to mediation, arbitration and neutral evaluation.

(7) Arbitration

Agreements to arbitrate, if in writing, are valid and specifically enforceable except in insurance contracts. Issues as to whether arbitration is appropriate are resolved by the Court of First Instance. Special provisions of law govern dealer contracts which can only be arbitrated in Puerto Rico under Puerto Rico law.

(8) Administrative Agency Adjudications

Almost all governmental agencies have the authority to exercise quasi-judicial powers in disputes between individuals and with the agencies through administrative adjudications. Administrative adjudications can be formal or informal. The formal adjudication is based on a hearing and a written record in which an administrative judge issues a final decision. As part of their decisions, the agencies can impose sanctions, fines or any other allowed remedies. Final agency decisions are subject to judicial review by the Court of Appeals.

XI. FINANCING INVESTMENTS

A. Short-Term Credit

Short-term commercial credit (up to 8-10 years) may be obtained from commercial banks doing business in Puerto Rico including local, U.S. or foreign banks. Collateral in the form of a parent company or other guaranty, mortgage or other collateral may be required. Guarantees may be available from the U.S. Small Business Administration* for small or medium-size businesses. Interest may be pegged to the lenders or another bank's prime rate or to another index such as Libor (London Inter-Bank Offered Rate).

Principal local banks are:

Banco Popular de Puerto Rico

Oriental Bank

FirstBank Puerto Rico

U.S. or Foreign Bank Affiliates include:

Citibank, N.A.

Banesco USA

Banco Santander Puerto Rico

Scotiabank de Puerto Rico

B. Long and Medium-Term Credit

Long and medium-term commercial credit is available primarily from government sources. For instance, the Puerto Rico Economic Development Bank (EDB) which has as its purpose the promotion of the development of the private sector of the economy of Puerto Rico, making available to any person, firm, corporation, or other private profit or non-profit organizations devoted to manufacture, commerce, agriculture, tourism and other service enterprises, direct loans, loan collateral and funds to invest in said enterprises, giving preference to small- and medium-sized Puerto Rican entrepreneurs. The EDB is a principal source for this type of credit and must also approve financing offered by other government agencies.

Commercial banks may also provide medium-term lending. Other sources are finance companies, insurance companies, leasing firms and pension funds.

Investment bankers and other intermediaries may also arrange for bond placements or loans which provide terms tailored to the borrower's needs.

Loans may also be available from International Banking Entities (IBEs) and International Financial Entities (IFEs). Although these entities were originally designed to lend only to foreign (non-Puerto Rico borrowers) they may now make loans for distressed projects or if the Puerto Rico Government Development Bank (GDB) or the EDB guarantees or participates in the loan or, in the case of IBEs, the loans are made to finance projects designated by the Puerto Rico Department of the Treasury and the Puerto Rico Commissioner of Financial Institutions as eligible for IBE financing. For a description of the tax benefits offered by the IBE program see VI B5(d) supra.

C. Securities Laws

The following is intended to provide a very general overview of the basic regulation of offerings, issuance and transfers of securities under Puerto Rico law. There are many exceptions and special rules that could apply. Parties are urged to contact a securities legal advisor regarding the imposition of United States federal and Puerto Rico securities regulations on issuers, investors and their respective business activities.

(1) Federal Securities Law

The Securities Act of 1933 is designed to provide disclosure to the investor and requires registration of securities issues with the Securities Exchange Commission (“SEC”) and periodic public disclosures with respect to the borrower’s business, properties, management, securities being offered and certified financials.

The Securities Exchange Act of 1934 created the SEC with the power to regulate brokers, transfer agents, clearing agencies, and stock exchanges and also establishes penalties for fraudulent activities such as insider trading.

(2) Puerto Rico Securities Law

In Puerto Rico, transactions involving securities are regulated under federal securities laws and the Puerto Rico Uniform Securities Act (“PRUSA”) which is administered by the Office of the Commissioner of Financial Institutions of Puerto Rico (“OCIF”).

PRUSA makes it unlawful for any person to offer or sell any security unless it has been registered, is exempt from registering, or is classified as a federally covered security subject to Section 18(b)(2) of the Securities Act of 1933.

