



Issues Relating To Organizational Forms And Taxation

U.S.A. - CONNECTICUT Murtha Cullina LLP

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- 1. Identify the forms of organization available in your jurisdiction and discuss the advantages and disadvantages of each (e.g., corporation, limited liability company, partnership, limited partnership, co-operative, etc.), describing which type of legal entity is mostly used or is of special interest, namely by foreign investors.**

Connecticut provides statutory authority for the following forms of organization: stock corporations (which can be taxed as C corporations or S corporations), general partnerships, limited partnerships, limited liability partnerships, limited liability companies, cooperative associations and statutory trusts. Connecticut also provides statutory authority for nonstock corporations, which are generally used for charitable and other tax-exempt purposes.

The discussion that follows focuses on the first set of organizations, and all references to corporations shall be deemed to mean and refer to stock corporations, as opposed to nonstock corporations. It is purposefully brief and is not intended to serve as a complete discussion of the issues presented. The choice-of-entity analysis depends primarily on the inherent characteristics of the entities involved (which are generally similar across state lines) and related characterizations and treatments under the United States Internal Revenue Code of 1986, as amended. Rarely, if ever, is the choice-of-entity analysis driven primarily by considerations that are unique to the State of Connecticut.

Often investors who are not United States persons will invest in a Connecticut business through a C corporation. A C corporation serves as a blocker corporation that is interposed between the United States and Connecticut income source and the foreign investors. The blocker corporation rather than the foreign investors will incur and pay federal and Connecticut tax on the income of the blocker corporation. Such interposition generally prevents the foreign investors from being engaged in a United States business merely because they own the C corporation.

Corporations

Connecticut has adopted the Model Business Corporation Act (the “MBCA”), which generally governs the creation, operation and dissolution of a corporation organized and existing under Connecticut law. The Connecticut version of the MBCA is known as the Connecticut Business Corporation Act (the “CBCA”). Under the CBCA, one or more persons may act as the incorporator or incorporators of a corporation by filing a certificate of incorporation with the Office of the Secretary of the State. The corporate existence begins when the certificate of incorporation is filed.

Generally speaking, the corporate form of organization is advantageous because it protects the owners of the business (i.e., the shareholders) from incurring personal liability for the debts and obligations of the corporation. The corporate form of organization is also very well understood. Because shareholders have limited liability and the corporate form of organization is so well understood, a corporation generally has easy access to capital. A Connecticut corporation may engage in almost any lawful business.

The primary disadvantage of a corporation is that its earnings are subject to double taxation, first at the corporate level and then again at the shareholder level when earnings are distributed to shareholders as dividends. Double taxation generally can be avoided if the corporation elects to be taxed under Subchapter S of the Internal Revenue Code of 1986, as amended. This is not unique to Connecticut, however, so a complete discussion of the rules and regulations pertaining to S corporations is beyond the scope of this survey.

General Partnerships

Connecticut has adopted the Uniform Partnership Act, which generally governs the creation, operation and winding up of a partnership organized and existing under Connecticut law. Unlike a corporation and most other limited liability entities, a general partnership may be created without filing any organizational document or other certificate with the state, although a partnership may file a statement of partnership with the Office of the Secretary of the State setting forth: (i) the name of the partnership, (ii) the street address of its chief executive office and of one office in this state, if there is one, (iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of maintaining such information, and (iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership. Any such statement also may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

Also unlike a corporation, a partnership’s profits are not taxed directly, but rather, flow through to the partners of the partnership. Partners in a general partnership have significant leeway in defining the relations among the partners and between the partners and the partnership.

The primary disadvantage of a general partnership is that the partners generally are jointly and severally liable for all obligations of the partnership.

Limited Liability Partnerships

Connecticut also provides statutory authority for the formation of registered limited liability partnerships, which generally combine the limited liability characteristics of corporations with the flow-through income tax treatment of partnerships. To become a registered limited liability partnership, a partnership must file a certificate of limited liability partnership with the Office of the Secretary of the State. The certificate of limited liability partnership must set forth: (i) the name of the partnership, (ii) the address of its principal office, (iii) if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state, (iv) a brief statement of the business in which the partnership engages, and (v) any other matters the partnership may determine to include, together with a statement that that the partnership thereby applies for status as a registered limited liability partnership.

