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A GUIDE TO DOING BUSINESS IN FLORIDA

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I. INTRODUCTION

A. Geographic Description

Florida, known as the Sunshine State, covers 58,664 square miles (151,939 sq km). A drive from Pensacola (in the northwest) to Key West (in the south) would traverse 792 miles (1267 km). Florida is located 100 miles (160 km) north of the tropics and Florida's southern tip is located 1700 miles (2720 km) north of the equator.

Florida is known for its beautiful beaches; no part of the state is more than 60 miles (96 km) from the coast. The Florida landscape is also punctuated by 10,000 lakes, including Lake Okeechobee, the second largest freshwater lake in the United States. Florida is home to a number of unique ecosystems, including the Everglades, a vast wetland covering the southwestern portion of the state, and the only living coral reefs found in the 48 contiguous states.

Florida enjoys a subtropical climate, with average summertime high temperatures ranging from 80.5 degrees Fahrenheit (27 degrees Celsius) in the north to 82.7 degrees Fahrenheit (28 degrees Celsius) in the south. In the winter months Florida's average high temperatures range from 53 degrees Fahrenheit (11.7 degrees Celsius) in the north to 68.5 degrees Fahrenheit (20.3 degrees Celsius) in the south. On average, the state receives 53 inches (135 centimeters) of rain per year.

B. Population

Florida's (15,982,378 million) residents make it the fourth most populous state in the United States. The state also has the fourth-largest number of Hispanic (2.6 million) and African-American (2.3 million) residents. Florida's population is expected to grow to 16.8 million by the year 2005.

The largest concentration of residents is in the southeast part of the state, with the population of Miami-Dade, Broward, and Palm Beach Counties totaling 5 million.

Florida ranks #1 for the percentage of residents that are over age 65 (17.6%), and, unsurprisingly, ranks #47 for the percentage of residents that are under age 18. The labor force includes some seven million residents, and the median household income is \$38,819.

C. Investment Climate

Florida has become one of the most desirable states in the country in which to conduct business. Florida consistently leads the nation in new business incorporations. With its large supply of business parks, an advantageous business tax system, transportation availability, thirteen foreign trade zones, an abundance of electrical power, and a large population of skilled human resources, Florida has everything that a business requires to prosper.

International commerce is big business in Florida. In 2002 \$70.1 billion worth of imports and exports flowed through the state, thanks to excellent deep water ports and air

transportation facilities. Florida is one of the nation's most important gateways to Latin America and the Caribbean, handling about half of all U.S. exports to the region and one-third of imports.

The State of Florida is dedicated to stimulating economic growth by providing assistance for minority businesses, rural economic development, small business, workforce development, and more. More information is available from Enterprise Florida, the state's economic development entity, located at Enterprise Florida, 390 North Orange Avenue, Suite 1330, Orlando, FL 32801, 407/316-4600, <http://www.floridabusiness.com>.

II. BUSINESS ENTITIES

A. Corporations

1. State Authorities. Corporate registration is handled by the Department of State of the State of Florida ("Department of State"). Inquiries should be directed to: Division of Corporations, P.O. Box 6327, Tallahassee, FL 32314, <http://www.dos.state.fl.us/doc>.

2. Articles of Incorporation. Under Florida law, corporate existence begins when the articles of incorporation are filed with the Department of State, or on a date specified in the articles of incorporation, if the date is within five business days prior to the date of filing. Promoters who act on behalf of a corporation knowing that the corporation has not yet been formed incur personal contractual liability, under section 607.0204 of the Florida Statutes.

Section 607.0202 of the Florida Statutes sets forth the required elements of the articles of incorporation: a corporate name; the street address of the initial principal office and, if different, the mailing address of the corporation; the number of shares the corporation is authorized to issue; the provision setting forth the shareholders' preemptive rights, if any; the street address of the corporation's initial registered office and the name of its initial registered agent at that office together with a written acceptance; and the name and address of each incorporator.

3. Purposes; Duration. Under Florida law, corporations may be organized for any lawful purpose or purposes. Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs. Florida Statutes § 607.0302

4. Mergers of Florida Corporations or Other Florida Business Entities. Corporate mergers are governed by Sections 607.1101 through 607.1107 of the Florida Statutes. Corporations may merge if the board of directors of each corporation adopts, and a majority of the shareholders of each corporation approves, a plan of merger specifying the terms of the proposed transaction. Approval by the shareholders of the surviving corporation of the plan is not required however, if the merger will not alter the surviving corporation's articles of incorporation or any shareholder rights. While an exchange of shares also requires adoption of a plan of merger by both boards, only the shareholders of the target corporation must vote to approve the exchange. No formal plan is required for a corporation to sell all or substantially all its assets, but such an action does require shareholder approval.

Florida permits short-form mergers. A parent directly owning at least 80% of a subsidiary's outstanding shares may effect a merger between the two corporations without the approval of either set of shareholders, provided that the merger will not alter the parent's articles of incorporation (Florida Statutes § 607.1104.)

After any plan of merger or share exchange is approved by the shareholders, if required, the surviving corporation must deliver to the Department of State articles of merger or share exchange, delineating the terms of the plan of merger, the effective date of the merger, and descriptions of the necessary of shareholder votes (Florida Statutes § 607.1105).

The statutes also establish procedures for the merger of not-for-profit corporations (Florida Statutes §§ 617.1101– 617.1107), limited partnerships (Florida Statutes §§ 620.201– 205), limited liability companies (Florida Statutes §§ 608.438 – 608.4384), and partnerships (Florida Statutes §§ 620.8905– 620.8907) which mirror the requirements for corporate mergers.

The merger of corporations with other business entities is covered in Florida Statutes § 607.1108. The transaction must include adoption of a plan of merger by each participating entity in the manner prescribed by statute for that type of business entity.

A shareholder has a statutory right to appraisal rights, and to obtain payment of the fair value of that shareholder's shares in the corporation (Florida Statutes § 607.1302).

5. Mergers of Foreign Corporations with Florida Corporations or Other Florida Entities. Florida Statutes regulate the merger of foreign corporations with Florida corporations (Florida Statutes § 607.1107), not-for-profit corporations (Florida Statutes § 617.1107), limited liability companies (Florida Statutes § 608.438), and limited partnerships (Florida Statutes § 620.201). The merger must be permitted by the laws under which the foreign corporation is organized, and the surviving entity must comply with the laws of its jurisdiction in carrying out the merger.

6. Treasury Stock. Section 607.0631 establishes the default rule that Florida corporations do not have treasury shares. A corporation's acquisition of its own shares converts them into authorized but unissued shares, unless the articles of incorporation provide otherwise. A corporation whose shares are listed on an exchange may want to provide for treasury shares in its articles so that listed shares acquired by the corporation can be used for stock plans without the expense of re-listing the shares.

B. Nonprofit Corporations

Nonprofit corporations may be organized for any lawful purpose not for pecuniary profit and not specifically prohibited to corporations under other Florida laws. Such purposes include, without limitation, charitable, benevolent, educational, historical, civic, patriotic, political, religious, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural, animal husbandry, and professional, commercial, industrial, or trade association purposes. Florida Statutes § 617.0301.

C. Partnerships

1. Definition. In Florida a “partnership” is defined as an association of two or more persons that carry on a business for profit as co-owners. Any such association forms a partnership, whether or not the participants intend to form a partnership. However, a partnership may also be established by filing a registration statement with the Department of State. Relations between partners are governed by the terms of their partnership agreement; otherwise, the Florida Revised Uniform Partnership Act (“FRUPA”) controls. FRUPA, however, provides that some provisions cannot be affected, or, in some instances, cannot be unreasonably amended, by a partnership agreement, particularly, some of the provisions dealing with fiduciary duties of care and loyalty. All partners are jointly and severally liable for all obligations of the partnership. Florida Statutes §§ 620.81001–620.91.

2. Limited Partnerships. A limited partnership consists of at least one limited partner and at least one general partner. Each general partner, who may be an individual, corporation, or other business entity, is personally liable for all obligations of the limited partnership. A limited partner is not liable for the partnership’s obligations unless the limited partner is also a general partner or participates in the control of the business in excess of the normal functions of a limited partner. Florida Statutes § 620.129

A limited partnership is formed by executing and filing a certificate of limited partnership with the Department of State. Florida Statutes § 620.108

3. Limited Liability Partnerships. Florida permits general and limited partnerships, domestic and foreign, to register as limited liability partnerships (“LLP”), under which general and limited partners enjoy additional protection against liability. All provisions of the regular partnership and limited partnership statutes, and all common law principles, continue to apply to those organizations after they become an LLP except for the LLP liability provisions, and the requirements to include the words “limited liability partnership” or “registered limited liability partnership” or the abbreviation “LLP” or “RLLP” at the end of the partnership name. If an LLP chooses or fails to renew its annual registration, it loses its status and protection as an LLP as to all obligations thereafter incurred.

Any general or limited partner of an LLP is not individually liable for obligations or liabilities of the partnership, whether in tort, or contract, However, a partner in an LLP is not relieved of personal liability for their own tortious misconduct, which may also include assistance in the tortious activity of others.

Establishing a limited liability limited partnership requires filing a statement of qualification with the Secretary of State. Florida Statutes § 620.9001.

4. Limited Liability Limited Partnerships. A limited partnership may become a registered limited liability limited partnership (“LLL”) upon approval by the limited partners and filing of a statement of qualification. A LLL provides each general partner the same shield against liability that is afforded to a partner in an LLP. Florida Statutes § 620.187.

D. Limited Liability Companies

Florida Statutes provide for the formation of limited liability companies (“LLCs”). LLCs provide members the same limited liability that shareholders of a corporation enjoy, but are taxed as partnerships. Florida Statutes also allow a LLC to have a single member. A single-member LLC, if disregarded for federal tax purposes, will also be disregarded for Florida income tax purposes and treated as a flow-through entity. Also, Florida imposes an annual intangibles tax on membership interests in LLCs under certain circumstances.

The Florida Limited Liability Company Act contains very few mandatory provisions regarding management operations. The principal organizing document is the operating agreement. Most statutory provisions are subject to the operating agreement, and the LLC members are free to a substantial extent to create their own organizational provisions.

E. Requirements for Foreign Corporations to Do Business in Florida

Foreign corporations may transact business in Florida only after obtaining a certificate of authority from the Department of State. Florida Statutes § 607.1501(1). What constitutes “transacting business” is defined by exclusion in a non-exhaustive list. Transacting business does not include: maintaining, defending or settling a legal proceeding; carrying on internal corporate affairs; maintaining bank accounts; having officers, agents, trustees, or depositories for sale or exchange of the corporation’s own securities; selling through independent contractors; soliciting or obtaining orders if the orders require acceptance outside the state before they become contracts; securing or collecting debts; doing business in interstate commerce; conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature; owning and controlling a subsidiary incorporated or doing business in Florida; owning a limited partnership interest in a limited partnership doing business in the state, unless such limited partner manages or controls the partnership or exercises the powers and duties of a general partner; or owning, without more, real property. Florida Statutes § 607.1501.