(3) Registration of Securities

Any security may be registered via qualification or, if it has been filed under the Securities Act of 1993, through coordination procedures. In addition, eligible securities may be registered through the notification process. Each registration process has its own requirements which include the filing of a statement containing specified information on the issuer, its investors, directors, etc.

Registration by Qualification. Under the qualification procedures, the issuer must register a statement containing specified information and documents related to the issuer and any significant subsidiary; (2) every director and officer of the issuer; (3) any person owning ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer; (4) every promoter if the issuer was organized within the past three (3) years; (5) any person on whose behalf any part of the offering is to be made in a non-issuer distribution; (6) the capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form

of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities; (7) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; (8) the estimated cash proceeds to be received by the issuer from the offering; (9) a description of any stock options or other security options outstanding, or to be created in connection with the offering; (10) the dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities); (11) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering; (12) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered; (13) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with a Spanish translation if it is in a foreign language; (14) the written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement; (15) a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant, and (16) such additional information as OCFI requires through rule or order.

Registration by Coordination. The coordination registration procedure applies solely for securities that have been registered in accordance to the Securities Act of 1993. Said registration may be carried out through the use of the electronic system known as the Securities Registration Depository (SRD) or through a system designated by OCFI. An issuer registering its securities through this method must also file a statement alongside a copy of its latest prospectus and certificate of incorporation.

Registration by Notification. Finally, the notification registration procedure is open solely for issuers which have been in continuous operation for at least five (5) years and any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution. A registration statement under this method shall contain information on: (1) the eligibility for registration by notification; (2) the issuer and any significant subsidiary; (3) any

person on whose behalf any part of the offering is to be made in a non-issuer distribution; (4) the description of the security being registered; and (6) a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(a) Registration Exemptions Under PRUSA

PRUSA exempts certain securities and securities transactions from having to be registered with OCFI. Exemptions are not applied automatically and must be claimed for by filing a petition for exemption together with a filing fee of one hundred dollars (\$100).

Exempt Securities. Exempt securities include: (1) any securities issued or, guaranteed by the United States, any state, any political subdivision of a state; (2) any securities issued or guaranteed by Canada or any other foreign government with which the United States currently maintains diplomatic relations, if the securities are recognized as a valid obligation by the issuer or guarantor; (3) any securities issued by any bank organized under the laws of the United States; (4) any securities issued by any federal savings and loan association; (5) any securities issued by any insurance company organized under the laws of any state and authorized to conduct business in Puerto Rico; (6) any securities issued by any federal savings and credit cooperative union, any savings and credit cooperative union, or similar association organized and supervised under the laws of Puerto Rico; (7) any securities issued or guaranteed by any railroad, other common carrier, public utility, or holding company; and (8) any securities listed or approved for listing upon notice of issue on the New York Stock Exchange. For additional exempted securities please see 10 L.P.R.A. § 882.

Exempt Transactions. Section 882(b) of PRUSA contains a list of securities transactions that are exempt from registration. As a manner of example, exempt transactions include the following: (1) any isolated non-issuer transaction, whether effected through a broker-dealer or not; (2) any non-issuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offering to buy; (3) any transaction between the issuer or another person on whose behalf the offering is made and an underwriter, or among underwriters; (4) any transaction relative to a bond or other evidence of indebtedness secured by a real or personal property mortgage or deed of trust, or by an agreement of the sale of real estate or personal property, if all mortgages, deeds of trust, or agreements, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit; (5) any transaction by an executor, administrator, actuary, marshal, receiver, trustee in bankruptcy, guardian, or curator; (6) any transaction executed by a bona fide pledgee without any purpose of evading the provisions of this chapter; and (7) any offer or sale to a bank, savings institution, trust company, insurance company, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for him/herself or in some fiduciary capacity.

(b) Registration of Broker-Dealers, Agents, and Investment Advisors

According to PRUSA, it is unlawful in Puerto Rico for any person to transact business as a Broker-Dealer, Agent, or Investment Advisor unless he is registered to do so with OCFI. A broker-dealer, agent, investment advisor or investment advisor representative may register or notify his/her registration statement initially, or renew his/her registration or notice of registration statement, by filing an application or notice before OCFI, and also giving consent to be summoned in legal proceedings.

