

Lex Mundi

Guide to Doing Business in Hawaii

Submitted by: Case Bigelow & Lombardi

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DISCLAIMER

Please note: The information contained in this publication is for general reference only and discusses certain laws application to doing business in Hawaii as of July 2003. This publication should not be relied upon in any specific factual or legal situation, does not create an attorney-client relationship and does not cover all laws and regulations that may apply in all circumstances. You should seek independent professional advice from a lawyer authorized to practice in Hawaii before proceeding to invest or do business in Hawaii.

I. GEOGRAPHY

A. Geography, Location and Climate

Hawaii is an archipelago comprised of islands, atolls, shoals and reefs stretching over 1,523 miles in the north central Pacific Ocean. Hawaii is about 2,400 miles west-southwest of San Francisco, California. The majority of the state's land mass and population is found on seven of its eight main islands: Oahu, Hawaii, Maui, Molokai, Lanai, Kauai and Niihau. The eighth island, Kahoolawe is uninhabited. Offshore of these main islands are the Northwestern Hawaiian Islands: Kure Atoll, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, Pearl and Hermes, Midway and Niihoa. The State of Hawaii maintains jurisdiction over all islands except Midway which is administered by the United States Navy.

Extinct, dormant and active volcanoes dominate our landscape as evidenced by our tallest mountains Mauna Kea and Mauna Loa on the Island of Hawaii, world famous Diamond Head on Oahu, and Haleakala on the Island Maui. These volcanic mountains and ranges influenced by the climate, sedimentation and erosion over millions of years have resulted in our sweeping sea cliffs, waterfalls, plains, harbors, bays and beaches. The Island of Hawaii is also home to one of the world's most active volcano, Kilauea.

Hawaii's climate is very comfortable with an annual average temperature of 78 to 85 degrees Fahrenheit. Hawaii has two seasons: "summer" (between May and October) and "winter"(between November and April). During the summer the sun is directly overhead. The weather is warmer and drier with prevailing northeast trade winds. In winter, the sun is to the south and the trade winds are interrupted by other winds bringing intervals of clouds and rain.

B. Cultural/Ethnic Background

Hawaii is the "melting pot of the Pacific" where our dynamic people have learned to live, work and play together in harmony. Hawaii is diverse racially with no ethnic group in the majority. Caucasians, Asians and Native Hawaiians are the largest categories followed by African Americans, American Indians, Alaska Natives and others. In the 2000 census, 21 percent of the state's population considered themselves as multi-racial.

Hawaii's culture is as diverse as its people. Throughout the year, the various ethnic groups share and celebrate their unique heritage by staging festivals, parades and gatherings of food, song and dance. Other festivals feature the arts, films and language.

Hawaii is the home of the Honolulu Symphony, the Honolulu Youth Symphony, the Hawaii Opera Theater, other theatrical and literary guilds, hula halaus, ballet and dance groups. As Hawaii is the cross roads of the Pacific, musicians, shows and performing artists often include Hawaii in their Asia and Pacific tours. Local musicians are enjoyed by residents and visitors alike in our many clubs and venues.

Among the many attractions Hawaii has to offer are the Hawaii State Art Museum, Bishop Museum, Honolulu Botanical Gardens, Lyon Arboretum, Mission Homes Museum, The Contemporary Museum, the Honolulu Academy of Arts, Hanuama Bay Nature Center, Haleakala

National Park and Hawaii Volcanoes National Park, Pearl Harbor and the Arizona Memorial, Punchbowl National Cemetery of the Pacific, and Iolani Palace.

C. Government

When doing business in the State of Hawaii it is important to note that there are two tiers of Hawaiian government-- State and County. The State government is composed of the executive branch, the legislative and the judiciary. State government is highly centralized with the Governor and agencies overseeing functions of government often allocated to municipality in other states. The state legislature, the House of Representatives and Senate is in session each January through May. The state's judiciary is comprised of the district courts, circuit courts, land and tax appeals courts, intermediate court of appeals and a supreme court.

There are four counties: The City and County of Honolulu (Island of Oahu and most of the Northwestern Hawaiian Islands), Maui County (Islands of Maui, Molokai, Lanai and Kahoolawe), Kauai County (Island of Kauai) and Hawaii County (Island of Hawaii). Each county are separate entities with a mayor and county council.