Obtaining a certificate of authority requires submitting an application form that is available from the Department of State and a certificate of existence from the official custodian of corporate records in the jurisdiction of incorporation. Florida Statutes § 607.1503. Foreign corporations authorized to transact business must continuously maintain a registered office and a registered agent (in each case with a business office that is identical to the registered office), who may be an individual, a corporation, or a not-for-profit corporation, in Florida, or another foreign corporation or foreign not-for-profit corporation authorized pursuant to the Florida Business Corporations Act or the Florida Not-For-Profit Corporation Act, to transact business or conduct its affairs in Florida. Florida Statutes § 607.1507. The Department of State may revoke a firm’s certificate of authority for failure to comply with any requirements of the Florida Business Corporations Act, filing of documents containing materially false information, or upon dissolution of the corporation. Florida Statutes § 607.1530.

For more information on the treatment of business entities under Florida law, please contact Cori Franco at cfranco@steelhector.com.

III. TRADE REGULATION

A. Federal Antitrust Law

The antitrust laws of the United States 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 are evaluated on a case-by-case basis.

2. The Clayton Act of 1914. The Clayton Act prohibits certain specific anticompetitive 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.

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 Federal Trade Commission Act and the Hart-Scott-Rodino Act.

For more information on state and federal antitrust matters, please contact Shanker Singham at sas@steelhector.com.

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 amended 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 transaction constitutes a threat to U.S. national security. Congress has indicated that the term “national security” is to be interpreted broadly and that 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 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 after appropriate investigation the President determines that the transaction constitutes a threat to national security, Exon-Florio empowers the President to take any action which the President 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 that result in a foreign person owning a 10% or more voting interest (or the equivalent) in that enterprise must be reported to the Bureau of Economic Analysis, 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. § 806), such reports must be made within 45 days after the investment transaction. Depending on the size of the entity involved, quarterly, annual and quintennial reports may be required thereafter.

3. The International Investment and Trade in Services Survey Act. The International Investment and Trade in Services Act (“IISA” or the “Act”), 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 purpose is not to regulate or dissuade foreign investment. Rather, the purpose is to provide the federal government with the information necessary to formulate an informed national policy on foreign investments in the U.S.

Under the IISA, international investments are divided into two classifications – direct investments and portfolio investments. The Bureau of Economic Analysis (“BEA”), a part of the Department of Commerce, collects data on direct investments while the Department of the Treasury collects data on portfolio investments.

A “foreign person” is any person who resides outside of the U.S. or is subject to the jurisdiction of a country other than the U.S. “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. The IISA further defines “business enterprise” to include any ownership in real estate.

Unless an exemption applies, Form BE-13 must be filed with the BEA within 45 days of the date on which a direct investment is made. The form requires 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.

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. The Act contains no restrictions and is aimed only at gathering reliable data from reports filed with the Secretary of Agriculture to determine the nature and magnitude of 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 the Act, a “foreign person” is (i) any individual who is not a citizen or national of the U.S. and who is not lawfully admitted to the U.S.; (ii) a corporation or other legal entity organized under the laws of a foreign country; or (iii) a corporation or other legal entity organized in the U.S. in which a foreign entity, either directly or indirectly, holds an interest of 5% or more. “Agricultural land” includes any land used for agriculture, forestry or timber production. AFIDA requires a foreign person to submit 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 a 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 that are generally available and 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 other commodities may require a validated license only for shipment to particular 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, no disclosure may be made to a foreign national without first obtaining the necessary validated license, regardless of where the disclosure is to occur.

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. The Board is authorized to grant to public or private corporations the privilege of establishing a zone, and also issues regulations covering the establishment and operation of these zones. The U.S. Customs Service establishes regulations for 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 an existing or incipient U.S. industry, an additional duty in an amount equal to the “dumping margin” is to be imposed upon all imports of that product from the country where the goods originated. Sales are deemed to be made at less than fair value

if the sale price is below the product's "foreign market value," which generally is equivalent to the amount charged for the goods in the home market. The dumping margin is the amount by which the foreign market price exceeds the U.S. price.

The Secretary of Commerce is charged with determining whether merchandise is being sold in the U.S. at less than fair value. The International Trade Commission determines 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, but for the eight years leading up to passage of the Act the authority has expired. 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.

For more information on the regulation of foreign trade and investment, please contact Shanker Singham at sas@steelhector.com.

C. State Considerations

1. Antitrust Law. In Florida, every contract, combination or conspiracy in restraint of trade or commerce is unlawful. Florida Statutes § 542.18. Further, it is unlawful for any person to monopolize, attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of trade or commerce in this state. Florida Statutes § 542.19. It is the express intention of the Florida Legislature that, in the interpretation and construction of Florida's antitrust laws, due consideration and great weight be given to federal court decisions interpreting and construing the comparable provisions of federal antitrust laws. Florida Statutes § 542.32.

2. Unfair Competition. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful by virtue of the Florida Deceptive and Unfair Trade Practices Act (sometimes called Florida's "Little FTC" Act). Florida Statutes § 501.204. Broad authority is granted to the Florida Attorney General in both promulgating implementing regulations and enforcing the provisions of the Act. Florida Statutes § 501.203. In its enforcement role, the Florida Attorney General must grant due consideration and great weight to Federal Trade Commission and federal court decisions interpreting or construing comparable federal provisions under the FTC Act. Under these statutes, the enforcing authority may seek equitable as well as compensatory damages. Florida Statutes § 501.207. Also, a civil penalty may be imposed on any entity or person violating this chapter in an amount not to exceed \$10,000 for each such violation. Florida Statute § 501.2075. A private cause of action is also available. Florida Statutes § 501.211.

3. Franchises. The sale or lease of "business opportunities" is regulated by sections 559.80–559.815 of the Florida Statutes. A "business opportunity" is any sale or lease of goods for the purchaser to start a business and for which the seller receives more than \$500, in which the purchaser and seller will have an ongoing business relationship. A seller of a business opportunity may not misrepresent any material information relating to the investment. The prohibited acts are specified in section 559.809 of the Florida Statutes. Every business opportunity contract must be in writing, and a copy must be given to the purchaser at least three working days before signing the contract. Business opportunity sellers must provide detailed disclosure statements to prospective purchasers and file a copy of this statement with the Department of Agriculture and Consumer Services. Sales of franchises, as defined by the Federal Trade Commission in 16 C.F.R. §§ 436.1 et seq., are exempt from these disclosure requirements.

For more information on state antitrust, unfair competition and franchise matters, please contact Shanker Singham at sas@steelhector.com.

4. Consumer Protection Laws. The Florida Attorney General's Office is an investigating and enforcing authority of Florida's Deceptive and Unfair Trade Practices Act. The Act is meant to protect individual consumers and legitimate businesses from various types of illegal conduct in trade or commerce. Pursuant to the Act, the Attorney General is authorized to investigate and file civil actions and to obtain temporary and permanent injunctions against persons who engage in unfair methods of competition, unfair, unconscionable or deceptive trade practices, such as pyramid schemes, misleading franchise or business opportunities, travel scams, fraudulent telemarketing, and false or misleading advertising. This enforcement authority can extend to the freezing and seizure of corporate assets such as real property and bank accounts. The Florida Attorney General's Office frequently works in tandem with the Florida State-Wide Prosecutor, FBI and the United States Attorneys' Offices throughout Florida as their civil investigations many times run parallel with state and federal criminal investigations. Florida Statutes §§ 501.201–501.213.

IV. TAXATION

A. Federal Taxation

1. Federal Income Taxation of U.S. Entities. Most U.S. business entities are subject to federal income taxation on their worldwide income. These entities are generally subject to federal income tax at the U.S. corporate tax rate. The highest marginal U.S. corporate tax rate is currently 35% (although some income is taxed at 38%). Some entities, such as limited liability companies, may be eligible to avoid U.S. income taxation at the entity level. The income of such eligible entities, however, would generally be taxable to the beneficial owners of the entities. There are various methods of controlling the amount of federal income tax payable by U.S. entities.

2. Personal Income Tax. Individuals are subject to U.S. income tax on their worldwide income if they are U.S. citizens or resident aliens. Resident alien status is determined under a set of complex rules. Any individual who is not a U.S. citizen, and who does not wish to be taxed as such, and who plans to spend a substantial amount of time in the U.S., should pay careful attention to these rules. Currently, the highest marginal U.S. individual income tax rate is 38.6%, which is scheduled to be phased down to 37.6% and then to 35% for ordinary income and 15% for most long-term capital gains.

3. Federal Income Taxation of Non-U.S. Individuals and Entities. Non-U.S. individuals and entities that carry on a trade or business in the United States are subject to U.S. federal income tax on all income that is effectively connected with the U.S. trade or business. U.S. trade or business income is generally taxed at the same rates as income of U.S. individuals and corporations. Non-U.S. entities may also be subject to a second tax on the entity's U.S. earnings and profits not reinvested in the United States. Federal income taxes are not affected by where a business chooses to locate in the U.S. Other types of income may be exempt from federal income taxation if such income is not sourced within the United States or the income does not fall within certain designated classes of income. If not exempt, this income is generally subject to a 30% withholding tax. Most dividends from U.S. corporations are taxed in this manner. Careful planning may minimize the amount of federal income tax payable by non-U.S. individuals or entities.

For more information on Federal Income Taxation of Non-U.S. Individuals and Entities, please contact Guillermo Fernandez-Quincoces at gfernandes-quincoces@steelhector.com.

4. S Corporations. The United States federal tax system permits certain corporations to elect S Corporation status, which allows, for the most part, the corporation to avoid U.S. income taxation at the corporate level. The income of S Corporations is instead taxable to its shareholders. Corporations with non-U.S. individual or entity shareholders are not eligible to elect S Corporation status.

B. Florida Taxation

1. Personal Income Taxes and Estate Taxes. Florida is one of seven states in the U.S. that does not require its residents to pay personal income taxes. Both a personal income tax, and any estate tax in excess of the federal credit, are prohibited under the Florida Constitution.

2. Corporate Tax. Florida's corporate tax rate is currently 5 ½% of the corporation's net income, defined as federal adjusted gross income, subject to certain Florida-specific additions and subtractions. Florida Statutes § 220.11. Until 1998, Florida treated LLCs as corporations for state income tax purposes, though now LLCs that are classified as partnerships for federal income tax purposes are exempt from state income tax. Florida Statutes § 608.471. Income of S Corporations and partnerships is generally not subject to tax; however, S Corporations and partnerships may be subject to certain filing requirements. Florida is a separate return state, but consolidated returns are permitted if the parent corporation has nexus with Florida. The income of national and international firms is apportioned to Florida under a three-factor formula (property, payroll and sales), but the sales factor is double-weighted. Net operating losses may be carried forward with certain limitations, but not backward. The state is aggressive in pursuing filing by corporations that it believes have nexus in the state. Penalties for non-filing are generally compromised when taxpayers voluntarily acknowledge liabilities. Florida Statutes §§ 220.02–220.905.