The primary advantage of a registered limited liability partnership is that, by statute, a partner in a registered limited liability partnership generally is not liable directly or indirectly, including by way of indemnification, contribution or otherwise, for any debts, obligations and liabilities of, or chargeable to, the partnership or another partner or partners, whether arising in contract, tort or otherwise, arising in the course of the partnership business while the partnership is a registered limited liability partnership. However, there is one important exception. The registered limited liability partnership provides no protection to a partner of a registered limited liability partnership for his own negligence, wrongful acts or misconduct, or that of any person under his direct supervision and control. As a result, the use of registered limited liability partnerships generally is limited to professional service organizations where such liability cannot be disclaimed.

A registered limited liability partnership that consists of partners who render professional services must continuously maintain professional liability insurance in an amount not less than two hundred fifty thousand dollars.

Limited Partnerships

Connecticut has adopted the Revised Uniform Limited Partnership Act, which generally governs the creation, operation and winding up of a limited partnership organized and existing under Connecticut law. A limited partnership may be formed by preparing and filing a certificate of limited partnership with the Office of the Secretary of the State. The certificate of limited partnership must set forth: (i) the name of the limited partnership and the address of the office required to be maintained in this state, (ii) the name and address of the agent for service of process required to be maintained by the limited partnership, (iii) the name and business address of each general partner; (iv) the latest date upon which the limited partnership is to dissolve, and (v) any other matters the partners determine to include therein.

Limited partnerships provide a vehicle to raise equity from a large number of investors because limited partners may invest without subjecting themselves to personal liability. Moreover, a limited partnership can include a large number of limited partners without hindering decision making because limited partners may not participate in the control or management of the business if they wish to maintain limited liability. Because of the passive nature of limited partnership investments, however,



the offer and sale of limited partnership interests are subject to the requirements of state and federal securities laws.

Limited Liability Companies

Connecticut has adopted the Connecticut Limited Liability Company Act, which generally governs the creation, operation and dissolution of a limited liability company organized and existing under Connecticut law. One or more organizers may form a limited liability company by signing and filing articles of organization with the Office of the Secretary of the State. The articles of organization must set forth: (i) the name of the limited liability company, (ii) if management of the limited liability company is vested in a manager or managers, a statement to that effect, (iii) the nature of the business to be transacted or the purposes to be promoted or carried out, except that it shall be sufficient to state, either alone or with other business or purposes, that the purpose of the limited liability company is to engage in any lawful act or activity for which limited liability companies may be formed under the Connecticut Limited Liability Company Act, (iv) the principal office address of the limited liability company, (v) an appointment of a statutory agent for service of process, and (vi) any other matter the organizer or organizers determine to include.

The primary advantage of a limited liability company is that it combines the limited liability characteristics of a corporation with the flow-through income tax treatment of a general partnership. Furthermore, a limited liability company generally provides greater flexibility in its operation than that provided by a corporation.

A Connecticut limited liability company cannot conduct business as a state bank and trust company, a savings bank, an industrial bank, a building and loan association, a telegraph company, a gas, an electric, or an electric distribution or water company, or cemetery corporation, or an affiliate of an insurance company.

Cooperative Associations

Connecticut provides statutory authority for the creation and formation of cooperative associations. Under Connecticut law, seven or more persons of lawful age, who are inhabitants of this state, may, by written articles of agreement, associate themselves together for the purposes of trade or for carrying on any lawful mercantile, mechanical, manufacturing or agricultural business within this state, and, when such articles of association have been executed and filed in the office of the Secretary of the State, the franchise tax specified by statute has been paid to, and such articles of association approved by, the Secretary of the State, such persons shall become a corporation and enjoy all the powers and privileges and be subject to all the duties, restrictions and liabilities of other Connecticut corporations, except so far as the same may be limited or enlarged by statute.

A cooperative association provides few, if any, advantages over a regular corporation, so this form of organization is rarely utilized. The distribution of profits from a cooperative association is subject to the additional requirement that no distribution shall be declared or paid until a sum equal to ten percent of the net profits is appropriated for a contingent or sinking fund and until there has been thereby accumulated a sum equal to twenty percent of the capital stock of the cooperative association.