D. Investment Climate

Although Hawaii's economy has traditionally been perceived as poor, our future shows promise. Contrary to prevalent beliefs and media characterizations about Hawaii's economy, Hawaii's economic performance has been steadily improving since the turn of the decade, even amidst recent jarring geopolitical events (i.e. 9/11 and Operation Iraqi Freedom). In fact, Hawaii's economy proved itself exceptionally resilient after 9/11, surpassing even the upward forecasting of Hawaii's major economic forecasters. Today, Hawaii outperforms the U.S. mainland's economy on a number of measures including inflation, employment, and real personal income growth. In addition, the most recent economic forecast by the Hawaii Economic Association predicts further growth for Hawaii's real income and job rates within the coming year.

In particular, Hawaii has recently been experiencing continued fixed investment growth. According to Paul Brewbaker, Chief Economist at the Bank of Hawaii, "All of the growth in Hawaii's economy is emanating from the investment sector, primarily from residential construction and investment."

Today, Hawaii is focusing on attracting outside business and investment. The State of Hawaii has been making strides toward encouraging foreign and domestic investment and business development in the islands. The state and its four comprising counties are working together to present appealing incentives for prospective businesses. Tax credits and exemptions, the Foreign Trade Zones and Enterprise Zones programs, and Hawaii's status as a U.S. designated Foreign Investment Regional Center are some of the main investment incentives that Hawaii has to offer. In addition, the state's Employment and Training Fund program promotes the long-term employability of Hawaii's people, making business-specific training, upgrade training, new occupational skills training, management skills training, and other similar activities available to both employers and individuals. With these incentives, Hawaii hopes to motivate increased investment in the islands.

E. Events That Have Made Hawaii's Headlines (2002-2003)

Perhaps the most profound news in Hawaii within the past year was the election and installation of Governor Linda Lingle, Hawaii's first Republican governor in 40 years, and its first female governor. In November 2002, Ms. Lingle defeated Lt. Governor Mazie Hirono for the governorship, ousting a Democratic regime that has sat seemingly invincibly in the governor's mansion since 1962, just 3 years after Hawaii gained statehood. Since then Hawaii has come to be known as a one-party state, with Democrats dominating seats at all levels of Hawaii's government. However, with a new Republican governor in office and a growing (albeit still minority) Republican assembly within the Legislature, there is reason indeed for recent talk of the 2002 election as ushering in "Hawaii's new era". Governor Lingle has ambitious reforms for Hawaii; among her primary objectives are diversifying and expanding the economy and improving public education. With an approval rating of nearly 75% (Advertiser, 2/10/03), Governor Lingle has garnered the backing of an impressive portion of Hawaii's citizenry. The public undoubtedly holds high hopes for the new administration – and the "new era" of Hawaii.

Another newsworthy story within the past year has been Hawaii's recovering economy. As noted above, Hawaii's economic situation shows promise, with local unemployment rates the lowest in years (at 3%), having fallen steadily from 6% since 1998. Since 9/11, unemployment has gone down almost 1.5%. Most notably, the tourism industry – Hawaii's biggest – continued its economic rebound throughout the year, returning almost completely to pre-9/11 levels, even though international arrivals remain low. According to the State of Hawaii Department of Business Economic Development and Tourism's latest (June 2003) Quarterly Statistical and Economic Report (QSER), 2003's first quarter showed a 0.5% increase in domestic and 4.2% increase in international arrivals over 2002's first quarter. Hotel occupancy was also up, from 70.8% to 74.6%. Construction and real estate have boomed, buoying other parts of the state's economy during the downturn, and remain strong. In the first quarter of 2003, construction jobs increased 9.0% and private building authorizations increased a whole 94.8%. Meanwhile, other symptomatic economic statistics also improved: bankruptcy filings decreased 23% statewide, wage and salary jobs rose 2.7%, and General Excise Tax collections increased 15%.

Furthermore, economic conditions are anticipated to progress further in the next year. In the same QSER report, the DBEDT projected additional growth in jobs (1.9%), real personal income (2.1% after inflation), and visitor counts (0.5%) and expenditures (3.1%). In 2004 similar advancements are predicted, as well.

II. BUSINESS ENTITIES

A. Administrative Agency and Forms

1. Administrative Agency. Corporations, partnerships, limited liability companies, limited liability partnerships, limited partnerships and all other Hawaii entities are required to register and file various reports with the Department of Commerce and Consumer Affairs (the "DCCA"), located at 1010 Richards Street, Honolulu, Hawaii 96813.

2. Forms. Forms for the creation of these business entities may be obtained from the DCCA's website at www.businessregistrations.com.