3. Sales and Use Tax. The sales and use tax is Florida's primary revenue source. The state rate is 6% for most purposes (electricity and telecommunications are taxed at 7%), but local option taxes can increase the rate. Until July 1, 1999, Florida had a five-year statute of limitations for assessment; now the period is three years. The state has numerous exemptions, the most common of which include the resale exemption, the export exemption, and the occasional and isolated sales exemption. Persons responsible for collecting the tax must secure a dealer's certificate of registration. Persons wishing to buy tax-free for resale must be in possession of a resale certificate, which is subject to renewal annually. All Section 501(c)(3) entities are entitled to purchase tax-free, but they must secure a consumer certificate of exemption in order to do so. Numerous exemptions are available for economic development purposes, including exemptions for machinery and equipment purchased by a new or expanded business, enterprise zone activities, and electricity consumed by manufacturers. One aspect of Florida's tax that often surprises non-residents is the application of the tax to commercial rental payments, including payments for licenses to use real property. Florida, like many other states, is aggressive in asserting nexus and is seeking to force collection of tax from remote sellers,

including those who sell via the internet. In that regard, Florida has information-sharing agreements with numerous other states and routinely shares audit information in an effort to discover remote purchases by Florida businesses and residents. Florida Statutes §§ 212.01–212.21.

4. Intangibles Tax. Florida imposes an annual intangibles tax, which is currently 1.5 mills, but proposed legislation would reduce the rate. The tax applies to certain intangible personal property that has a tax situs in Florida on January 1st of the tax year. Property has a tax situs in Florida if it is owned, managed or controlled by a person domiciled in Florida, or if the property arises from business conducted in Florida with Florida customers. Certain exemptions apply, including an exemption for accounts receivable. Persons liable for the tax are required to file an annual return by June 30th of each year. Corporations doing business in Florida are required to attest to the filing of the return or the non-applicability of the tax when filing their annual reports. Florida Statutes §§ 199.012–199.303.

5. Documentary Stamp Tax. Florida imposes a documentary stamp tax on deeds and on notes executed or delivered in Florida and mortgages recorded in Florida. When notes are not secured by Florida real property, many businesses take steps to execute the notes outside of Florida to avoid incurring Florida’s documentary stamp tax. Florida Statutes §§ 201.01–201.24. The tax also applies to some capital leases that are deemed to be mortgages.

6. Property Taxes. Property taxes are under the general supervision of the Florida Department of Revenue, but real and tangible property is assessed annually by 67 county property appraisers, who are constitutional officers, and all of whom but one are elected officials. Florida’s constitution mandates assessment of all property at its “just value,” except where otherwise specified. Homestead property is entitled to an exemption and special assessment caps. Agricultural property is assessed based upon its use as agricultural property. Certain exemptions are available for educational, religious and charitable property. Millage caps in the Florida Constitution limit taxes that can be imposed by local governments.

7. Internet Tax. Florida law prohibits taxation of internet access fees. However, sales made via the internet are treated like sales of any other remote seller with the obligation to collect Florida’s tax dependent upon the nexus of the seller. Remote sellers without Florida sales tax nexus can negotiate to voluntarily collect tax in exchange for a higher collection allowance than is otherwise allowed.

8. Communications Services Tax. Florida imposes a tax upon telecommunications and computer communications. The tax is collected by the Department of Revenue on behalf of the counties as well as the state. The combined rate of taxation is 15%.

9. Florida Department of Revenue. Most Florida taxes are administered by the Florida Department of Revenue, located at: 104 Carlton Building, Tallahassee, FL 32399-0100, (850) 488-5050, <http://www.state.fl.us/dor/>.

For more information on federal tax issues, please contact Samuel Ullman at sullman@steelhector.com. For more information regarding Florida taxation, please contact Bill Townsend at bill.townsend@steelhector.com, or Rex Ware at rware@steelhector.com. For

information on international tax issues please contact Guillermo Fernandez-Quincoces at Guillermo.Fernandez-Quincoces@steelhector.com.

V. IMMIGRATION

A. Federal Considerations

With the globalization of world markets, employers located in the U.S. often seek to employ foreign personnel. A variety of immigrant and nonimmigrant 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. employer and the foreign employer. Lawful permanent residents are authorized to work where and for whom they wish. Nonimmigrant visa holders have authorization to remain in the U.S. for a temporary period of time, and their employment authorization is often limited to specific employers, jobs, and even specific work sites.

1. Lawful Permanent Residence (the "green card"). Lawful permanent residence is most commonly based on family relationships, such as marriage to a U.S. citizen. Lawful permanent residence may also be obtained through employment, but employment based applications may involve a time-consuming process, known as labor certification, that can take several years. Employers considering the permanent residence option for alien employees should therefore ascertain the requirements for the specific status sought prior to bringing the employees to the U.S.

2. Nonimmigrant Visas. Following are the most commonly used nonimmigrant visas:

a. E-1 Treaty Trader and E-2 Treaty Investor Visas

The E-1 and E-2 visas are temporary visas based upon treaties between the United States and certain foreign nations. Principal investors as well as employees in managerial, executive or essential skills positions may qualify for E visas if the company engages in substantial trade with or invests substantially in the U.S. Generally, E visa holders receive a five-year visa stamp but only two-year entries at any time. To qualify, there must be an existing treaty between the United States and the country of which the treaty trader or treaty investor company is a national, and the beneficiary of the visa must also be a national of that country.

b. H-1B Specialty Occupation Visas

H-1B visas are for persons in specialty occupations, which are generally defined as positions that require at least a bachelor's degree. Examples of such occupations are engineering, architecture, and accounting. Initially, H-1B temporary workers are given three-year temporary stay with possible extensions up to an aggregate of six years. H-1B visas are employer specific and job specific. To qualify, the job must require at least a bachelor's degree, and the beneficiary must have the required degree in the same field.

c. L-1 Intracompany Transferee Visas

The L-1 visa is used to transfer executives, managers or employees with specialized knowledge from international companies to related companies in the United States if the employee has worked for the company abroad in at least one of the last three years. L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to seven years in certain categories. L managers or executives may qualify for a shortcut to permanent residence based on their intracompany transferee status because such employees may seek permanent residence without labor certification.

d. B-1 Business Visitors and B-2 Visitors for Pleasure

These visas are commonly used 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 for brief periods to negotiate contracts, to attend business conferences or board meetings, or to fill contractual obligations such as repairing equipment. The B-2 visa is used by tourists. B-1 or B-2 visitors cannot be on the payroll of a U.S. company or receive remuneration from a U.S. source.

e. TN Professionals

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify for and fill specific defined professional positions can obtain TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN holders are granted one-year stays for specific employers. Other employment is not permitted without prior INS approval. Particularly with regard to Canadians, paperwork required for filing these requests is minimal.

f. F-1 Academic Student Visas Including Practical Training

Foreign students may obtain visas to come to the U.S. in F-1 status for academic training or M-1 status for vocational training. To remain in status, students must attend school full time. While in F-1 status, students may be authorized to work on campus by the designated school official. Off-campus optional practical training may be permitted, upon application, either during the school year or for one year following the conclusion of the student's education. During the period of optional practical training, the student may be paid in the United States by his/her employer for the services rendered. Vocational students cannot obtain work authorization while attending classes, but may receive some post-completion practical training in limited instances.

g. 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 return to the U.S. under a changed a status.

h. 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 based upon meeting established criteria. Also included in this category are persons who assist in such O-1 artistic or athletic performances.

i. P-1 Athletes/Group Entertainers and P-2 Reciprocal Exchange Visitor Visas

These temporary visas allow certain athletes who compete at internationally recognized levels or 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.

There are other non-immigrant visas categories that may apply to specific desired entries.

When planning to bring foreign personnel to the U.S., employers should allow sufficient time for processing by the Bureau of Citizenship and Immigration Services, as well as 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, may dramatically affect the employment authorization of foreign employees.

For more information on immigration law, please contact Rebekah Poston at rjp@steelhector.com.

VI. LABOR AND EMPLOYMENT

A. Labor and Employment Statutes (Federal and State Considerations)

Florida is an employment-at-will state. Therefore, unless an employee is employed under a fixed term contract or an agreement that provides that termination shall only be for cause, employment may be terminated by either the employer or the employee for any reason or no reason at all. The at-will rule does not apply if the termination violates a federal or state statute or local ordinance. In addition, the at-will rule will not apply if the termination violates a judicially or statutorily created exception to such rule.

1. 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 (20) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year. The ADEA applies to employees age forty (40) or older. The Florida Civil Rights Act (“FCRA”) also prohibits discrimination on the basis of age but does not contain the “over age 40” protected category definition. The FCRA applies to employers with 15 or more employees.

2. Americans with Disabilities Act (“ADA”). The ADA proscribes discrimination in employment based on disability. 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. The FCRA also prohibits discrimination on the basis of a handicap. An employer may not refuse employment to the deaf, hard of hearing, blind, visually impaired, or the otherwise physically disabled on the basis of the disability alone, unless it is shown that the particular disability prevents the satisfactory performance of the work involved.

3. 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.

4. Equal Pay Act (“EPA”). The EPA is an amendment to the Fair Labor Standards Act designed to promote equal pay for men and women performing equal work. The FCRA prohibits an employer from discriminating between employees on the basis of sex by paying an employee at a rate less than the rate paid to employees of the opposite sex for equal work on jobs that require equal skills, effort, and responsibility, and are performed under similar working conditions, except when payment is made related to: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; and (4) a differential based on a reasonable factor other than sex when exercised in good faith.

5. Fair Labor Standards Act (“FLSA”). The FLSA establishes the minimum wage, overtime and child labor laws for employers engaged in industries affecting interstate commerce, regardless of the number of employees. Certain salaried employees who are executives, professionals, or administrative personnel are exempt from these minimum wage and overtime pay requirements. Florida has no parallel wage and hour statute. However, in Florida, unless a written employment contract dictates otherwise, an employee performing “manual labor” is entitled to receive “extra pay for all work performed by the requirement of his or her employer in excess of ten (10) hours’ labor daily.” Florida Statutes § 448.01(2). Also, Florida law contains many specific requirements relating to the use of minors in the workplace, including hours of work depending on the minor’s age, rest and meal periods, and certain duties which are prohibited outright. Florida Statutes § 450.001-450.161.

6. Unemployment Insurance. Under Florida law, persons who become involuntarily unemployed through no fault of their own may receive unemployment benefits upon registering with the Division of Unemployment Compensation of the Department of Labor and Employment Security. Employers must make quarterly contributions to the Unemployment Compensation Trust Fund. Companies less than two years old must contribute an amount equal to 2.7% of wages, while established companies pay 5.4% of wages. Florida Statutes §§ 443.011–443.231.

7. Jury Duty. Employees who are required to serve on jury duty or who are summoned to appear in court as witnesses must be given time to do so. Violations of this law subject an employer to compensatory damages, punitive damages and attorneys’ fees. Florida Statute § 40.271. Additionally, certain counties require that an employee be given *paid* time off to serve on a jury. See Miami-Dade Ordinance.