The application or notice shall contain any information regarding the matter required by OCFI, such as: (1) The manner and place in which the applicant was organized; (2) the manner in which the applicant intends to conduct business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and history of any partner, official or director or of any person occupying a similar position or performing similar functions, or any person directly or indirectly controlling the broker-dealer or the investment adviser; and in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction for a crime involving securities or any aspect of the securities business, or any dishonest activity unrelated to the securities business, and (5) the financial condition and history of the applicant.

In addition, PRUSA requires Broker-Dealers, Agents, and Investment Advisors to pay registration fees. Broker-Dealers may be required to have a minimum capital or prescribe the ratio between the net capital and the total debt, subject to the limitations as established in § 15 of the Stock Exchange Regulating Act of 1934. Likewise, PRUSA may require minimum financial requirements from the registered Investment Advisors, through regulations to such effect, subject to the limitations established in § 222 of the Investment Advisors Act of 1940.

(c) Anti-Fraud Provisions Under PRUSA

PRUSA's Anti-Fraud provision is focused on preventing the use of deceptive and manipulative practices in connection with the offer and sale of securities in Puerto Rico. Specifically, PRUSA makes it unlawful for any person: (1) to employ any device, scheme, or artifice to defraud; (2) to make any untrue statement of a material fact or to omit to state a material fact; (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; (4) to issue, circulate, or publish any material, printed or through electronic means, containing false representation of a material fact, or omitting information concerning a necessary material fact, so that the information which is issued leads to an error, or (5) to issue, circulate, or publish any material, or make any written statement, unless the name of the person who issues, circulates or publishes or makes the aforesaid, and the fact that it is that person who issues, circulates, publishes or makes the statement, is clearly indicated in that same communication.

In addition, PRUSA regulates certain business practices connected with investment advising services. For instance, it prohibits persons from conducting fraudulent schemes when advising others as to the value, purchase or sale of securities or from engaging in any practice that would manipulate the market price of specific securities.

As for investment advisors, PRUSA makes it is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing: (1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; (2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract, and (3) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Moreover, Uniform Securities Act prohibits any investment adviser taking custody of any securities or funds of any client in certain circumstances.

XII. REAL ESTATE

A. Title

Title to real property ("*propiedad inmueble*") and rights of ownership may be held and exercised by one or more individuals, corporations, limited liability corporations, partnerships and trusts, including foreign persons and corporations and other foreign legal entities. No limitations exists other than certain restrictions on the exercise of ownership rights by minors, and a Puerto Rico constitutional provision (1) limiting corporate and other legal entity ownership of real property to that necessary for its business (which may not include the business of buying and selling real estate) and (2) limiting ownership of land by an agricultural corporation and its affiliates to 500 acres. These limitations also apply to foreign corporations and legal entities.

B. Concurrent Ownership

The common law concepts of "joint tenancy", "tenancy by the entirety" and "joint tenants with right of survivorship" are not present in Puerto Rico's legal system. However, joint ownership is mentioned and regulated by the Puerto Rico Civil Code. The rights of each owner may be defined by contract. No joint owner may be forced to remain a part of the common ownership and each may request the division of the property held in common. The joint ownership contract may stipulate that the property remain undivided for a period not exceeding ten years but extendable by the owners. The right to require division cannot be enforced if to do so would render the property unserviceable for the use for which it was intended.

Puerto Rico has separate legislation governing condominium property, condohotels, and time shares and vacation clubs.

C. Spousal Rights

Spousal rights are regulated by the Puerto Rico Civil Code. Except for property belonging to the spouses prior to the marriage and property received through gift or inheritance, all property of spouses pertains to the conjugal partnership and may not be sold or mortgaged without the consent of both spouses. These rights may be altered pursuant to a pre-nuptial agreement. In the absence of such an agreement, all property is divided evenly between the spouses, or the surviving spouse and the heirs of the deceased spouse upon divorce or death. In the event of one spouse's death, the survivor acquires title to his/her one-half share as a matter of right and not through inheritance.