Statutory Trusts



Finally, Connecticut provides statutory authority for the creation and formation of statutory trusts, commonly known as business trusts. A statutory trust may be organized to carry on any lawful business or activity, whether or not conducted for profit. A statutory trust is created by: (i) a trust instrument under which property is or will be held, managed, administered, controlled, invested, reinvested or operated, or business or professional activities are or will be carried on, by a trustee or trustees for the benefit of such person or persons as are or may become entitled to a beneficial interest in the trust property and (ii) the filing of a certificate of trust with the office of the Secretary of the State. The certificate of trust must set forth: (i) the name of the statutory trust, (ii) the future effective date, which shall be a date certain, of effectiveness of the certificate if it is not to be effective upon the filing of the certificate, (iii) the principal office address of the statutory trust, (iv) the appointment of a statutory agent for service of process, and (v) any other information the trustees determine to include therein.

Except to the extent otherwise provided in the governing instrument of the statutory trust, the beneficial owners of a statutory trust shall be entitled to the same limitation of personal liability extended to shareholders of a Connecticut corporation. Similarly, except to the extent otherwise provided in the governing instrument of a statutory trust, a trustee, when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof.

2. Are there attributes of the form that you consider unique to your jurisdiction?

No. Generally speaking, the Connecticut laws governing the formation and operation of business entities are derived from model and uniform acts. For example, the Connecticut statutes governing the formation and operation of corporations are derived from the Model Business Corporation Act, the Connecticut statutes governing the formation and operation of general partnerships are derived from the Uniform Partnership Act, and the Connecticut statutes governing the formation and operation of limited partnerships are derived from the Revised Uniform Limited Partnership Act.

3. Describe the management and governance structure for each organizational form.

Corporations

All corporate powers are exercised by or under the authority of, and the business and affairs of a corporation are managed by or under the authority of, the board of directors of the corporation. Directors are responsible for appointing officers, adopting bylaws, and managing the corporation. Directors generally delegate day-to-day operating responsibilities to officers. Officers perform the functions set forth in the bylaws of the corporation and, to the extent consistent with the bylaws, the functions prescribed by the board of directors. Shareholders elect directors, have the right to receive dividends and vote on significant corporate transactions, such as a merger and the sale of all or substantially all of the assets of the corporation.

General Partnerships

A general partnership is defined as the association of two or more persons to carry on as co-owners of a business for profit. As such, each partner is an agent of the partnership. This means that an act of a partner in the ordinary course of the business binds the partnership, unless the partner had no authority to act for the partnership in that matter and the person with whom the partner dealt knew that the partner lacked authority.



Under a general partnership, co-owners have considerable freedom to determine among themselves the terms which will govern their partnership. Generally, relations among the partners and between the partners and the partnership are governed by the partnership agreement. The partnership agreement may grant to all or certain identified partners the right to vote on any matter. In lieu of a provision in the partnership agreement defining the rights and duties of the partners, the partners' rights and duties are governed by statute.

Limited Partnerships

A limited partnership must have at least one general partner and one limited partner. General partners manage and control the limited partnership, and may be subject to personal liability. If a limited partner participates in the management or control of the partnerships, he is no longer a limited partner (i.e., may be subject to personal liability). However, Connecticut law enumerates various powers that a limited partner may exercise which do not constitute participation in the "management or control" of the business. These powers include serving as an agent or employee of the limited partnership, consulting with or advising the general partner on the business of the partnership, acting as surety for the limited partnership, attending meeting of partners, or voting on matters such as the dissolution and winding up of the limited partnership, the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership, or change in the nature of the business.

Limited Liability Partnerships

A registered limited liability partnership is managed in the same manner as a general partnership. The partners have considerable freedom to determine the terms that govern their partnership. In lieu of a provision in the partnership agreement defining the rights and duties of the partners, the partners' rights and duties are governed by statute.

Limited Liability Companies

Unless otherwise provided in the articles of organization, every member of a limited liability company is an agent of the limited liability company for purposes of its business or affairs, and the act of any member binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the member has no such authority. If the articles of organization vests management of the limited liability company in non-member managers, then the members are not agents of the company and do not have the authority to act on behalf of the company, and every manager is an agent of the limited liability company for purposes of its business or affairs, and the act of any manager binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom he is dealing has knowledge of the fact that the manager has no such authority.

Cooperative Associations

The business and affairs of a cooperative association are managed by no fewer than seven members, who are styled a board of managers and are chosen annually by the stockholders. Such persons hold their offices until others are chosen and have qualified in their stead. The bylaws of a cooperative association may divide the board of managers into not more than three classes, each class of which shall hold office for not more than three years. In such event, one of the classes is elected each year.

The association has such other officers as may be designated and appointed in accordance with its bylaws.