8. 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. This Act applies to all employers engaged in commerce where the employer employs fifty or more employees in a 75 mile radius for each working day during each of twenty or more calendar weeks in the current or preceding calendar year. Florida does not have a parallel state Family Medical Leave Act, however, some local jurisdictions within Florida expand on the federal requirements by adding grandparents to the list of covered family members. See Miami-Dade County Ordinance.

9. Federal Contractors. Employers that are federal contractors or subcontractors may have affirmative action obligations under Executive Order 11246 and the Vocational Rehabilitation Act, depending on the type and size of their contracts (i.e. contracts in excess of \$50,000). Certain federal contractors are also subject to the Drug-Free Workplace Act.

10. 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.

11. Drug Testing: Florida does not have a mandatory drug-testing policy. It does, however, proscribe a mandatory program if employers wish to qualify for workers compensation discounts. Florida Statutes §440.102. Under the Program, employers are eligible for a 5% discount in their workers’ compensation insurance premiums, if the drug-testing policy comports with the statutory criteria. *Id.* If an employers’ drug testing policy does not comply with the Program, the employer may still implement it, however, the employer will not be eligible for the discount. Florida Statutes § 440.102(7)(e) (“[t]his section . . . does not abrogate the right of an employer under state law to conduct drug tests, or to implement employee drug-testing programs; however, only those programs that meet the criteria outlined in this section qualify for reduced rates under section 627.0915 [of the Florida Statutes]”)

Moreover, Florida’s constitution recognizes a right to privacy. Fla. Const. Art. I § 23. Notwithstanding this constitutional privacy provision, no Florida case law addresses whether Florida citizens possess such a privacy right in the context of employee drug-testing.

12. 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. Florida workers have a statutory right to organize and strike, but Florida law also prohibits discrimination in employment against non-union members. Labor unions must register with the Department of Labor and fulfill various record-keeping and reporting requirements. Florida Statutes §§ 447.01–447.17.

13. Occupational Safety and Health Act (“OSHA”). OSHA created 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.

14. Title VII. Title VII is the broad civil rights statute that forbids discrimination in all employment practices based on race, religion, gender and 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. The FCRA prohibits discrimination in all employment practices on all of these bases and adds handicap (including HIV/AIDS), and marital status.¹ Notwithstanding the law's provision on marital status discrimination, employers are permitted to have valid anti-nepotism policies.

The FCRA applies to employers with 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. Florida Statutes §§ 760.01–760.11. Some counties in Florida have ordinances prohibiting discrimination in employment as well. Some of these local ordinances extend the prohibitions to discrimination on the basis of sexual orientation and familial status.

15. Worker Adjustment Retraining and Notification Act (“WARN”). This federal law requires employers to give sixty calendar 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, and to businesses that employ 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime). There is no equivalent Florida Act.

16. Whistleblower Protection. Federal Law protects employees who report what they have a good faith belief is unlawful in the work place. Employees are protected against retaliation for either reporting an act, or refusing to perform an act, which they consider to be unlawful. Retaliation against them in the form of any adverse employment action is unlawful. Florida law prohibits an employer from taking any retaliatory personnel action against any employee because that employee has:

- (1) Disclosed, or threatened to disclose, to any appropriate governmental agency a policy or practice of the employer that violates a law, rule or regulation (however, the employee must, in writing, bring the complained of activity to the attention of a supervisor such that the employer is afforded a reasonable opportunity to correct the activity),
- (2) Provided information to, or testified before, any appropriate governmental agency conducting an investigation into an employer's alleged violation of a law, rule or regulation,
- (3) Objected to, or refused to participate in, an employer's violation of a law, rule or regulation.

¹ Florida law also has a statutory provision expressly addressing employment discrimination of those persons that have or are perceived as having AIDS, AIDS-related complex or HIV. See Florida Statutes § 760.50.

Florida Statutes §§ 448.101-448.105.

17. 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. Under Florida law, it is unlawful for any person knowingly to employ, hire, recruit, or refer, either for oneself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States. Florida Statutes § 448.09.

18. Restraints of Trade or Commerce. Section 542.335 of the Florida Statutes governs restraints on trade that protect legitimate business interests and are reasonable as to time, area, and line of business. The statute is very pro-employer and sets forth time limits that are presumptively reasonable for particular industries and circumstances, while indicating that other unspecified interests may warrant protection. Restrictive covenants may be enforced by temporary or permanent injunctions or any other appropriate remedy. Attorneys’ fees are available to the prevailing party in an action seeking to enforce a restrictive covenant.

19. Trade Secrets. Florida law codifies the Uniform Trade Secrets Act at Florida Statutes § 688.01 *et seq.* Under Florida law, “Trade Secret” means “information, including a formula, pattern, compilation, program, device, method, technique, or process that derives economic value; actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure and use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” Florida Statutes § 688.002(4). Actual or threatened misappropriation of a trade secret may be enjoined, and a complainant may also be awarded compensatory and exemplary damages in certain circumstances. Florida Statutes §§ 688.001–688.009. Additionally, a Trade Secret can form the basis for a legitimate business interest as required to enforce a restrictive covenant under Florida Statute § 542.335.

For more information on labor and employment matters, please contact Pat Lowry at plowry@steelhector.com or Heather Gatley at hgatley@steelhector.com.

B. Employee Benefits

1. Employee Retirement Income Security Act of 1974, as amended (“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 structure creating certain reporting and disclosure requirements, fiduciary obligations and, in most types of retirement plans, coverage, vesting and funding requirements. ERISA generally preempts state laws governing employee plans and arrangements other than state insurance and securities laws.

2. Family Medical Leave Act of 1993 (“FMLA”). FMLA imposes certain requirements on employers regarding coverage, including family coverage, under group health plans for employees taking leave under FMLA and regarding the restoration of coverage to such employees at the end of such leave. Regulations under FMLA generally require employers who offer employees group health plan benefits to continue to provide such benefits during paid or unpaid FMLA leave under the same conditions that would have been applicable if the employee had been continuously working (provided that the employee pays the applicable premiums), and to reinstate coverage with regard to such benefits on the same terms as prior to the FMLA leave upon the employee’s return from such leave.

3. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). HIPAA provides enhanced rights and protections for participants and beneficiaries in group health plans. HIPAA, among other things, limits exclusions for pre-existing conditions, prohibits discrimination against employees and dependents based on their health status, and permits special enrolment opportunities to individuals under certain circumstances. In addition to providing protections for health coverage offered to employees in connection with their employment, HIPAA also offers protections for individuals under individual insurance policies sold by insurance companies.

4. 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 maximum period for which this coverage may be required to be provided by an employer, depending on the circumstances, is thirty-six months. COBRA contains very specific procedures for notifying terminated employees of their COBRA rights. If a plan does not comply with the COBRA continuation coverage requirements, the Internal Revenue Service imposes an excise tax on the employer, or the plan itself, and ERISA gives certain affected parties (including qualified beneficiaries) the right to sue to redress such noncompliance. With respect to group health insurance plans covering employers that do not have enough employees to be subject to COBRA (i.e., twenty or more employees), Florida Statutes require that each terminated employee (or affected beneficiary) who would lose coverage under the group health plan because of termination of employment or other qualifying event is entitled, without evidence of insurability, to elect to continue coverage under the employer’s group health plan for eighteen months or, in the case of certain disabled qualified beneficiaries, twenty-nine months.

VII. ENVIRONMENTAL LAW

A. Regulation of Pollution and Waste Disposal

1. Resource Conservation and Recovery Act (“RCRA”). RCRA’s primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. By statute, the disposal of hazardous waste is prohibited except in accordance with a permit. RCRA also contains 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. The federal Environmental Protection Agency (“EPA”) is authorized to bring suit against any person or entity contributing to the handling, storage, treatment or disposal

of a hazardous waste in a manner presenting an imminent and substantial endangerment to health or the environment. 42 U.S.C. § 6901 et seq.

2. The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). Commonly known as Superfund, CERCLA was enacted in 1980 to provide for the clean-up of abandoned disposal sites. 42 U.S.C. § 9601 et seq. This statute has possibly generated more litigation and controversy in the past decade than any other federal legislation.

CERCLA allows the government and private parties to sue “potentially responsible parties,” or PRPs, for reimbursement of clean-up costs caused by actual or threatened releases of hazardous substances. Liability is strict, joint and several, with little or no regard for causation. Four categories of persons are liable for clean-up costs:

- (1) “Owners or operators” of any contaminated location. The current owner or operator is liable, regardless of when the hazardous substance was disposed of at the facility and whether the present owner or operator did anything to contribute to the release.
- (2) “Owners or operators” of the facility at the time of release of the hazardous substances.
- (3) Any person who contracted or arranged to have hazardous substances taken to, disposed of, or treated at a facility. This category generally applies to generators and manufacturers.
- (4) Transporters of hazardous substances.

CERCLA has certain limited defenses 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 unrelated third parties. The “third party” defense does not apply if the damage from hazardous substances was caused by an employee or agent of the PRP, or a third party acting in connection with a contract with the PRP.

3. The Clean Air Act (“CAA”). The CAA regulates air pollutants under federal standards implemented and enforced by the states. The Act was amended in 1990 to add several new programs, including acid rain control and stratospheric ozone protection programs, coupled with modification of existing programs for attaining the national ambient air quality standards (“NAAQS”) and reducing emissions of hazardous air pollutants. 42 U.S.C. § 7401 et seq. Because of the nature of air pollution and its sources, this program is generally considered to be the most complex of the federal environmental programs.

The CAA is implemented in Florida by the Florida Department of Environmental Protection (“DEP”) which exercises authority delegated by EPA pursuant to Florida’s approved State Implementation Plan (“SIP”). EPA generally retains the right to pursue independent enforcement action if it finds that the state has not adequately enforced the CAA.

Under the CAA and federal and state implementing regulations, air emissions are regulated through various controls. EPA has established New Source Performance Standards (“NSPS”) for numerous industrial source categories, ranging in size from large petrochemical complexes to neighborhood dry cleaners. These standards are located in 40 CFR Part 60. Additionally, “major sources” of air pollution are generally required to (i) install the best available control technology to limit their emissions and (ii) provide assurance that their emissions will not cause exceedence of certain pre-established air pollution budgets.

Generally, any new stationary point source of air pollution will require a construction permit from DEP. The CAA, as amended, and DEP regulations also requires operating permits for all major air sources, with state administration and enforcement. Whether or not a facility is a major stationary source is determined by applying standards found in Rule 62-213 of the Florida Administrative Code. A significant new program is a permit fee based on tons of pollutants emitted on an annual basis; the permit fees fund the state operating permit programs.

4. The Clean Water Act (“CWA”). The CWA regulates the discharge of pollutants into all “navigable waters,” (a broadly defined term that includes many small water bodies) and prohibits the discharge of any pollutant into those waters unless a permit has been issued. Permits are issued by the state under an approved state National Pollutant Discharge Elimination System (“NPDES”) program. The permit limits are based upon EPA’s effluent limitation regulations and are incorporated into the NPDES permit. The CWA effluent limitations for industrial dischargers will also specify standards for pretreatment for those who discharge to a publicly owned treatment work.