Common law marriages and other similar partnerships are not recognized by the laws of Puerto Rico. However, in situations where a party contributes money or work to a venture, business or property, the Supreme Court of Puerto Rico has recognized certain rights arising under similar arrangements.

D. Purchase and Sale of Real Property

Puerto Rico has not adopted Article 2 of the U.S. Uniform Commercial Code. Sale contracts are governed by the Civil and Commercial Codes of Puerto Rico.

In purchase and sales agreements one party is to deliver a specified thing while the other agrees to pay a specified amount with money or otherwise. The sale is perfected when the buyer and seller agree on both the thing being sold and the price, neither payment nor delivery is required. If the object of the sale is a real property, the sale must be evidenced by a public deed executed before notary public and must be recorded in the Property Registry in order to be binding upon third parties. Stamp fees are due on the deed and recording fees are due upon presentation for record. In addition, the Notary is entitled to fees prescribed by law. In the absence of an agreement to the contrary, the seller selects the notary and pays the stamp fees on the original deed and the buyer pays the notarial fees, the fees on the certified copy of the deed and the costs of recording. See E below.

Except in the case of residential housing developments which are subject to strict rules for protection of purchasers enforced by the Puerto Rico Department of Consumer Affairs (DACO), no special requirements for real estate purchase contracts or options to purchase exist other than those mentioned above.

(1) Protection from fraud

Protection from fraud with respect to purchase/sale contracts is provided by Puerto Rico Civil Code provisions which specify that the seller warrants to the buyer the legal and peaceful possession of the thing sold and that no hidden faults or defects exist. The Code further provides that a person who is guilty of fraud, negligence or delay or other violations of the Code is liable for losses or damages caused thereby. Consumers may seek protection and

advice from DACO should they feel their rights have been violated. Article 1802 of the Civil Code of Puerto Rico, 1930 edition, provides that persons, including all legal entities, who in fulfilling their obligations are guilty of fraud, negligence or delay, and those who violate contractual obligations, shall be liable for any loss or damage caused thereby. Concurrent negligence of the aggrieved party results in a reduction of the indemnity due, but does not release the liability.

E. Taxes Due with Respect to Real Property Sale/Purchase/Lease

(1) Internal Revenue Stamp

Internal Revenue Stamps (IRS) are cancelled on each original public deed and on each certified copy thereof, based on the value of the transactions as stated in the deed or in the case of leases on the stipulated rent for the full term of the lease and renewals as follows:

Deed Value	IRS Original Deed	IRS Per Certified Copy
\$1-\$250	\$0.50	\$0.20
\$250.01-\$500	\$1.00	\$0.50
\$500.01-\$1,000	\$2.00	\$1.00
\$1,000.01-\$5,000	\$2.00 first \$1,000 and .50 each additional \$1,000 or fraction	\$1.00 first \$1,000 and .20 each additional \$1,000 or fraction
Over \$5,000	\$2.00 first \$1,000 and \$1.00 each additional \$1,000 or fraction	\$1.00 first \$1,000 and .50 each additional \$1,000 or fraction

(2) Notarial Stamp

A Notarial Stamps (Notarial) \$1 stamp is cancelled on each original deed and on each certified copy and a Legal Aid Society (LAS) stamp is also cancelled on deeds as follows:

BAR: Deed Value	Original Deed	Per Certified Copy
Any Value	\$1.00	\$1.00

LAS: Deed Value	Original Deed	Per Certified Copy
\$25,000-\$50,000	\$5.00	\$2.50
Over \$50,000	\$5.00 first \$50,000 and each additional \$50,000 or fraction	\$2.50 first \$50,000 and each additional \$50,000 or fraction

There is also a \$5 Legal Aid Society Stamp cancelled on each notarial affidavit.

Charges for recording documents in the Property Registry, including leases, conveyances, mortgages and cancellations of mortgages, are based on the amount of the transaction stated in the document, provided that the value for leases is fixed at stipulated rent for the first twelve years of the lease, or total rent to be paid, whichever is less, as follows:

Value	Stamp Fee
\$1,000 or less	\$2.00
\$1,001 - \$25,000	\$2.00 each \$1,000 or fraction
Over \$25,000	\$50 first \$25,000 and \$4.00 each additional \$1,000 or fraction

There is also a standard filing fee of \$15 for any document filed in the Property Registry, with an additional \$10 fee if the filling is made online, through the Property Registry's online platform, "Karibe".