Statutory Trusts

Except to the extent provided in the governing instrument of the statutory trust, the business and affairs of a statutory trust are managed by or under the direction of the trustees. To the extent provided in the governing instrument of a statutory trust, any person, including a beneficial owner, is entitled to direct the trustees or other persons in the management of a statutory trust and, except to the extent otherwise provided in the governing instrument of a statutory trust, neither the power to give direction to a trustee or other persons nor the exercise thereof by any person, including a beneficial owner, causes such person to be a trustee.

4. Is there a residency requirement for management or owners? In particular, are there restrictions or prohibitions on foreign investors to perform, or have interests in, specific activities?

Except for cooperative associations, no form of Connecticut business organization imposes any general residency requirement for management or owners of the organization and there is no restriction or prohibition on foreign investors to perform, or have interests in, specific activities. Generally speaking, however, each form of Connecticut business organization must maintain an office in the state and appoint a registered agent for service of process.

There is a residency requirement for cooperative associations. The members of a cooperative association must be “inhabitants” of the State of Connecticut.

5. Describe the extent to which management and owners are exposed to liability.

Corporations

A shareholder of a Connecticut corporation is not liable to the corporation or its creditors, except to pay the agreed upon consideration for its shares. Unless otherwise provided in the certificate of incorporation, a shareholder of a Connecticut corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

Similarly, an officer or director is not liable for any action taken as an officer or director if he acts in good faith, with the care an ordinarily prudent person in that position would exercise under similar circumstances and in a manner he reasonably believes to be in the best interests of the corporation. Under the doctrine of piercing the corporate veil, however, a corporation’s shield of limited liability may be disregarded, and personal liability imposed, when the corporation is inadequately capitalized, used to perpetrate a fraud, or corporate formalities are not followed.

General Partnerships

Under Connecticut law, all partners of a general partnership are jointly and severally liable for all obligations of the partnership, unless otherwise agreed by the claimant or provided by law.

Limited Partnerships

In a limited partnership, general partners are personally liable for the debts of the partnership and the acts of other partners. Limited partners, however, are afforded limited liability in much the same manner as shareholders of a corporation. A limited partner is not liable for the obligations of the partnership beyond the amount of his or her capital contribution so long as the limited partner does not participate in the management or control of the partnership.

Limited Liability Partnership

A partner in a registered limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution or otherwise, for any debts, obligations and liabilities of, or chargeable to, the partnership or another partner or partners, whether arising in contract, tort or otherwise, arising in the course of the partnership business while the partnership is a registered limited liability partnership, except that the statutory limitation of liability does not affect the liability of a partner in a registered limited liability partnership for his own negligence, wrongful acts or misconduct, or that of any person under his direct supervision and control.

Limited Liability Companies

A person who is a member or manager of a Connecticut limited liability company is not liable, solely by reason of being a member or manager, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, manager, agent or employee of the limited liability company. However, any member, manager, agent or employee of a limited liability company rendering professional services is personally liable and accountable for the negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional services on behalf of the limited liability company to the person for whom such professional services were being rendered. Moreover, under the piercing of the veil doctrine described above, a member of a limited liability company may be subject to personal liability under certain circumstances.

Cooperative Associations

Managers of a cooperative association are subject to the same limited liability as directors and officers of a corporation. Similarly, shareholders of a cooperative association are subject to the same limited liability as shareholders of a corporation.

Statutory Trusts

The beneficiaries of a statutory trust are entitled to the same limitation of personal liability extended to shareholders of a corporation. Trustees of a statutory trust, when acting in such capacity, are not personally liable to any person other than the statutory trust or a beneficiary for any act, omission, or obligation of the statutory trust. Officers, employees, and managers of a statutory trust, when acting in such capacity, have the same limited liability as the trustees.

- 6. Ownership interest: (i) how is it represented? (ii) is it transferable?; and (iii) is there a minimum number of owners?**

Corporations

The ownership interest in a corporation is represented by its outstanding shares. Individual shares are transferrable and there is no minimum number of owners.

General Partnerships

The only transferable interest of a partner in a Connecticut general partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

A general partnership must consist of at least co-owners, or partners.

Limited Partnership

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve the limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would have been entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

A limited partnership must have at least one general partner and one limited partner.

Limited Liability Partnerships

See “General Partnerships” above.