5. Additional State Considerations. The Florida Department of Environmental Protection (“DEP”), Florida’s principal environmental and natural resources agency, is located at 3900 Commonwealth Blvd. M.S. 10, Tallahassee, FL 32399-3000, (850)488-1554, <http://www.dep.state.fl.us>. The DEP issues regulations governing the handling, registration, permitting, and clean-up of pollutants and hazardous materials, as well as storage, transfer and disposal facilities for both non-hazardous waste (referred to as solid waste) and hazardous waste. The agency also brings actions on behalf of the state to enforce liabilities for environmental cleanup. Florida Statutes §§ 376.051, 376.303, 403.121-.141.

Florida prohibits discharge of pollutants into the state’s surface or ground waters in violation of state standards. Florida Statutes § 376.302. Disposal, storage, and treatment of hazardous waste is regulated by sections 403.702 through 403.7895 of the Florida Statutes. Florida has also adopted its own “Baby Superfund” laws requiring the DEP to recover clean-up costs from any persons who cause pollution or from the Federal Government. Florida Statutes §§ 376.30–376.3195, 403.727. One of DEP’s major responsibilities is the permitting and regulation of storage tanks for petroleum and other products. Finally, Florida has programs for the regulation of specific products, such as used tires, used oil, spent florescent lamps and fixtures, compost, etc., that complement the federal system.

B. Waters and Wetlands

Depending upon the nature or size of a proposed development, permits may be necessary from State and/or Federal regulatory agencies. Originally, this meant that developers had to file separate applications with multiple agencies. In 1994, the agencies created a program which allows applicants to apply for a comprehensive Environmental Resource Permit (“ERP”). The Florida Water Management Districts act as the intake agency for most ERP applications and then distribute the application to other permitting authorities as may be dictated by the project’s impact. The Department of Environmental Protection acts as the intake agency for activities related to solid and hazardous waste facilities, mines, power plants, single-family dwellings on five acres or less, marinas and docks having more than nine slips, and open water projects.

The ERP application may be used to apply for permits for the following activities:

- (1) Surface Water Management. Permits are required prior to the construction or alteration of any surface water management system, which include storm water management system, dams, impoundments, reservoirs, “works”, “appurtenant works” and dredge and fill areas. Works are statutorily defined as “all artificial structures, including but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, or drains water into, or is placed in or across waters of the state.” Florida Statutes § 373.404. General permits may be relied upon by certain small scale projects. However, most significant, large-scale developments will require an individual drainage permit from the appropriate Water Management District
- (2) Wetlands Permits. The Water Management Districts and the United States Army Corps of Engineers share permitting authority over impacts to wetlands. Florida generally requires a permit applicant to demonstrate that it cannot reasonably avoid impacts to existing wetlands. If impacts to wetlands are unavoidable, the applicant then must develop a satisfactory mitigation proposal. Mitigation plans are site specific and are approved on a case by case basis. Fla. Admin. Code § 62-312.300 et seq. Mitigation can include creating new wetlands, restoring existing wetlands that have previously been damaged, enhancing the functions of wetlands, or preserving wetland or associated uplands. Where onsite mitigation is not feasible, the district will allow transfer of “mitigation credits” from off-site areas. Fla. Admin. Code § 62-342.100 et. seq. Offsite mitigation options can include donation of funds or land to offsite regional mitigation areas as well as the purchase of mitigation credits from mitigation banks.

The Army Corps of Engineers has jurisdiction to regulate any wetland which touches upon or affects “interstate commerce.” This is a broadly defined term which has allowed the Corps to establish jurisdiction over tributaries which ultimately reach navigable streams, waters or water courses, and wetlands adjacent to such waters. Any disturbance of wetlands, including dredge and fill permits, may require a separate permit

from the Army Corps of Engineers. However, the Water Management Districts routinely forward environmental resource permit applications to the Corps for review and comment, and separate Corps permits are not always necessary.

- (3) Dredge And Fill Activities. The ERP also can be utilized for procuring a dredge and fill permit. The Department of Environmental Protection issues dredge and fill permits for, among other things, jetties, breakwaters, rip-rap or seawalls, marinas, docks, (except for private docks of 500 square feet or less), canals and other similar structures. Dredge and fill permits are also required for filling wetlands. In general, a dredge and fill permit will issue if the project is not contrary to the public interest (taking into consideration mitigation).
- (4) Use Of Sovereign Submerged Lands. Marinas and similar enterprises which require the use of submerged lands as part of their operation usually require a lease or easement from the state to utilize state submerged lands. This program is administered by the Department of Environmental Protection under express grant of authority from the Board of Trustees of the Internal Improvement Trust Fund.

C. Consumptive Uses of Water

Any significant withdrawal of ground water will generally require a Consumptive Use Permit from the pertinent Water Management District. In general, the Water Management Districts review applications under a three pronged test outlined in Florida Statutes section 373.223, requiring the use to (i) be reasonable and beneficial, (ii) be consistent with the public interest, and (iii) not result in adverse impacts to existing legal uses. In areas designated as critical water supply problem areas reclaimed water must generally be used unless the applicant can demonstrate environmental, economic or technical infeasibility. *See, e.g.*, Fla. Admin. Code § 40E-2.301(h).

D. Coastal Construction

Chapter 161 of the Florida Statutes authorizes the Bureau of Beaches and Coastal Systems of the Department of Environmental Protection to regulate coastal construction. There are four regulatory programs authorized under Chapter 161. These are the coastal construction permit program, the coastal construction control line permit program, the joint coastal permit program, and the coastal zone protection program.

The intent of the coastal construction permit program is to regulate construction projects located seaward of mean high water line and which might have an effect on natural shoreline processes (such as jetties and piers). Coastal construction control line permits are required from the Department of Environmental Protection for any alteration of topography, damage or removal of native salt resistant vegetation, vehicular access over vegetated beach/dune areas, and construction between the coastal construction control line and the mean high water line on sand shoreline areas fronting the Gulf of Mexico or the Atlantic ocean, with

certain exclusions. Control lines are established based upon comprehensive studies of the area's topography.

E. Wildlife Protection

1. Federal Endangered Species Act ("ESA"). Section 9 of the ESA, 16 U.S.C. § 1538, prohibits the "taking" of federally listed animals without appropriate authorization. The term "take" is broadly defined as "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." A landowner or developer in Florida who believes that his or her otherwise lawful activities will result in the "take" of a federally listed species should seek an Incidental Take Permit from the United States Department of Interior, Fish and Wildlife Service ("FWS") (for terrestrial and freshwater species) or the National Marine Fisheries Service ("NMFS") (for marine species).

For those projects that require other federal approvals (such as federal wetlands permits) or are federally funded, this permitting is generally accomplished through a mandatory interagency consultation process. The federal agency approving or funding the project must review impacts to protected wildlife and, in consultations with the FWS or NMFS, determine that the project will not jeopardize a protected species or its habitat. This process results in the issuance of a biological opinion by the services, which authorizes incidental takings of wildlife so long as certain conditions set forth in the permit are observed.

For projects that do not have federal approval or funding a direct application to the FWS or NMFS may be made under ESA section 10. This permit application must contain a detailed habitat conservation plan ("HCP") which describes the steps to be taken to minimize, mitigate for and monitor impacts to the species. The scientific research necessary to support the HCP is typically performed by a consulting biologist hired by the applicant.

2. State Wildlife Protection. At the state level, Section 372.0725, Florida Statutes, declares that "it is unlawful for a person to intentionally kill or wound any fish or wildlife of a species designated by the Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern, or to intentionally destroy the eggs or nest of any such fish or wildlife, except as provided for in the rules of the commission."

Florida's wildlife regulations are codified at Chapter 68, Florida Administrative Code. Rules 68-27.003 - .005 list over 100 state-designated endangered species, threatened species, and species of special concern, including the west indian manatee (endangered – federal and state), Florida panther (endangered – federal and state), scrub jay (threatened), Florida tree snail (special concern) and gopher tortoise (special concern). Rule 68A-27.005 states that "no person shall take, possess, transport, or sell any species of special concern included in this subsection or parts thereof or their nests or eggs except as authorized by Commission regulations or by permit. . . ." Similar protections are afforded to endangered and threatened species under Rules 68-27.003 and 68-27.004. Take is defined as "pursuing, hunting, molesting, capturing, or killing any wildlife or freshwater fish, or their nests or eggs by any means." Rule 68A-1.004(76), Fla. Admin Code.

F. National Environmental Policy Act (“NEPA”)

NEPA, 42 U.S.C. § 4321, *et. seq.*, requires a comprehensive environmental review of major projects that receive federal approvals or funding. This can often be a cumbersome and costly process for both the agency and the regulated party. Often a preliminary Environmental Assessment (“EA”) is performed to determine whether NEPA review is required. If the EA finds that there is no significant impact from the project, no further NEPA action is required. If the EA determines that the project will be significant, a comprehensive Environmental Impact Statement (“EIS”) must be produced. The determination of significance is governed by the regulations of the Council on Environmental Quality, 40 CFR 1500, *et. seq.*

For more information on environmental law, please contact John Butler at jbutler@steelhector.com or Gabriel Nieto at gnieto@steelhector.com.

VIII. LAND USE AND GROWTH MANAGEMENT REGULATION

A. Local Land Development Regulations and Comprehensive Plans

Development within Florida is governed by city and county land development codes and by a multi-tiered system of comprehensive development plans. Approval for any development will generally need to be secured from the local government in which the project is located. The specific development restrictions and approval procedures will vary from one locality to another, so a thorough review of the applicable local land development regulations is essential. Additional development controls will be found in the local comprehensive plan, which serves as the overall framework for local government land use decisions. Copies of the applicable comprehensive plan and land development regulations may be obtained from the pertinent local governments.

The local comprehensive plan may need to be revised to allow particular developments to go forward. Local governments are limited to two plan revisions per year. However, certain small scale plan amendment and amendments that implement the recommendations in an evaluation and appraisal report produced by the local government are exempt from this limitation. Comprehensive plan revisions are reviewed by the Florida Department of Community Affairs for consistency with state law.

B. Developments of Regional Impact

Florida’s Developments of Regional Impacts (“DRI”) program was one of the nation’s earliest efforts to address the regional impacts that result from large developments. Since July 1, 1973, certain developments, because of their magnitude, character, or location, have been required to undergo a comprehensive regional impact review prior to local government approval. There will often be a question as to whether a particular development is a DRI. This is answered by applying the DRI thresholds found in section 380.0651, Florida Statutes. Projects that exceed 120 percent of any threshold are presumed a DRI and those that fall under 80 percent of the thresholds are presumed not to be a DRI. For projects falling in the middle ground between 80 and 120 percent, a process is available to obtain a binding letter from the Florida Department of Community Affairs passing on whether DRI review is required. Note that in applying the thresholds multiple projects under the control of a single developer may be

aggregated to trigger DRI review and certain developments may be exempt from DRI requirements under vested rights principles.