B. Corporations. The Hawaii Business Corporation Act (the "Act") controls the formation, operation, and dissolution of Hawaii corporations. As a general rule, the Act follows the Model Business Corporation Act. The Act can be found at Chapter 414 Hawaii Revised Statutes ("HRS").

1. Application Process. A Hawaii corporation is formed by filing Articles of Incorporation with the Director of the DCCA along with a \$100 filing fee. The Articles of Incorporation require the signature of at least one incorporator and must contain the name and address of the incorporator.

2. Organizational Documents. The Articles of Incorporation must include: the corporate name; the number of shares the corporation is authorized to issue; the street address of the corporation's initial registered office and the name of its initial registered agent at that office; and the name and address of each incorporator. The Articles of Incorporation may include any other information that is permissible under the Act. The initial board of directors of the corporation may be appointed in the Articles or elected later at an organizational meeting at the call of a majority of the incorporators.

3. Bylaws. The Bylaws contain detailed provisions for governance of the corporation including, but not limited to, meetings of shareholders, meetings of directors, election and authority of officers, and indemnification of officers and directors.

4. Share Capital. The board of directors may issue shares of stock for consideration consisting of tangible or intangible property of benefit to the corporation including cash, promissory notes, services performed, contracts for services to be performed and other securities of the corporation. Unless the Articles or Bylaws provide otherwise, a corporation may issue some or all of the shares of any or all classes or series without certificates.

5. Meetings of Shareholders. The Act provides for annual and special meetings of the shareholders. Shareholders may also act by unanimous written consent in lieu of a meeting. The corporation is required to give notice to the shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the date of the meeting. Notice of a special meeting of the shareholders must include a description of the purpose or purposes for which the meeting is called. A shareholder may waive the notice requirement either in writing or by participating at the meeting. A special meeting of the shareholders may be called by the board of directors or shareholders representing at least ten percent of all votes entitled to be cast on any issue proposed to be considered at the meeting.

6. Directors. The Act requires each corporation to maintain a board of directors, consisting of one or more individuals, unless there is a shareholder's agreement that eliminates the board of directors. Directors are elected to serve one year terms unless the corporation elects to utilize staggered terms. The directors may act by holding meetings or through unanimous written consent. Directors do not have to be notified of regular meetings. However, directors must be given at least two days' notice of special meetings unless otherwise provided in the Articles or the Bylaws.

7. Officers. A corporation has the officers designed in its Bylaws or by the board of directors. Officers must be natural persons.

8. Merger or Share Exchange. The Act provides for mergers and share exchanges which as a general rule must be recommended by the board of directors and approved by the shareholders. A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of these corporate actions.

9. Annual Corporate Report. Hawaii corporations must file a corporate report with the DCCA every year. These may be filed electronically through the website www.ehawaii.gov/annuals. Failure to file a corporate report will ultimately lead to administrative dissolution of the corporation. Such a dissolution will typically have adverse consequences under both state (loss of limited liability protection) and federal law (taxable liquidation).

C. Partnerships

1. General Partnership. A Hawaii partnership is governed by the Hawaii Partnership Act which can be found at Chapter 425 HRS. A partnership is defined as the association of two or more persons to carry on, as co-owners, a business for profit, whether or not the persons intend to form a partnership. A Registration Statement for a general partnership shall be filed with the Director of the DCCA within 30 days after the partnership is formed. All partners are jointly and severally liable for the debts and obligations of the partnership.

2. Limited Liability Partnership. Limited liability partnerships are governed by the Hawaii Partnership Act, Chapter 425 HRS. The partnership which is registered with the DCCA may become a limited liability partnership by filing a Statement of Qualification with the Director of the DCCA. An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership, and the partners are not personally liable.

3. Limited Partnership. Limited partnerships are governed by the Uniform Limited Partnership Law which can be found at Chapter 425D HRS. The Chapter will be replaced by a modified version of the 2001 Revised Uniform Limited Partnership Act on July 1, 2004. A limited partnership is a partnership formed by two or more persons, having as members one or more general partners and one or more limited partners. Limited partners are passive investors who are not bound by the obligations of the partnership and who are prohibited from participating in the management of the partnership. A limited partnership is formed by filing a Certificate of Limited Partnership with the Director of the DCCA.

4. Limited Liability Limited Partnership. Beginning July 1, 2004 with the consent of each general partner, the Certificate of Limited Partnership may be amended to state that the limited partnership is a limited liability limited partnership. An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort or otherwise, is solely the obligation of the limited partnership and the general partners are not personally liable.