F. Public Deeds

Public deeds for real estate sales, mortgages, long term leases, trusts, wills and certain other documents are prepared by a notary public who participates in the signing of the deed and certifies to know the parties personally, or has verified their identity through approved means. The notary public has the responsibility to explain to all parties to the deed the legal consequences of the document. The notary public is also responsible for ensuring that stamp fees are paid and cancelled, and for filing the deed for recording in the appropriate section of the registry, as required by law in order to allow for publicity of the transaction and enforceability against third parties. Notaries cannot represent title insurers or act as brokers for the transaction.

Lawyers are the only ones who may qualify to be notaries and must pass a special examination administered by the Puerto Rico Supreme Court. Notaries are responsible for the validity of documents authorized by them, including deeds and sworn statements. They may be sued for damages and sanctioned by the Puerto Rico Supreme Court when acting improperly. For the preparation and execution of public documents, the following Notary fees are set by law:

Value	Stamp Fee
\$10,000 or less	\$150.00
\$10,001 - \$5,000,000	To be agreed upon by the parties and the Notary, but shall never be more than 1% or less than 0.5%
Over \$5,000,000	For the first \$5,000,000, the fees shall be agreed upon by the parties and the Notary, but shall never be more than 1% or less than 0.5%. The quantity in excess of the first \$5,000,000 shall be agreed upon by the parties and the Notary.

G. Deeds Executed Outside of Puerto Rico

Deeds of conveyance of Puerto Rico real property may be executed outside of Puerto Rico provided they comply with requirements of form and content of the jurisdiction where the document is signed or with those of Puerto Rico and, provided further that the document is then protocolized by a Puerto Rico notary. Protocolization serves to convert the foreign document into a Puerto Rico public deed suitable for recording in the Property Registry. The same stamp fees apply to the document and certified copies thereof as would have been paid had the document been originally executed as a public deed in Puerto Rico.

A deed executed in a foreign country (not the United States) may be valid in Puerto Rico if it conforms substantially with the formalities required for a public deed under the Puerto Rico notarial law. The deed must be authenticated by the appropriate government official of the foreign country, whose signature must then be authenticated by a U.S. embassy or consular officer. If the country has adhered to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, the signature must then be authenticated by certificate of apostille issued by the foreign country's designated officer, and must also be protocolized in Puerto Rico.

H. Title Insurance

Title insurance is recommended for all real estate transactions. This is due primarily to delays in recording of deeds in the Property Registry. The cost of title insurance is normally borne by the buyer or borrower.

I. Real Property Taxes

Real property taxes in the case of a sale/purchase are usually allocated in the deed so that the taxes due up to the closing date correspond to the seller and those due thereafter to the

buyer. Taxes are billed annually as of July 1 which is the beginning of the government fiscal year. Taxes for the current fiscal year are prorated between seller and buyer.

J. Closing Procedures

(1) Public deeds

Public deeds must be used for sales, mortgages, long term leases for 6 years or more and trusts. Deed content, notaries and costs involved in deeds are discussed above.

(2) Bills of sale

Bills of sale are used only for non-real property transactions. However, there are no statutory requirements for bills of sale in Puerto Rico. The Civil Code covers perfection of a sale. See D above. A simple statement signed by the parties reciting the delivery of the thing sold and receipt of the purchase price is useful as evidence of the transaction.

(3) Mortgages

Mortgages on real (immovable) property must be constituted by public deed and recorded in the Property Registry to create a valid lien on the property. Recourse and Non-Recourse Mortgages are valid. Mortgages may be constituted to secure a direct obligation or a mortgage note payable to the mortgagee or to bearer. The title to the mortgaged property is retained by the mortgagor. Future advances, up to the amount of the lien, are allowed if provided for in the mortgage. Open-end mortgages are not provided for. Upon satisfaction, a deed of cancellation is required and must be recorded. For a discussion of public deeds, stamp fees and recording fees payable, see E and F above.