Limited Liability Companies

Except as provided in writing in an operating agreement: (i) A limited liability company membership interest is assignable in whole or in part; (ii) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled; (iii) an assignment of a limited liability company membership interest does not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member; (iv) until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor; (v) until an assignee of a limited liability company membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and (vi) the assignor of a limited liability company membership interest is not released from liability as a member solely as a result of the assignment.

An operating agreement may provide that a member's limited liability company interest may be evidenced by a certificate of membership interest issued by the limited liability company and may



also provide for the assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such certificates.

There is no minimum number of owners in a limited liability company; a limited liability company may be formed by a single member.

Cooperative Associations

A cooperative association consists of seven or more persons of lawful age agreeing, for the purpose of trade, to join together and form a corporation. The shareholders in a cooperative association are considered the owners. No person may become a shareholder without the consent of the association's managers.

Statutory Trusts

Except to the extent otherwise provided in the governing instrument of the statutory trust, a beneficial owner has an undivided beneficial interest in the property of the statutory trust and shares in the profits and losses of the trust. A beneficial owner's interest in a statutory trust is considered personal property. This interest is freely transferable except to the extent otherwise provided in the governing instrument. There is no minimum number of beneficial owners in a statutory trust.

7. Is there a minimum capitalization?

Generally speaking, the Connecticut statutes do not impose any minimum capitalization requirements on any of the forms of business organization discussed in this survey, although the licensing and other requirements applicable to particular types of businesses (e.g., banks and insurance companies) may impose minimum capital requirements and inadequate capitalization may lead to the loss of the limitation of personal liability.

8. Is there a security that can be issued to the public?

Corporations, limited partnerships, limited liability companies and statutory trusts all may issue securities to the public.

9. Can the form incur debt, or grant security for debt?

Yes. Each form of business organization discussed in this survey can incur debt and grant security for its debts.

10. What is the duration of the form? Can it be renewed?

Corporations

A Connecticut corporation has a perpetual duration unless its certificate of incorporation provides otherwise.

General Partnerships

A Connecticut general partnership may be organized for a definite term or the completion of a particular undertaking, or may be a partnership at will. Generally speaking, a partnership that is organized for a definite term or the completion of a particular undertaking is dissolved, and its business must be wound up, upon the expiration of the term or the completion of the undertaking. A partnership at will generally continues in existence until it is dissolved upon the receipt of notice of a partner's express will to withdraw as a partner, or on a later date specified by the partner. Conn. Gen. Stat. § 34-372 provides for a number of events that cause the dissolution of a general partnership.

Limited Partnerships

A Connecticut limited partnership is dissolved and its affairs must be wound up (i) at the time specified in the partnership agreement; (ii) upon the happening of events specified in the partnership agreement; (iii) with the written consent of all partners; (iv) upon an event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal, if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners, if necessary or desired and (v) by judicial decree.

Limited Liability Partnership

See "General Partnerships" above.

Limited Liability Companies

A Connecticut limited liability company will exist perpetually unless otherwise specified in the articles of organization or its dissolution is voted upon and approved by at least a majority of the members or ordered by judicial decree of dissolution.

Cooperative Associations

A cooperative association may exist perpetually.

Statutory Trusts

Except to the extent otherwise provided in the governing instrument, a Connecticut statutory trust has perpetual existence. A statutory trust may not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of its governing instrument.

11. Describe the process, customary time period and approximate cost of establishing the form.

Corporations

A Connecticut corporation is formed when an incorporator executes and delivers a certificate of incorporation to the Office of the Secretary of the State. The submission of the certificate of incorporation must be accompanied by a filing fee of \$100. At the time of formation, a corporation must also pay a franchise tax, the amount of which is determined by the number of shares it issues. The minimum franchise tax currently is fixed at \$150.



The corporate existence begins when the certificate of incorporation is filed with the Office of the Secretary of the State. After incorporation, if the initial directors are named in the certificate of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting. If the initial directors are not named in the certificate of incorporation, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect directors and complete the organization of the corporation or to elect a board of directors who shall complete the organization of the corporation. An organization and first annual report must be filed with the Office of the Secretary of the State within thirty days after the date of the organizational meeting. The fee for the filing of the organization and first annual report currently is fixed at \$150.

General Partnerships

A Connecticut general partnership is formed whenever two or more persons carry on as co-owners of a business for profit. A general partnership does not need to file a certificate with the Office of the Secretary of the State.