D. Sole Proprietorship.

A sole proprietorship is a business owned and controlled by one person. A sole proprietorship may be formed without any expense or formality of organization. A sole proprietorship is not an entity distinct from the owner, but may be operated under a trade name. The owner is individually responsible for the obligations of the business.

E. Limited Liability Company

Limited liability companies (LLCs) are governed by the Hawaii Limited Liability Company Act which can be found at Chapter 428 HRS. An LLC combines the pass-through tax treatment of a partnership with the limited liability of a corporation. Organizing an LLC requires the filing of Articles of Organization with the DCCA. Owners of an LLC are referred to as members. Management of the LLC may be vested in either the members or in managers. The rights and obligations of the members should be set forth in an operating agreement. As a general rule, an operating agreement should at least provide for the following: allocations of profit and loss; distributions; management; liquidation; and the members' ability to transfer their individual interests in the LLC.

F. Joint Venture

Joint ventures are not a statutory form of organization in Hawaii. A joint venture, sometimes called a "Hui" in Hawaii, is legally a partnership and must be registered as such.

G. Nonprofit Corporations

Nonprofit corporations are governed by the Hawaii Nonprofit Corporation Act which can be found at Chapter 414D HRS. Articles of Incorporation must be filed with the DCCA to create a nonprofit corporation. The Articles of Incorporation must set forth the name of the nonprofit corporation, the name and address of the initial registered agent, the nonprofit corporation's principal address, the name and address of the incorporator and whether or not the nonprofit corporation will have members.

H. Branch Office

A branch office is a location other than the principal business office where a business operates. As a general rule, any form of Hawaii business entity can operate one or more branch offices.

III. TRADE REGULATIONS

A. State Considerations

1. Antitrust Laws. The Antitrust Provisions of Chapter 480 HRS operate in Hawaii like the Sherman and Clayton Acts and the Federal Trade Commission Act operate federally. It declares that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State, or in any section of the State to be illegal. Further, no person shall monopolize, or attempt to monopolize, or combine or conspire

with any other person to monopolize any part of trade or commerce in any commodity in any section of the State. The Hawaii antitrust law is construed in accordance with judicial interpretations of the similar federal antitrust statutes except that lawsuits by indirect purchasers are permitted. Only consumers or the State may bring actions for unfair or deceptive acts or practices. Any person may bring an action for unfair methods of competition.

2. Franchise Regulation. It is unlawful to offer or sell a franchise in Hawaii unless an offering circular prepared in accordance with Chapter 482E HRS has been represented to the prospective franchisee and filed with the Director of the DCCA at least seven days prior to the sale. There are certain exceptions, such as the sale of a motor vehicle franchise, which is separately regulated.

3. Consumer Protection Laws. Chapter 487 HRS creates an Office of Consumer Protection within the DCCA to coordinate the consumer protection activities of State and county governments and to cooperate with federal agencies. It has investigatory and enforcement powers.

Among the specific statutes which provide protection and recourse for consumers are the Unfair and Deceptive Practices Act, Chapter 481B HRS, which covers unsolicited goods, offers of prizes in connection with the sale, lease or rental of consumer products, refunds and exchanges, credit repair organizations and cybersquatting. Other chapters regulate Door-to-Door Sales (Chapter 481C), Going Out of Business Sales (Chapter 481D), Art Prints (Chapter 481F), Used Motor Vehicle Sales (Chapter 481J), Motor Vehicle Leases (Chapter 481L), Lease-Purchase Agreements for Personal Property (Chapter 481M), Service Contracts (Chapter 481X), and Gold and Silver Marks (Chapter 482D).

Additional consumer protection statutes include Credit Sales (Chapter 476-I), the Fair Credit Extension Act (Chapter 477E), Interest and Usury (Chapter 478), the Automobile Lemon Law (Chapter 481I), the Telemarketing Fraud Prevention Act (Chapter 481P), Measurement Standards (Chapter 486-79) and the Residential Landlord-Tenant Code (Chapter 421).

The regulation of the professions and vocations as described in Section XIB below is also an element of the consumer protection fabric in the State.

IV. TAXATION

A. State Taxation

1. Personal Income Tax. The tax rates for individuals range from 1.4% to a maximum 8.25% depending upon filing status and taxable income. The allowable standard deduction amounts vary according to filing status. The standard deduction amount for married filing a joint return or surviving spouse with dependent child is \$1,900; single is \$1,500; head of household is \$1,650; and married filing separately is \$950. Capital gains are taxed at a maximum 7.25%.