DRI review is coordinated by regional planning councils, with the participation of other affected agencies. The review identifies impacts of the proposed development upon the health, safety, and welfare of citizens of more than one county. The regional planning council must submit a report to the local government summarizing these impacts and make a recommendation as to whether the development should be approved, approved with conditions, or denied. The local government will make the final decision regarding development approval, and issue of a development order which contains the required conditions for development. The developer and the Department of Community Affairs (“DCA”) have the right to appeal a local government’s development order, or the denial of a development order, to the Florida Governor and Cabinet.

C. Concurrency

The principle of concurrency requires that public facilities, such as roads and sewers, needed to support development be available concurrently with the impacts of the development. This can have the effect of limiting or delaying development in parts of the state where there are insufficient public facilities to support new growth. Generally, local comprehensive plans must provide for concurrency management and require that adequate public facilities be put in place prior to any new development being completed. The statewide concurrency requirements are found in Rule 9J-5.0055 of the Florida Administrative Code.

For more information on land use, zoning and comprehensive planning, please contact Gabriel Nieto at gnieto@steelhector.com.

IX. INTELLECTUAL PROPERTY

In the United States and Florida, intellectual property may be protected as a copyright, patent, trademark, and trade secret. Protection mechanisms are pursuant to common law or pursuant to state or federal statute. Depending on the nature of the property involved and the type of protection sought, more than one form of protection may be available.

A. Federal Law

1. Copyright Law. Copyrights are matters of federal law and are governed by Title 17 of the United States Code. 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 specific exclusive rights to use, distribute, modify and display the work. Works of authorship that qualify for copyright protection include literary works, musical works (including lyrics), dramatic works, choreographic works, audiovisual works, pictorial, graphic and sculptural works, sound recordings, and architectural works. The Computer Software Copyright Act of 1980 expressly made computer software eligible for copyright protection. All works eligible for copyright protection must meet two specific requirements. First, the work must be fixed in some tangible form—there must be a physical embodiment of the work so that the work can be reproduced or otherwise communicated. Second, the work must be the result of original and independent authorship; however, the originality requirement does not entail novelty or ingenuity, concepts of

importance to the ability to acquire a patent. 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 after publication or 120 years after creation. A copyright infringer may be liable for actual or statutory damages and may be subject to being enjoined from exploiting a work. Registration of copyrights is handled by the U.S. Copyright Office, located at Library of Congress, Copyright Office, 101 Independence Ave, SE, Washington, DC 20559-6000, <http://lcweb.loc.gov/copyright/>.

2. Patents. This area is governed exclusively by federal law as set forth in Title 35 of the United States Code. One who invents or discovers a new machine or device or a new manufacturing process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right for a specified time to make, use, import, offer to sell, or sell the patented invention in the United States. A patent provides the holder with a limited monopoly on the use of the patented invention. A valid patent forecloses use of the patented invention by any other party, even if another party independently conceives the identical invention. Naked ideas, principles, or unknown laws of nature are not capable of patent protection.

A utility patent, which generally governs the functional aspects of a machine, manufacturing process, or composition of matter is enforceable beginning at the grant of the patent and ending 20 years (plus up to 5 more years for certain delays) after the filing date of the regular patent application. A design patent, which covers the design or appearance of an article of manufacture, is enforceable for 14 years from the date of issuance 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. A foreign patent is generally not enforceable in the United States. 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.

A U.S. patent application must meet the requirements of Title 35, Section 111 of the United States Code and be filed with the U.S. Patent and Trademark Office. The patent review process takes from 18 months to three years. All correspondence should be addressed to Assistant Commissioner for Patents, Washington, DC 20231. The official website is located at <http://www.uspto.gov>.

3. Trademarks. This area is governed by both federal and state law. A trademark is often used by a manufacturer to identify its goods and services and to distinguish its goods and services from those of its competitors. Under federal law, a trademark can be a word, a name, a number, a slogan, a symbol, a device, or a combination thereof. 15 U.S.C. § 1127. A trademark 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 of the business.

A business should carefully consider the trademark selected for its merchandise. The level of protection against infringement of a trademark varies with the “strength” or

“uniqueness” of the selected trademark. Trademarks are categorized on a continuum of strength from generic marks on one end (considered unenforceable marks) to descriptive, suggestive, arbitrary, and finally fanciful (considered the strongest marks). Descriptive trademarks, those that describe a feature or characteristic of the good or service, are only registrable upon development of secondary meaning. Selection of a trademark should be accompanied by a trademark search to determine whether another has already adopted or used a mark that is the same or similar to the desired mark.

Under the trademark laws of the United States and Florida, the principal method of establishing rights in a trademark is actual use of the trademark. Registration of a trademark with the Patent and Trademark Office is not legally required but can strengthen the registrant’s ability to prevail in any infringement action. An applicant may apply for a federal trademark registration before actually using the mark if it has a bona fide intent to use the mark in commerce. Once approved for registration, the applicant then has six months to submit an affidavit confirming that the mark has been used in commerce. Extensions of this time period are available upon application. Once issued, a certificate of registration remains in effect for ten years and is renewable for additional ten-year terms upon evidence of continued use.

B. State Considerations

As noted above, patents and copyrights are governed exclusively by federal law.

1. Trademarks and Service Marks. Generally. Both trademarks and service marks may be registered in Florida. There are some limitations imposed on the type of mark that can be registered. For example, if the mark is merely descriptive, will likely cause confusion, mistake or deception, or suggests affiliation with the United States, the mark cannot be registered. If a registered mark is intentionally copied and used by any person “to cause confusion or mistake or to deceive,” the holder may recover profits and possibly treble damages. In addition, the holder can enjoin the “manufacture, use, display or sale of any counterfeits or imitations.” Florida Statutes §§ 495.011–495.181. Marks are registered with the Division of Corporations of the Department of State, Post Office Box 6327, Tallahassee, FL 32314, <http://www.dos.state.fl.us/doc>. Registration of a mark is effective for a term of ten years from the date of registration and renewable for an additional ten-year term by filing the necessary form with the Department.

2. Trade Secrets. Florida provides both statutory and common law protection for trade secrets. Florida has adopted the “Uniform Trade Secrets Act” in Florida Statutes §§ 688.001-688.009. The Act provides injunctive relief for actual or threatened misappropriation of a trade secret. The act also provides for monetary damages for unauthorized disclosure or use of a trade secret. If the misappropriation is “willful and malicious,” the court may award exemplary damages of up to twice the compensatory award. Florida also provides criminal sanctions for the misappropriation of a trade secret. Florida Statutes § 812.081.

Under Florida common law, an employee cannot use for his or her own advantage and to the harm of his or her employer confidential information that the employee has gained in the course of employment. A former employee cannot be enjoined, however, from using his or her knowledge, experience, or skill in another business.

For more information on intellectual property issues, please contact Janet Munn at janet.munn@steelhector.com or Curtis Wolfe at curtis.wolfe@steelhector.com.

X. DISPUTE RESOLUTION

A. Federal Court System

1. The Supreme Court. Nine judges, known as Justices, constitute the highest court of the country. Justices are appointed to a life term after nomination by the President and approval by a majority of the Senate. The Supreme Court decides cases by a simple majority vote and is the court of final appeal for all federal matters, including cases arising from federal statutes, treaties, and the United States Constitution. The vote of four Justices being required to grant discretionary review, the Court itself selects nearly all of the cases it will hear and typically issues approximately 150 or fewer decisions per year.

2. The Courts of Appeals. Thirteen circuit Courts of Appeals are the intermediate appellate courts in the federal system. The Eleventh Circuit, headquartered in Atlanta, hears appeals from federal district and tax courts in Florida, Alabama, and Georgia, as well as appeals from decisions of federal administrative agencies in those states. Appeals Court judges, the number of which varies by circuit, also serve for life after nomination by the President and confirmation by the Senate. Cases are generally heard by a three-judge panel at this level, although a full-court (*en banc*) review of a panel decision is sometimes granted.

3. The District Courts. The trial courts in the federal system are the U.S. District Courts. Within limits set by Congress and the Constitution, the District Courts have jurisdiction to hear nearly all categories of federal cases, including both civil and criminal matters. In addition, District Courts may hear cases arising out of state law when the amount in controversy exceeds \$75,000 and the parties are citizens of different states or one party is a citizen of another country. All states and the federal capital have at least one such court, and Florida has three: the Northern, Middle, and Southern Districts. District Court judges serve life terms after nomination by the President and confirmation by the Senate.

4. Trial by Jury. The Sixth Amendment to the United States Constitution establishes the right to trial by jury for criminal matters. The Supreme Court has interpreted this provision to apply to serious offenses, defined as those with a potential penalty of imprisonment for more than six months, and to require that a jury have at least six members. In practice, the jury in a Federal criminal case generally comprises 12 members. The Court has ruled that while unanimous verdicts are required in federal criminal trials and in state trials in which a six-member jury is used, nonunanimous verdicts are permissible in state, non-death penalty trials utilizing juries of 12. Nevertheless, only three states allow the use of nonunanimous verdicts in criminal cases. The right to a trial by jury may be waived in writing by the accused. In nearly all civil matters, the right to demand trial by jury is guaranteed by the Seventh Amendment, though not making the demand waives this right. Under Federal Rules, a civil jury must have between six and twelve members and, unless the parties reach an agreement otherwise, its verdict must be unanimous.

B. State Court System

1. The Supreme Court. The Supreme Court of Florida is the state's highest court. The Court is composed of seven judges, with five justices required to constitute a quorum to conduct business and four justices in agreement necessary to reach a decision. Each justice serves a six-year term, at the termination of which his or her name appears on the general election ballot for a merit retention vote. If the voters decide not to retain a justice for an additional term (and whenever a vacancy occurs), the Governor fills vacancies on the Court, choosing from a list of between three and six qualified persons recommended by the Judicial Nominating Commission.

The jurisdiction of the Supreme Court is set out in the Florida Constitution. The Court is required to review final orders imposing death sentences, District Court of Appeal decisions declaring a state statute or constitutional provision invalid, bond validations, and certain orders of state-wide agencies relating to utility rates and services. The Court must also, upon the request of the Governor, render advisory opinions regarding the interpretation of any portion of the Constitution affecting the governor's executive powers and duties.

In addition, the Court may, at its discretion, review any decision of a District Court of Appeal that expressly declares valid a state statute, construes a provision of the state or federal Constitution, affects a class of constitutional or state officers, or expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court. The Supreme Court may also review certain judgments, decisions, and questions of law certified to it by a District Court of Appeal or federal appellate court.

2. The District Courts of Appeal. Most appellate review in Florida occurs in three-judge panels of the District Courts of Appeal. The state is divided into five districts, headquartered in Tallahassee, Tampa, Miami, West Palm Beach, and Daytona Beach. The jurisdiction of each court includes appeals from final judgments or orders of trial courts that are not directly appealable to the Supreme Court or a Circuit Court and the review of certain non-final orders of trial courts. The Courts of Appeal also have the authority to review most actions taken by state agencies. Although a Court of Appeal decision may be appealed to the Florida Supreme Court, the vast majority of such requests are denied.