Limited Partnerships

To form a Connecticut limited partnership, all of the general partners must execute and file a certificate of limited partnership with the Office of the Secretary of the State. The certificate of limited partnership must set forth: (i) the name of the limited partnership and the address of the office in Connecticut where it maintains records; (ii) the name and address of the agent for service of process; (iii) the name and business address of each general partner; (iv) the latest date upon which the limited partnership is to dissolve; and (v) any other matters the partners desire to include. Each limited partnership must appoint and maintain a statutory agent for service of process in the State of Connecticut. The initial written appointment of the statutory agent for service of process must be included in the initial certificate of limited partnership. The filing fee for the initial certificate of limited partnership and appointment of statutory agent currently is fixed at \$120.

Limited Liability Partnerships

To form a registered limited liability partnership in Connecticut, a partnership must file a certificate of limited liability partnership with the Office of the Secretary of the State. The certificate must state the name of the partnership, the address of its principal office, or if not located in Connecticut, the address of a registered office, and the name and address of a registered agent for service of process in Connecticut. The filing fee for the initial certificate of limited liability partnership currently is fixed at \$120.

Limited Liability Companies

A limited liability company is formed by one or more organizers executing and filing articles of organization with the Office of the Secretary of the State. The filing fee for the articles of organization and initial appointment of a statutory agent for service of process currently is fixed at \$120.

Cooperative Associations



A cooperative association is formed when seven or more persons associate together for the purposes of trade or business within Connecticut, and execute and file articles of association with the Office of the Secretary of the State. A cooperative association is subject to the same filing fee and franchise tax as corporations.

Statutory Trusts

Each statutory trust must file a certificate of trust with the Office of the Secretary of the State. In addition to filing a certificate of trust with the Secretary of the State, a statutory trust must appoint a statutory agent for service of process. The filing fee for the initial certificate of trust currently is fixed at \$120.

12. Are there requirements for the government (central or local) to be part of a project or investment vehicle or receive part of the profits arising therefrom (apart from taxes)?

No.

13. For what taxes is the form liable?

Except for insurance companies, the base tax for corporations other than real estate investment trusts, regulated investment companies, and financial institutions is the greater of the regular tax measured by Connecticut net income, the additional capital stock based tax, or the minimum tax of \$250.

The Connecticut corporation business tax is a franchise tax computed on the basis of net income as reported for federal tax purposes with certain adjustments and as apportioned to Connecticut under a statutory apportionment formula. Net income apportioned to Connecticut is taxed at the rate of 7.5%. Modifications to determine Connecticut net income include increasing federal corporate taxable income by state and local income tax paid or accrued in the income year and decreasing income for dividends received or accrued (as defined by the Internal Revenue Code); except that 30% of dividends received from a domestic corporation in which a taxpayer owns less than 20% of the shares, as measured by total voting power and value, are included in Connecticut net income.

Applicable to income years beginning on or after January 1, 2009, a surtax of 10% of the tax on net income applies for income years beginning on or after January 1, 2009, and prior to January 1, 2012. The surtax does not apply to any company whose tax is equal to \$250. Any company whose gross income is less than \$100 million is exempt from this surtax unless it files as part of a Connecticut combined corporation business tax return or as part of a Connecticut unitary return. The surtax is calculated without regard to any credit that may be applied against the corporation business tax.

An additional capital stock based tax calculated on the average value of capital stock, surplus and undivided profits at 3.1 mills per dollar of capital holdings can apply if, and to the extent that, the amount calculated exceeds the regular tax computed on the basis of Connecticut net income. Corporations subject to Connecticut tax pay a minimum tax of \$250 per year.

Applicable to income years beginning on or after January 1, 2009, a surtax of 10% of the tax on capital applies for income years beginning on or after January 1, 2009, and prior to January 1, 2012. The surtax does not apply to any company whose tax is equal to \$250. A company whose gross income is less than \$100 million is exempt from this surtax unless it files as part of a Connecticut

combined corporation business tax return or as part of a Connecticut unitary return. The surtax is calculated without regard to any credit that may be applied against the corporation business tax.

For taxpayers engaged in business both within and without Connecticut, the capital stock base is apportioned under a two-factor formula consisting of tangible property and intangible assets to determine the portion attributable to Connecticut.

For taxpayers engaged in business both within and without Connecticut, net income is generally apportioned based on gross receipts in Connecticut as a percentage of total gross receipts. However, a three factor formula is applied to businesses engaged in the manufacture, sale, or use of tangible personal or real property, the three factors being property, payroll and receipts, with receipts double weighted. Generally, for income years commencing after 2000, manufacturers are allowed to use the single gross receipts factor formula. Specific statutory apportionment provisions apply to motor bus companies, air carriers, and domestic life insurance companies.