2. Corporate Income Tax. The tax rates for corporations are 4.4% if taxable income is not over \$25,000, 5.4% if over \$25,000 but not over \$100,000, and 6.4% if over

\$100,000 of taxable income. The tax imposed on capital gains is 4%. Deductions, in general, conform to the Internal Revenue Code.

3. General Excise and Use Tax. Hawaii does not have a sales tax; instead, Hawaii has the general excise tax which is assessed on all business activities measured by gross proceeds of sales or gross income. The tax rate is ½ of 1% on wholesaling and intermediary services, producing, sugar processing and pineapple canning; all other activities (retailing business and professional services, contracting, theatre, amusement, radio, interest, commissions, rentals) are taxed at 4%, except insurance commissions received by general agents, subagents and solicitors who are taxed at .15%. As of January 1, 2000, the wholesale tax treatment was expanded to more goods and services transactions. Qualifying transactions will be taxed at 3.5% in calendar year 2000, and will be reduced by 0.5% each January 1st until a 0.5% rate is fully phased-in on January 1, 2006. The licensing fee for general excise tax licenses and nonprofit organizations is a one-time fee of \$20.

Use tax is an excise tax levied on personal property that is imported or purchased from an unlicensed seller for use in the State. The tax is based upon the purchase price or value of the tangible personal property purchased or imported, whichever is applicable. The rates are ½ of 1% if for resale at retail and 4% if for use or consumption.

4. Estate and Transfer Tax. Every resident decedent is taxed on transfer of taxable estate equal to federal credit for estate death taxes allowed by IRC section 2011. Credit is allowed for death tax imposed by another state not qualified by reciprocal provision. For a nonresident decedent, the tax is based on the transfer of taxable estate located in Hawaii by use of ratio. The exemption afforded to a resident estate is equally applicable to a nonresident, with certain exceptions.

For generation-skipping transfers after June 30, 1994, a tax in an amount equal to the federal credit is imposed on every generation-skipping transfer of (1) property located in Hawaii and (2) property from a resident trust.

5. Property Tax. The counties and not the State, administer property taxes in Hawaii. The different counties are: City and County of Honolulu, County of Hawaii, County of Maui, and the County of Kauai. Properties are assessed at 100% of fee simple market value using the cost and market approaches to value. Real property taxes are calculated by multiplying assessed values less any exemptions by the appropriate tax rate. Once a year, on March 15, property owners receive an assessment notice. The notice lists the assessed value, exemptions, net taxable value and general land classification. The tax rate is different for each year, and varies for different classes of property and for land and buildings. The tax rates for the fiscal year of July 1, 2003 to June 30, 2004 for the different counties are as follows: the City and County of Honolulu varies from \$3.75 to \$ 10; the County of Hawaii varies from \$5.55 to \$9.85; the County of Maui varies from \$3.55 to \$8.30; and the County of Kauai varies from \$4.35 to \$8.55.

6. Conveyance Tax. A conveyance tax is imposed on all documents transferring ownership or interest in real property. The rate is 10¢ per \$100 of the actual and full consideration paid or to be paid. There is a minimum \$1 tax for each taxable transaction.

Documents of certain conveyances are exempted as provided by Hawaii Revised Statutes § 247-3.

7. Transient Accommodations Tax. A tax at the rate of 7.25% is payable on the gross rental or gross rental proceeds derived from furnishing transient accommodations which are premises customarily occupied for less than 180 consecutive days.

8. Other Taxes. Other taxes are levied against Public Service Companies, Public Utilities, Banks and Financial Institutions, Fuel, Liquor, Cigarettes and Tobacco, Vehicles and Motor Vehicle Rentals.

9. High Technology Business Investment Tax Credit. A nonrefundable high technology business investment tax credit of up to \$2,000,000 is available for each taxpayer that is subject to Hawaii income tax for an investment in a qualified high technology business (a "QHTB"). A credit is allowable for each year during a five-year period and declines from 35% to 10% from the date of the "investment" for investments made through the year 2005. The credit is capped at varying amounts (\$700,000 in the year the investment is made to \$200,000 in the last year). Ten percent (10%) of the credit claimed in the two preceding taxable years will be recaptured from the taxpayer if the QHTB ceases to qualify as a QHTB during the five-year period, otherwise the aggregate credit over the five-year period will equal 100% of the taxpayer's qualified investment.