3. The Circuit Courts. Most jury trials in Florida take place in a Circuit Court in one of 20 judicial circuits. Circuit Courts have original jurisdiction over civil disputes of greater than \$15,000 and general trial jurisdiction over matters not assigned by statute to the County Courts and, thus, handle matters such as probate, guardianship, juvenile cases, tax assessments, and actions related to real property title and boundaries. Circuit Courts also hear appeals from County Courts, and thus are simultaneously the highest trial courts and the lowest appellate courts in Florida's judicial system.

4. County Courts. Most non-jury trials take place in a single-judge County Court, one of which is located in each of Florida's 67 counties. This court hears civil disputes of less than \$15,000 and handles criminal misdemeanors. The number of judges in each County Court varies with population and caseload. The County Courts are sometimes referred to as "the people's courts" because a large part of the court's work involves high-volume cases such as

landlord-tenant disputes, violations of traffic laws and municipal and county ordinances, and simplified or uncontested dissolutions of marriage.

5. Trial by Jury. Florida guarantees a trial by jury for nearly all criminal cases and most civil matters. Florida criminal cases in which the death penalty is a potential punishment are tried before juries of twelve members; the jury in non-capital cases is composed of six members. In most civil matters, six people serve on the jury. Florida requires that the jury verdict be unanimous in all criminal cases and in civil cases in which the parties have not agreed beforehand to a different standard. The accused in a criminal case may waive the right to a jury trial if the waiver is informed, intelligent, and voluntary. A party in a civil matter must make a timely demand for a jury trial or the right is waived.

C. Arbitration

1. Federal. The Federal Arbitration Act (Title 9 of the United States Code) establishes that an arbitration provision in a written commercial contract or a subsequent written agreement to submit a commercial dispute to arbitration shall be “valid, irrevocable, and enforceable.” The law provides that, in cases in which there is no dispute over the existence or validity of or compliance with the provision or agreement, a United States District Court shall not allow a lawsuit to be brought before arbitration occurs and shall order that the arbitration provision or agreement be implemented. The District Court which would have jurisdiction over a dispute in the absence of the arbitration clause or agreement has the authority to appoint arbitrators if their method of appointment has not been agreed upon by the parties; to enforce the arbitrators’ power to compel the attendance of witnesses at and the production of evidence for proceedings; and to enforce the arbitral judgment as if it were a court decision.

The Act also implements the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) and the Inter-American Convention on International Commercial Arbitration (1975). Actions and proceeding falling under these conventions form part of the original jurisdiction of the United States District Courts without regard to the amount in controversy. The law also provides for enforcement of foreign arbitral decisions and awards on a reciprocal basis.

2. Florida. Florida’s Arbitration Code (Title XXXIX, Chapter 682) provisions are very similar to those of the Federal law. Arbitral provisions in contracts or agreements to submit pending disputes to arbitration “shall be valid, enforceable, and irrevocable.” The County Court in the jurisdiction where one of the parties resides or has a place of business has the authority to direct the parties to proceed with arbitration and to appoint arbitrators.

In the proceedings, parties have the right to be heard and represented by an attorney, to present evidence, and to cross-examine witnesses. The arbitrators have the authority to issue subpoenas to compel the production of evidence and the attendance of witnesses and to order that depositions be taken.

State courts are to enforce the arbitrators' orders and judgments, and the Code calls explicitly for the enforcement in Florida of any judgment entered upon an award by a court of any U.S. state or territory or foreign country.

The Florida International Arbitration Act ("FIAA")(Title XXXIX, Chapter 684) governs post-1986 written arbitration provisions and agreements where at least one of the parties is not a United States resident or where the dispute involves property outside of the country, a contract or other agreement which contemplates performance at least in part outside of the United States, a foreign investment, or some other relation to a foreign country. Such provisions and agreements are to be valid and enforceable by the courts of Florida. (Disputes concerning real property within Florida, domestic relations, and those of a political nature between two or more governments are, however, excluded from the provisions of this law.)

Arbitrators have the authority to compel the attendance of witnesses, the production of evidence, and the taking of depositions. Parties have the right to attorney representation.

The FIAA authorizes state Circuit Courts to order arbitration, to appoint arbitrators, to enforce the subpoena power of arbitrators, and to enforce arbitral awards as judgments of the Florida courts.

For more information on arbitration matters, please contact Eduardo Palmer at ep@steelhector.com.

XI. BANKING IN FLORIDA

A. Overview

Florida, and particularly South Florida, has the largest concentration of domestic and international banks on the East Coast of the United States after New York City. There are over 250 state and nationally-chartered banks, over 40 international banking agencies and approximately 20 international representative or administrative offices in the State. Among others, offshore clients are served by the offices of Brazilian, British, Canadian, French, German, Israeli, Japanese, Spanish, Swiss, U.S. and Venezuelan banks. As of June 30, 2002, commercial banks, savings banks and thrift institutions in Florida held over \$242 billion in total deposits, with international banks holding over \$15 billion.

Commercial banks provide short, intermediate and long-term financing for fixed assets, international transactions, and working capital. Banks also offer government-backed loans and have programs which target the small business market. Capital-intensive investments and higher risk businesses in certain industries can also seek assistance from several public agencies which provide or guarantee financing. Equity financing and investment banking are on the increase and provide other financing alternatives in Florida along with commercial finance companies, export management companies and leasing companies.

B. Laws Affecting Florida Financial Institutions

1. In General. The Florida Department of Financial Services, Office of Financial Regulation governs the application for and operation of state-chartered banks, trust companies and international banking corporations in Florida, although there are also federal regulations which must be taken into consideration. Florida Financial Institutions Codes are codified in Florida Statutes §§655-667. The Department of Financial Services, Office of Financial Regulation can be contacted at: 200 East Gaines Street, Tallahassee, FL 32399-0371, <http://www.dbf.state.fl.us/banking.html>.

2. Uniform Commercial Code. The Uniform Commercial Code has been adopted in Florida and covers most banking transactions. Florida law provides that:

- (1) There are no limits on the amount of deposits a bank can accept.
- (2) Federal Deposit Insurance Corporation insurance covers all state and nationally-chartered banks; however, non-resident deposits in foreign banks in Florida are not subject to such insurance.
- (3) Minors are permitted to make deposits and withdrawals.
- (4) Accounts in the name of two or more persons may be paid to or on the order of any of such persons unless expressly provided otherwise by contract, in an agreement, or on the signature card used in opening the account.
- (5) There is a presumption that joint account proceeds are paid to the survivor, or the guardian of a survivor in the case of incompetency.
- (6) Agents may be designated to deposit and withdraw funds from convenience accounts.

3. Choice of Law. Unless otherwise agreed by all parties in writing, or unless the Uniform Commercial Code specifically provides otherwise, Florida law (excluding its comity and conflicts of law provisions) will govern all aspects of a deposit account in, or a credit extension by, a branch or office in this state, of a deposit or lending institution, without regard to the citizenship, residence, location or domicile of any other party to the contract or agreement governing the account or credit extension.

C. International Banking in Florida

1. International Administrative Office. An international banking corporation may establish an international administrative office in this state for the purposes of: (i) administering personnel and operations; (ii) engaging in data processing or record-keeping activities; and (iii) negotiating, approving, or servicing loans or extensions of credit and investments.

2. International Representative Office. An international representative office cannot take deposits, make loans, collect or disburse funds on behalf of customers, but it does create a physical presence in the local market that may be useful in gathering information and in establishing business contacts that may be important over the long term.

3. International Bank Agency. International bank agencies are only authorized to carry out transactions that are clearly related to, and usual in, international or foreign business and financing international commerce. An international bank agency may make loans and engage in other banking services, but it cannot accept deposits from the general public. An international bank agency may only receive deposits if they are: (i) from non-resident entities or persons with a principle place of business or domicile outside the U.S.; (ii) interbank deposits; or (iii) international banking facility deposits.

4. International Branch. An international branch can offer the full range of banking services that its home office could offer, but with a physical presence in the local market.

5. Money Transmitter Office. A money transmitter is any person located in or doing business in the State of Florida who acts as a payment instrument seller, foreign currency exchanger, check casher, funds transmitter or deferred presentment provider.

For more information on banking issues, please contact Raul Valdes-Fauli at rvf@steelhector.com or Barry G. Craig at Barry@steelhector.com or Cori E. Franco at cfranco@steelhector.com.

XII. SECURITIES LAWS

A. Federal Law

The Securities and Exchange Act of 1933 (the “33 Act”) provides for the federal regulation of the issuance and sale of securities. The 33 Act requires that an issuer of securities disclose extensive information about itself at the time it initially sells its securities. The sale of securities, such as stocks, bonds, and other investment interests, is prohibited unless the issuer has registered them with the Securities and Exchange Commission, the agency charged with enforcing federal securities law, or unless the sale is exempt from registration.

It is important to determine whether securities qualify for exemption from federal securities registration to avoid the cost and potential delay of registration. The ‘33 Act includes two types of exemptions from registration requirements. Various types of securities are exempt entirely and certain types of securities transactions qualify for registration exemptions.

The Securities Exchange Act of 1934 (the “34 Act”) regulates secondary securities trading. Although its disclosure provisions are more limited than the 33 Act, the 34 Act requires some issuers with outstanding securities to disclose information on an ongoing basis. Among its principal provisions are its ban on insider trading and on transactions by corporate insiders that result in short-swing profits, and its anti-fraud provisions.

B. State Considerations

The Florida Securities and Investor Protection Act governs the sale and marketing of securities and is designed to protect the public from deceptive or fraudulent practices in such transactions. Florida Statutes §§ 517.011-517.32. Florida's regulation of securities transactions is concurrent with federal regulation. A security is defined broadly under Florida law as a contract, transaction or scheme where an individual invests money in a common enterprise and where that person is led to expect profits solely from the entrepreneurial or managerial efforts of others. The Florida Securities and Investor Protection Act sets forth registration requirements which are intended to provide potential investors with adequate information so that they will be able to protect themselves from financial harm resulting from securities transactions.

C. Registration of Securities

It is unlawful for any person to sell or offer to sell a security within Florida unless the security is itself exempt, is sold in a transaction exempt under Florida law, is a federally registered security, or is registered pursuant to Florida law. Issuers of securities requiring registration must follow the procedures set forth in Florida Statute § 517.081 and may be required to submit to the Department of Financial Services (the "Department") various issuer information and other materials relevant to the transaction. The exemptions from registration requirements are self-executing and do not require any filing with the Department prior to claiming such exemption.