Estimated corporate income tax payments are due on the 15th day of the third, sixth, ninth and twelfth months and must in the aggregate equal the lesser of (a) 90% of the tax determined to be due for the income year, or (b) if the preceding year was an income year of 12 months and the corporation filed a return with a liability for tax for such year, 100% of the tax shown on the return for the preceding income year without regard to any credits.

For tax years beginning in 2001, Subchapter S corporations are not taxable in Connecticut under the Connecticut corporation business tax. Furthermore there is no provision of Connecticut law that specifically indicates that a state entity-level tax is imposed if an S corporation has a federal entity-level tax (due to net recognized built-in gains, excessive net passive investment income, or LIFO recapture). Prior to 2001, the percentage of net income subject to tax was reduced over a four-year period beginning in 1997. However, beginning on January 1, 2004, Subchapter S corporations are required to file a composite tax return and make a composite Connecticut income tax payment on behalf of each nonresident shareholder where the shareholder's pro rata share of the income derived from or connected with Connecticut sources is \$1,000 or more. An S corporation shareholder is liable for the Connecticut personal income tax, in his or her individual capacity, on the shareholder's respective share of S corporation income, whether or not such share is actually distributed to the shareholder.

Similar to Subchapter S corporations, beginning on January 1, 2004, partnerships, limited liability companies that have multi-members and are characterized as partnerships for federal income tax purposes, and other pass-through entities (hereinafter collectively referred to as "pass-through entities") are generally required to file a composite tax return and make a composite Connecticut tax payment on behalf of each nonresident, noncorporate partner or member where the partner or member's pro rata share of the entity's income connected with Connecticut sources is \$1,000 or more. Similar to Subchapter S corporations, a partner or member of a pass-through entity is liable for the Connecticut personal income tax or Connecticut corporation business tax, as applicable, in his or her or its individual or corporate capacity, on the partner or member's respective share of the pass-through entity's income, whether or not such share is actually distributed to the partner or member.

A limited liability company that is disregarded as an entity separate from its owner for federal income tax purposes is similarly disregarded as an entity for Connecticut income tax purposes.

For taxable years beginning on or after January 2, 2002, there is an annual tax of \$250 on each S corporation, limited liability partnership, limited partnership, and limited liability company that is, for federal income tax purposes, either treated as a partnership if it has two or more members, or disregarded as an entity separate from its owner if it has a single member. For tax year 2003, such entities were required to pay an additional surcharge equal to 20% of the business entity tax for a total 2003 business entity tax of \$300. This surcharge was removed for taxable years beginning on or after January 1, 2004 and the annual tax is \$250.

All of these entities also pay various other taxes, such as on employee wages, property tax and sales and use taxes.

14. What is the tax treatment of payments to foreign owners?

Foreign owners of a C corporation are liable for the Connecticut personal income tax or Connecticut corporation business tax, as applicable, on dividends received from a C corporation where such dividends are derived from Connecticut sources and are includible in income for federal income tax purposes. However, if the dividend recipient is a C corporation, Connecticut allows the dividends received deduction claimed on the federal tax return, but only 70% of the dividends received is allowed as a subtraction from federal income to determine Connecticut income when the recipient corporation owns less than 20% of the total voting power and value of the stock of the dividend payor. The payor of the dividend is not required to withhold the Connecticut tax on the dividends.

Foreign owners of an S corporation, limited liability partnership, limited partnership, and limited liability company that is, for federal income tax purposes, either treated as a partnership if it has two or more members, or disregarded as an entity separate from its owner if it has a single member, are liable for the Connecticut personal income tax or Connecticut corporation business tax, as applicable, in his or her or its individual or corporate capacity, on their respective shares of the entity's Connecticut income, whether or not such shares are actually distributed to the owners.

15. Is there a tax treatment which would impact foreign owners differently than owners resident in the jurisdiction?

S corporations, partnerships, limited liability companies that have multiple members and are characterized as partnerships for federal income tax purposes, and other pass-through entities are generally required to file a composite tax return and make a composite Connecticut tax payment on behalf of each nonresident, noncorporate shareholder, partner or member where the shareholder, partner or member's pro rata share of the entity's income connected with Connecticut sources is \$1,000 or more.