Act 221, which establishes this credit and by which it is generally known, among other things, allows partnership investments the flexibility of allocating the high technology business investment tax credit among the partners without regard to the substantial economic effect tax rule of Section 704(b)(2) of the Internal Revenue Code.

V. LABOR AND EMPLOYMENT

A. State Considerations

1. Employment-At-Will. Hawaii 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 created exception to such rule such as where the termination violates public policy or where there are implied contracts created by employee manuals or other documents or by verbal assurances and promises in the employee's employment.

2. Employment Statutes. The Hawaii Legislature has enacted the following statutes which govern labor and employment in the State of Hawaii.

a. Discriminatory Practices. This statute prohibits employment discrimination on the basis of race, sex, sexual orientation, age, religion, color, ancestry, disability, marital status, or arrest and court record. The state discrimination statute is enforced by the Hawaii Civil Rights Commission. A charge of alleged discrimination under this statute must be filed with the HCRC within 180 days after the date of the alleged unlawful

discriminatory practice or last occurrence in a pattern of ongoing discriminatory practices occurred.

b. Whistleblower Protection Act. This law provides protection for an employee who 1) reports or is about to report to a public body a violation or a suspected violation of a federal or state law or rule; or 2) who is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body or a court action. An aggrieved employee may obtain injunctive relief and/or actual damages for a violation of this law. The statute of limitations for such an action is two years after the occurrence of the alleged violation of this law.

c. Employment Relations Act. This law provides the right to employees of self-organization and right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. The law governs labor disputes and is administered by the Hawaii Labor Relations Board.

d. Wage and Hour Law. The Hawaii Wage and Hour Law is the state counterpart of the federal Fair Labor Standards Act ("FSLA") which establish minimum wages and overtime standards. Most employers are covered under the FSLA, which requires employers to pay the more beneficial wage or overtime requirements between state and federal law. Presently, the state minimum wage is higher than the federal minimum wage. Like the FSLA, the state law requires payment of overtime at one-and-one half times the employee's basic rate for all non-exempt employees.

e. Payment of Wages and Other Compensation. This statute provides for the timely payment of wages and other compensation to employees. The statute provides for civil remedies and penalties for the failure of an employee to provide timely payment of wages. It also provides for payment of an aggrieved employee's attorneys' fees and costs incurred in collecting unpaid wages.

f. Child Labor Law. This statute regulates the employment of children under eighteen years of age. No minor under the age of fourteen is permitted to work except in specified circumstances. Minors between the age of fourteen and sixteen may not work more than six consecutive days nor more than forty hours in any one week with certain exceptions. Minors between the age of sixteen and eighteen may be employed during periods when the minor is not legally required to be in school unless excused by school authorities. All employers employing minors must obtain certificates of employment and age from the director of labor and industrial relations.

g. Workers' Compensation Law. The Hawaii workers' compensation law provides compensation and medical care to employees who suffer an injury or disease "arising out of and in the course of employment". Unless rebutted by substantial contrary evidence, it is presumed that 1) the employee's claim is for a covered work injury; 2) sufficient notice of the injury was given to the employer; 3) the injury was not caused by the intoxication of the injured employee; and 4) the injury was not caused by the willful intention of the injured employee to injure her or himself. Recovery under Hawaii's workers' compensation law is an employee's exclusive remedy for work-related injuries or diseases.

h. Hawaii Employment Security Law. Hawaii's unemployment insurance law is broadly written and liberally interpreted to provide temporary income protection for individuals who lose their jobs through no fault of their own. The law is administered by the Unemployment Insurance Division of the Hawaii Department of Labor and Industrial Relations. The law is designed to provide benefits for a limited time while unemployed individuals seek work.

i. Prepaid Health Care Act. The Hawaii Prepaid Health Care Act requires private sector employers to provide minimum prepaid health care coverage to eligible employees. Employees are eligible for coverage if they work for an employer twenty (20) or more hours per week for four (4) consecutive weeks and earn a monthly wage of at least 86.67 times Hawaii's minimum hourly wages. Employees must be covered at the earliest possible time permitted by the health care contractor after meeting eligibility requirements. The employer must notify eligible employees of their rights under the Act, provide advance notice of any changes and provide the employer's health care contractor's name, plan number, group number, effective date of coverage, and employee's cost share for funding health insurance premiums.

j. Temporary Disability Insurance. Hawaii's Temporary Disability Insurance Law ("TDI") requires employers to provide temporary disability insurance coverage for their employees. TDI insures employees against total wage loss in the event of disability due to a non-occupational sickness or accident. The purpose of the law is to establish a statutory sick leave program or "safety net." TDI lessens the economic consequences of an employee's inability to work due to a non-occupational disability.