D. Exempt Securities

The securities that are exempt from registration requirements are described fully in Florida Statute § 517.051 and include but are not limited to: securities issued by the United States, certain foreign governmental institutions, a national bank, a federally chartered savings and loan association, or a federally chartered savings bank, and an international bank of which the United States is a member, a corporation acting as an instrumentality of the United States government, a railroad or other public service utility, or entities subject to the examination, supervision or control of the State of Florida or the Federal Deposit Insurance Corporation or the National Credit Union Association; securities which have been outstanding in the hands of the public for a period of not less than 5 years, without default; and certain commercial paper having a unit amount of \$25,000 or more.

E. Exempt Transactions

Transactions exempt from registration requirements are delineated in Florida Statute § 517.061. Exempt transactions include: private placements; limited offerings; isolated transactions by a non-issuer bona fide owner; offers made solely to employees; offers or sales of securities to qualified institutional buyers; distributions or offers to existing security holders; and reorganization transactions.

F. Registration of Dealers, Associated Persons, Investment Advisers and Branch Offices

In order to sell or offer for sale any securities in Florida, or to sell securities to persons in Florida from offices outside the state, any dealer, associated person, or issuer of securities must register with the Division of Securities and Finance of the Department. This requirement does not apply where the securities offered or sold qualify for a registration exemption. Florida Statute § 517.12

G. Anti-Fraud Provision

It is unlawful to engage in any fraud, deceit, or material misrepresentation or omission in connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security. Florida Statute § 517.301.

H. Criminal and Civil Liability

It is a third-degree felony to violate any provisions of the Florida Securities and Investor Protection Act. Violation of the Act may also result in civil liability.

For more information on securities law, please contact Thomas R. McGuigan at trm@steelhector.com or Richard N. Bernstein at rbernstein@steelhector.com.

XIII. REAL ESTATE

A. Ownership of Real Property

In Florida, all natural persons are equal before the law and have inalienable rights, among which are the rights to acquire, possess and protect property.

All interest in real estate for a term of more than one year must be created, made, granted, transferred or released by a written instrument, signed in the presence of two subscribing witnesses. Florida Statutes §689.01.

Foreign individuals can also own real property in Florida except that the ownership, inheritance, disposition and possession of real property by aliens ineligible for citizenship may be regulated or prohibited by law. For example, the Foreign Investment in Real Property Tax Act of 1980 may impose taxes on the sale of real property by foreign individuals. (26 U.S.C., Sec. 897)

Although a foreign corporation may not transact business in Florida until it obtains a certificate of authority from the Department of State (Florida Statutes § 607.1501), mere ownership of real property does not constitute “transacting business.” A foreign corporation that owns real property located in Florida is required to maintain a registered office and registered agent and file notice of the registered office and agent with the Department of State. (Florida Statutes § 617.0503.)

Pursuant to Florida Statutes section 689.045, domestic limited partnerships may acquire real property. Title so acquired is required to be conveyed in the partnership name. (Florida Statutes § 689.045)

Under Florida Statutes § 621.08, limited liability companies and corporations may invest their funds in real estate, mortgages, stocks, bonds and other types of investments and may own real or personal property necessary for the rendering of professional services.

B. Concurrent Ownership

In Florida, a transfer or conveyance made to two or more individuals or entities creates a tenancy in common, unless the instrument creating the estate expressly provides for joint tenancy with the right of survivorship. (Florida Statutes § 689.15) If the transfer or conveyance is made to a husband and wife and the requirements of a joint tenancy with rights of survivorship are met, then title is assumed to be held by the husband and wife as tenants by the entirety. (*Beal Bank, SSB v. Almand & Associates*, 780 So.2d 45, 54-55 (Fla. 2001)). In the event of a dissolution of marriage, the tenants in an estate by the entirety become tenants in common. (Florida Statutes § 689.15)

1. Tenancy in Common. A tenancy in common is a joint ownership in which each cotenant owns an undivided interest in the property. The tenancy in common may be comprised of any number of individuals. Their interests need not arise from the same instrument nor at the same time. Although a tenancy in common relationship may consist of unequal interests, each cotenant has an equal right to possession and control of the property. A tenant in common may convey or devise its own interest in the property without the joinder or consent of the other tenants. There are no survivorship rights in a tenancy in common thus the interest of each cotenant is inherited by the cotenant's heirs and not the other cotenants.

A tenancy in common is formed by listing the grantees as "A and B as tenants in common" or simply "A and B".

2. Joint Tenancy. As with a tenancy in common, a joint tenancy with right of survivorship is an undivided interest in the land. However, property held in a joint tenancy does not pass to the heirs of a deceased joint tenant, but instead vests by operation of law in the surviving joint tenant or tenants.

Creation of a joint tenancy requires not only unity of possession but also unity of time, title, and interest. Each joint tenant's interest must be of the same proportionate share and created at the same time, from the same instrument. Any number of related or unrelated individuals may hold property as joint tenants. A joint tenancy is severed upon any joint tenant conveying its undivided interest to itself or another and thus destroying the unities of time and title. The conveyed interest becomes a tenancy in common. A joint tenant may mortgage its undivided interest without disturbing the joint tenancy as the unities are not destroyed merely by placing a lien on the property. The mortgage is a lien on a defeasible interest and would terminate, along with the property interest, upon the death of the mortgagor.

In order to create a joint tenancy, the instrument creating the estate must expressly include the right of survivorship or a tenancy in common will result. Florida Statutes § 689.15.

3. Tenancy by the Entireties. A tenancy by the entireties is a joint interest that can only be created between a husband and wife. This form of ownership vests title wholly in the husband and wife as a couple. No individual ownership rights exist in the husband or the wife alone. Property owned by the entireties may not be sold, mortgaged or otherwise encumbered by one spouse acting alone. Such conveyance or encumbering requires the joinder of both spouses. A tenancy by the entireties becomes a tenancy in common upon the dissolution of marriage. Florida Statutes § 689.15.

A tenancy by the entireties includes the right of survivorship. Property owned by the entireties does not pass by descent but vests in the surviving spouse by operation of law.

Property conveyed to a married couple is held as tenants by the entireties unless the deed contains language to the contrary. However, it is customary to describe the grantees in the deed as “husband and wife,” or “her husband” or “his wife,” to clearly indicate the type of estate in the chain of title.

C. Homestead Property

Homestead property is Florida real property owned by any natural person on which they reside. The homestead protection is limited to one-half an acre of contiguous land if it is within a municipality and to one hundred sixty acres of contiguous land if it is outside a municipality (Art. 10 § 4 Florida Constitution). Homestead property is entitled to special treatment in Florida for several reasons.

First, the homestead is protected by the Florida Constitution against forced sale (Art. 10 § 4(a) Florida Constitution). The Florida Constitution provides that a judgment, decree of execution is not a lien upon homestead property. Homestead property is only subject to property taxes, municipal assessments, and consensual liens.

Second, homestead property is afforded certain tax advantages. Florida Statutes grant homestead property an exemption from property tax up to a value of \$25,000.00. (Florida Statutes § 196.031). The Florida Constitution also provides that assessments on homestead property shall not exceed the lower of (a) three percent (3%) of the assessment for the prior year, or (b) the change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics (Art. 7 § 4(c) Florida Constitution).

Homestead property cannot be devised by will except that the homestead property can be devised to the surviving spouse if there are no minor children (Art. 10 § 4(c) Florida Constitution). If there are minor children, upon the death of the owner the homestead property such property passes by intestacy to the minor children with a life estate in the surviving spouse. If there are no minor children, then the property passes by will or intestacy to the surviving spouse in fee simple

D. Documentary Stamp Taxes

Unless excepted by law, Florida imposes excise taxes on deeds and other instruments conveying real property or any interest therein. (Florida Statutes §201.02). The documentary stamp tax due on deeds, instruments, documents, or other writings transferring or conveying realty or any interest therein is currently 70 cents on each \$100 or fraction thereof of the consideration paid or to be paid, except in Miami-Dade County where the rate of 60 cents on each \$100 applies. (Florida Administrative Code §12B-4.012). The definition of consideration includes, but is not limited to, the amount paid for the real property, the amount of the mortgage indebtedness and the amount of “any indebtedness discharged by a transfer of any interest in real property.” (Florida Administrative Code §12B-4.012)

For more information regarding Florida’s property law, please contact Thomas V. Eagan at teagan@steelhector.com or Michael A. Berke at michael.berke@steelhector.com.

XIV. GOVERNMENT AGENCY ASSISTANCE

A. Office of International Relations

The Office of International Relations (“OR”) offers leadership, coordination, and direction to Florida’s citizens and its international counterparts interested in Florida’s future internationally. Responsibilities such as the Consular and Diplomatic programs, Sister City / Sister State programs, and International Liaison enable every region of the state to share involvement in new international challenges. OR also serves as Florida’s international contact for its congressional delegation and federal agencies. OR is located at Florida Department of State, The Capitol, Tallahassee, FL 32399-0250, <http://oir.dos.state.fl.us/index.html>.

B. International Trade and Economic Development

The International Trade and Economic Development (“ICED”) program unit of Enterprise Florida was established July 1, 1996 with the approval of the State Legislature. Its mission is to conduct economic and trade development functions for the State of Florida and promote Florida as a competitive global business center. Its activities includes the economic development components of international trade, business recruitment/inward investment, urban/rural targeted recruitment, and expansion and retention. All programs are promoted to and coordinated with local and regional economic development organizations. ICED has offices in Brazil, Canada, Colombia, Germany, Israel, Japan, Korea, Mexico, Spain, Taiwan, United Kingdom, and Venezuela.

C. Back to Business Resources

The staff of Enterprise Florida, the state’s economic development entity, will facilitate arrangements among businesses that are ready to identify economic development organizations at the regional, county and community level who work in partnership with Enterprise Florida. To reach an Enterprise Florida recruitment team member at the division headquarters in Orlando, Florida, contact Marco Oliver at 407-316-4558 or moliveri@enterprise.state.fl.us.

The recruitment team provides an overview of Florida's many advantages and will assist with site selection, transportation and distribution, permits and licenses, utilities, demographic information workforce recruitment and training, regulatory policies and considerations, trade promotion incentives, banking and finance, taxes and fees, Florida's corporate community, quality of life, vendors and suppliers, education system, and other business assistance information.

D. Incentives and Grants

1. Qualified Target Industry Tax Refund. Qualified Target Industry Tax Refund incentives are available for the creation of high wage jobs in targeted value-added industries. Incentives include refunds on corporate, sales, ad valorem, intangible personal property, insurance premium tax and other state taxes.

2. Qualified Defense Contractor Tax Refund. The Qualified Defense Contractor Tax Refund provides for up to \$5000 per job created or saved in Florida through the conversion of defense jobs to civilian production.

3. Capital Investment Tax Credit. The Capital Investment Tax Credit is an annual credit against the Florida corporate income tax for a period of up to 20 years for eligible projects in high impact sectors.

4. Other Grants and Programs. Certain companies may negotiate other grants for growing major high impact facilities in Florida. There are also additional programs available for Quick Response Training Incentives, Incumbent Worker Training Programs, Transportation facility improvements along with a number of other rural and urban incentives.

For more information regarding government agency assistance matters, please contact Jorge Lopez at jlopez@steelhector.com or James Krog at jk1@steelhector.com.