(4) Closing statements

Closing statements are not required under Puerto Rico law. Federal law does require closing statements for federally guaranteed mortgage loans. As a practical matter either the seller's or buyer's attorney may prepare a closing statement identifying the transaction and detailing the date, price, down payment and other payments made and allocation of funds to the purchase price and other required disbursements due from seller and buyer.

(4) Foreclosures

Certain foreclosure proceedings must first comply with a mandatory mediation process. If, however, an agreement is not reached, the creditor may continue the normal judicial proceeding.

After compliance with statutory and judicial notice requirements, foreclosure sales are executed through a public auction where the mortgagee may bid.

XIII. LAND USE AND DEVELOPMENT PERMITS

A. The Puerto Rico Environmental Public Policy Act

Pursuant to the Puerto Rico Environmental Public Policy Act of 2004 ("EPPAct"), Act 416-2004, Puerto Rico agencies must take into account the impact, significant or otherwise, that a proposed action or decision (i.e. approving siting of a project, issuing a permit, etc.) may have upon the environment. This is done through the preparation of an environmental document in which the reasonably anticipated environmental impacts associated with a proposed action or decision are analyzed. Environmental impacts may be addressed through: (1) a categorical exclusion, which is reserved for routine actions whose environmental impact is not significant; (2) the preparation of an environmental assessment ("EA"), whereby the lead agency (generally the "Permits Management Office" or "OGPe, by its Spanish acronym), evaluates relevant factors to determine whether an action or decision will have significant impact on the environment and whether the preparation of an environmental impact statement ("EIS") will instead be required; and (3) the preparation of an EIS, which is a more thorough document subject to additional procedural and content requirements that delves deeper into potential environmental impacts and is usually accompanied by detailed supporting studies, if it is determined by the lead agency that the proposed action or decision will have a significant impact on the environment. The adequacy of the environmental document, as regards to its evaluation of expected environmental impacts, would be addressed in a resolution issued by OGPe. The environmental review process is generally the first step for agencies to consider a proposed project, action or decision. In other words, OGPe's determination regarding the adequacy of the environmental document precedes the issuance of any permits.

B. Zoning and Siting Approvals

(1) Zoning Regulations and Maps

The P.R. Planning Board ("PRPB"), the OGPe, and certain Puerto Rico Municipalities control the physical development of land and the kinds of uses permitted in each zoning district through the implementation of the Puerto Rico Permits Reform Act, Act 161-2009, the Permits Joint Regulation, Regulation No. 8573 of March 24, 2013, and Municipal Zoning Ordinances (collectively, "Zoning Regulations"). In general, Zoning Regulations specify (i) the areas in which residential, industrial, agricultural, recreational or commercial uses or activities may be established, and (ii) the requirements for the physical layout of lots, buildings, parking, signage regulation, and other physical structures and elements on the land.

(2) Siting Approvals

Zoning Regulations provide a list of permitted uses that can be established within a particular zoning district "as-of-right". Zoning Regulations also provide, in many cases, a list of uses that may be approved subject to a discretionary approval process (permit by exception).

In addition to permits by exception, zoning regulation provide for the authorization of certain areas though such uses would not be permitted "as-of-right". Such "siting approvals" are generally subject to special requirements unique to each individual case. Special requirements may include restrictions on use, limits on height, added parking, access roads, development of new infrastructure to accommodate future needs, etc. Special requirements may also come from administrative agencies with jurisdiction over the proposed project (e.g., Department of Natural and Environmental Resources, P.R. Environmental Quality Board, P.R. Telecommunications Regulatory Board, Institute of Puerto Rican Culture, etc.)

"Siting approvals" are also required for proposed projects that, due to their magnitude or location, have regional impacts (regardless of the zoning district where a property is located). In such cases, the permitting office may discretionally determine if a proposed use is generally feasible in a determined land or property. In other words, how the proposed activity will conform to the area, taking into account geological, economic, environmental, social, infrastructure and zoning aspects located in and surrounding the land or property, and how the impacts of the construction and operation of a proposed activity will be generally handled.

C. Permits

(1) Construction Consultations ("Construction Variances")

A construction consultation is the regulatory mechanism to request variances from construction parameters contained in Zoning Regulations, and the P.R. Building Code (P.R. adopted the International Building Code). In general, construction variances are requested when the strict application of construction parameters contained in Zoning Regulations would prevent the developer or project owner from using the property for a permitted purpose.