VI. ENVIRONMENTAL LAW

A. Federal Considerations

1. Resource Conservation and Recovery Act ("RCRA"): 42 U.S.C. " 6901, et seq. RCRA's primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. The administration of RCRA has been delegated to a number of states by statute (including to South Carolina through the Hazardous Waste Management Act) and, therefore, the states regulate most aspects of hazardous waste management within their borders.

By statute, the disposal of hazardous waste is prohibited except in accordance with a permit. Section 7003 of RCRA authorizes the Federal Environmental Protection Agency (the "EPA") 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.

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

2. The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"): 42 U.S.C. " 9601, et seq. CERCLA, or Superfund as it is commonly called, was enacted in 1980 to provide for the clean-up of abandoned disposal sites. It also provides a vehicle for the EPA to recover for damage to natural resources caused by hazardous substance releases. 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 releases, actual or threatened, of hazardous substances. Liability is strict, joint and several, with little or no regard for causation. By statute, there are four categories of persons liable for clean-up costs:

- "Owners or operators" of the contaminated facility. A "facility" is virtually any place in which a hazardous substance is found. 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.
- "Owners or operators" of the facility at the time of release of the hazardous substances. 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.
- Transporters of hazardous substances.

There are limited defenses under Superfund 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. This latter "third party" defense does not apply if the damage from hazardous substances was caused by an employee or agent of the PRP, or a third party acting in connection with a contract with the PRP.

CERCLA was amended through enactment of Public law 107-118, titled the Small Business Relief and Brownfield Revitalization Act (the "Brownfields Amendments"). A Brownfields site is property where expansion, redevelopment or reuse is complicated by the fact that there is a presence or potential presence of hazardous materials. Government funds are available to investigate, clean up and encourage private purchase. Among other things, the Brownfields amendments provide a limitation on liability for persons who qualify as bona fide prospective purchasers.

3. The Clean Air Act ("CAA"): 42 U.S.C. " 7401, et seq. 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. 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.

Under the Act, air emissions are regulated through various controls. EPA is expected to issue standards for 150 to 200 industrial source categories of air pollutants by the year 2000. The

sources that will be affected range in size from large petrochemical complexes to neighborhood dry cleaners.

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

4. The Clean Water Act ("CWA"): 33 U.S.C. " 1251, et seq. The CWA regulates the discharge of pollutants into all navigable waters. The CWA prohibits the discharge of any pollutant into the water of the U.S. unless a permit has been issued. Permits are issued by either the state under an approved state program or by the EPA if the state program has not been approved. South Carolina's program has been approved. The permit limits are based upon EPA's effluent limitation regulations and are incorporated into a National Pollutant Discharge Elimination System ("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. In 1990, EPA promulgated new rules regarding permits for storm water discharges under the NPDES permit program.

B. State Considerations

The State Department of Health ("DOH") is the primary environmental regulatory agency in the state. Within the DOH are various programs (branches, offices, and sections) dedicated to specific environmental issues. The DOH also promulgates the Hawaii Administrative Rules ("HAR") to implement, administer and enforce applicable statutes. DOH rules are found in Title 11 of the HAR and are described in more detail in Section 2 below. The administrative rules may be found on the web at: <http://www.state.hi.us/doh/rules>

1. Organization of Hawai'i's Regulatory and Enforcement Agencies. The Environmental Health Administration of the DOH oversees the following divisions and offices: Hazard Evaluation and Emergency Response Office, Environmental Planning Office, Environmental Management Division, Environmental Health Service Division and Environmental Resources Office.

a. The Hazard Evaluation and Emergency Response Office ("HEER") provides risk assessments, responds to the release of hazardous substances and oversees the cleanup of contaminated sites. Office activities include evaluating health effects of air and water pollutants when no standards exist.

b. The Environmental Planning Office develops strategic plans, supports land use reviews, helps to get new programs underway such as the polluted runoff control program, and is involved in coordinating watershed management projects.

c. The Environmental Management Division ("EMD") is responsible for implementing and maintaining statewide programs for controlling air and water pollution, for

assuring safe drinking water, and for the proper management of solid and hazardous waste. The division also regulates the state's wastewater.

i. The Clean Air Branch is responsible for the implementation of a statewide air pollution control program through services which include engineering analysis and permitting, monitoring and investigations, and enforcement of the federal and state air pollution control laws and regulations. The Clean Air Branch also monitors and conducts inspections of schools for compliance with the Asbestos Hazard Emergency Response Act (AHERA).