(2) Urbanization and Construction Permits

OGPe and certain Municipal Permitting Offices issue urbanization and construction permits. Urbanization generally consists of preliminary civil works at the project site and the installation of infrastructure (e.g. leveling of terrain, earth movement, construction of roads, drainage systems, etc.) Prior to obtaining urbanization and construction permits, developers and project owners must submit construction plans certified by professional engineers. Professional engineers must certify that the Project and engineering drawings comply with all laws, regulations, and codes. It is important to note that any project proposed in Puerto Rico must comply with the American with Disabilities Act ("ADA"). ADA prohibits private places of public accommodation from discriminating against individuals with disabilities. Examples of public accommodations include privately-owned, leased or operated facilities like hotels, restaurants, retail merchants, medical offices, private schools, day care centers, health clubs, sports

stadiums, movie theaters, and so on. ADA sets the minimum standards for accessibility for alterations and new construction of facilities.

(3) Other Construction-related Permits

In addition to the general urbanization and construction permits, project owners and developers must also seek additional permits and authorizations (if applicable) related to the construction of the proposed project. For example, proposed projects must obtain authorization or permits for the cutting and pruning of trees, for the removal/extraction of soil material, for fugitive/dust emissions, for waste generation, and for the management and control of erosion and sedimentation. Also, the Federal Clean Water Act, through the U.S. Environmental Protection Agency, requires to obtain an NPDES Construction General Permit (“CGP”) for stormwater discharges associated with construction activities that disturb one (1) or more acres.

D. Certificate of Occupancy ("Use Permits"), Fire Permits, Sanitary Licenses

After the project has been constructed, the Puerto Rico Permits Reform Act requires the owner or occupant to obtain a Use Permit (“Certificate of Occupancy”). In order to obtain it, the Permits Joint Regulation requires that the project be inspected by fire and sanitary officials to confirm that it complies with the fire code and sanitary regulations.

E. Other Relevant Permits

Depending on the type of operation or activity to be carried out (whether it be for commercial or industrial), the owner or operator might need additional permits, licenses or approvals to operate the facility. For example, a pharmaceutical manufacturing facility may need the following permits in order to operate: (1) Air Emissions Operating Permits issued by the PREQB, (2) NPDES Multi-sector General Permit for storm water discharges associated with industrial activities issued by USEPA, (3) Pharmaceutical Industry license issued by the Puerto Rico Health Department, (4) Industrial Wastewater Discharge Permit issued by the P.R. Aqueduct and Sewer Authority, (5) Waste Water Treatment Plant Operating Permit issued by the PREQB, etc. In essence, additional permits required for the operation of facilities are specific for the type of activity being carried out.

APPENDIX A

**PUERTO RICO'S PRINCIPAL ECONOMIC DEVELOPMENT
AND BUSINESS ASSISTANCE AGENCIES**

COMPANY	ADDRESS	TELEPHONE FAX NUMBER	WEBSITE
PUERTO RICO INDUSTRIAL DEVELOPMENT COMPANY (PRIDCO)	355 FD Roosevelt Avenue, Edif. de Fomento Industrial, Suite 404 Hato Rey, PR 0018	Tel. 787-758-4747	www.pridco.com
DEPARTMENT OF STATE Registry of Marks Commercial Names	PO Box 9023271 San Juan, PR 00901	Tel. 787-722-2121	www.estado.pr.gov/es/regis- tro-de-marcas-y-nombres- comerciales/
DEPARTMENT OF STATE Registry of Corporations	PO Box 9023271 San Juan, PR 00901	Tel. 787-722-2121	www.estado.pr.gov
DEPARTMENT OF CONSUMER AFFAIRS (DACO)	Ave. José de Diego Pda. 22 Centro Gubernamental Minillas, Edif. Norte, Piso 8 San Juan , PR 00940	Tel. 787-722-7555	www.daco.pr.gov
BANCO DE DESARROLLO ECONOMICO (ECONOMIC DEVELOPMENT BANK)	<i>Physical Address:</i> Calle Aldebarán #638 Urb. Altamira San Juan, PR 00920 <i>Postal Address:</i> PO Box 2134 San Juan, PR 00922	Tel. 787-641-4300	www.bdepr.ogr

COMPANY	ADDRESS	TELEPHONE FAX NUMBER	WEBSITE
ENVIRONMENTAL QUALITY BOARD EQB	<p><i>Physical Address:</i> Edificio de Agencias <i>Physical Address:</i> Edificio de Agencias Ambientales Cruz A. Matos Urbanización San José Industrial Park 1375 Avenida Ponce de León San Juan, PR</p> <p><i>Postal Address:</i> P.O. Box 11488 San Juan, PR 00926- 2604</p>	Tel.787-767-8181	www.jca.pr.gov
DEPARTMENT OF NATURAL ENVIRONMENTAL RESOURCES (DNER)	<p><i>Physical Address:</i> Carretera Núm. 8838, Km. 6.3 Sector El Cinco Río Piedras, PR 00926</p> <p><i>Postal Address:</i> PO Box 366147 San Juan, PR 00936-</p>	Tel. 787-999-2200	www.drna.pr.gov
SOLID WASTE AUTHORITY (SWA)	<p><i>Physical Address:</i> Carretera Núm. 8838, Km. 6.3 Sector El Cinco Río Piedras, PR 00926</p>	Tel. 787-765-7575	www.ads.pr.gov
PUERTO RICO PLANNING BOARD (PRPB)	Centro Gubernamental Roberto Sánchez Vilella Apartado 41119 Santurce, Puerto Rico 00940-1119	Tel. 787-723-6200	www.jp.gobierno.pr

COMPANY	ADDRESS	TELEPHONE FAX NUMBER	WEBSITE
PUBLIC SERVICE COMMISSION (PSC)	<i>Physical Address:</i> Carr. 1 Calle Bori 1608 San Juan P.R.00919 <i>Postal Address:</i> PO Box 190870 San Juan, PR 00919- 0870	Tel. 787-756-1919 Fax. 787- 300-6457	www.csp.pr.gov
COMMISSIONER OF FINANCIAL INSTITUTIONS	<i>Physical Address:</i> Edif. Centro Europa Ave. Ponce de León 1492, Piso 6 Santurce, PR <i>Postal Address:</i> PO Box 11855 San Juan, PR 00910- 3855	Tel. 787-723-3131 Fax. 787-723-4042	www.ocif.gobierno.pr
PUERTO RICO TRADE AND EXPORT COMPANY	<i>Physical Address:</i> Edificio New San Juan Ave. Chardón, 159 San Juan, PR 00918 <i>Postal Address:</i> PO Box 195009 San Juan, Puerto Rico 00919-5009	Tel. 787-294-0101 Fax. 787-294-0718	comercioyexportacion.com
ADMINISTRATION OF ENERGY MATTERS	<i>Physical Address:</i> 209 Calle Manuel Camuñas, Esq. Ave César González, Urb. Industrial Tres Monjitas Hato Rey, PR <i>Postal Address:</i> PO Box 41314 San Juan, PR00940	Tel. 787-332-0914 Fax 787-332-0915	www.aae.pr.gov

COMPANY	ADDRESS	TELEPHONE FAX NUMBER	WEBSITE
INFRASTRUCTURE DEVELOPMENT AGENCY	Physical address: World Plaza Building 268 Muñoz Rivera Ave., 4th Floor San Juan, P.R. 00918 Postal address: PO Box 41207 San Juan, PR 00940- 1207	Tel. 787-763-5757 Fax. 787-765-5712	www.gdb-pur.gov
DEPARTMENT OF ECONOMIC AND TRADE DEVELOPMENT	<i>Physical Address:</i> #355 Ave. Roosevelt, Suite 401 Hato Rey, PR <i>Postal Address:</i> PO Box 362350 San Juan, 00936-2350	Tel. 787.765-2900	www.ddec.gobierno.pr.gov
GOVERNMENT DEVELOPMENT BANK	P.O. Box 42001, San Juan PR 00940- 2001	Tel. (787) 722-2525 Fax (787) 723-7388	www.gdb-pur.com