ii. Clean Water Branch. The Clean Water Branch administers and enforces statewide water pollution laws and rules through permitting of point sources, compliance monitoring, inspections, investigations of complaints, and ambient water quality monitoring.

iii. Safe Drinking Water Branch. The Safe Drinking Water Branch administers federal and state safe drinking water regulations to the approximately 155 public water systems in the State of Hawai`i to assure that the water served by these systems meets state and federal standards. Any system which services 25 or more people a minimum of 60 days per year or has at least 15 service connections is subject to these standards and regulations.

iv. Solid and Hazardous Waste Branch

(a) The Solid Waste Management Program. The Office of Solid Waste Management has program responsibilities which cover three major areas: Municipal Solid Waste Management Facility Permitting and Enforcement; Special Waste Management; and Alternative Waste Management.

(b) The Hazardous Waste Management Program conducts routine inspections of local facilities that generate, store, transport, and treat hazardous wastes. Initiation of formal enforcement action against noncompliant facilities is also a charge of the Hawai`i program.

(c) The Underground Storage Tank Management (UST) Program implements the federal UST regulations in Hawai`i while the State's capabilities in this subject area are being established. The federal UST regulations require specific technical design and operational standards for USTs, financial assurance, and corrective actions in response to tank releases.

(d) The Wastewater Branch implements the construction of county wastewater facilities with federal and state financing by low interest loans from the State Revolving Fund.

(e) Statewide Wastewater Operator Training Center

d. The Environmental Health Service Division is responsible for controlling noise and radiation, and improving indoor air quality. The division is also responsible

for lead abatement, sanitation, and vector control (rats, mosquitoes, and other public health threats).

i. The Food and Drug Branch ensures that food, drugs, cosmetics, medical devices and related consumer products are safe, effective (in the case of drugs and medical devices), and properly labeled; and that poisonous household substances are packaged in child resistant containers when required by rule. The branch also provides education and consultation for food handlers.

ii. The Noise, Radiation and Indoor Air Quality Branch is responsible for statewide programs of community noise and radiation control through the provision of services which include inspectional, educational, consultative and enforcement activities. The Branch also works to ensure that air conditioning and ventilation rules are enforced and that the public is protected from exposure to lead and asbestos.

iii. The Sanitation Branch is responsible for the implementation and enforcement of the statutes, rules, and policies relating to environmental sanitation. The branch regulates food and service establishments, public swimming pools, housing, milk, recreational trailer camps, tattoo artists, licensing for sanitarians, mortuaries, cemeteries and embalmers.

iv. The Vector Control Branch prevents or suppresses outbreaks of vector-borne diseases and vector nuisance by maintaining vector populations below disease-transmitting or nuisance-causing levels.

e. The Environmental Resources Office handles many of the grants and administrative responsibilities of the Environmental Health Administration, primarily seeing to it that the administration's reorganization is fully implemented, that new positions are described and established and maximum funding is obtained for programs from the EPA.

In addition, the four counties, by their respective Departments of Public Works, are responsible for recycling and solid waste disposal. Wastewater matters are governed by the Department of Public Works in the counties of Maui, Kauai and Hawaii, and by the Department of Wastewater Management in the City and County of Honolulu.

2. Hawai`i's Environmental Statutes and Rules

a. Hawai`i Environmental Response Law: Chapter 128D HRS.

Chapter 128D is patterned after CERCLA and its long term goals are the same. There are, however, several significant differences. Notably, Hawai`i's law includes oil and trichloropropane in the definition of "hazardous substances." Other areas where Chapter 128D mirrors or diverges from federal law include the following:

Hawai`i law mirrors CERCLA in terms of liability and contribution. There is a state revolving fund, similar to the Superfund, to be used for response actions. The Director of the DOH is authorized to act, consistent with the state contingency plan (described below), to remove or arrange for the removal of, and provide for remedial action relating to a hazardous substance, pollutant, or contaminant at any time, or take any other response measure

consistent with the state contingency plan which the Director deems necessary. Costs payable from the fund may be recovered by the attorney general from the liable person or persons. Liability mirrors federal liability under CERCLA §9607(a)).

There is no provision for a private cause of action under Chapter 128D that is the equivalent of CERCLA private recovery of costs under §9607(a). There is, however, a provision for citizen's suits (128D-21) that is similar to that provided in RCRA §6972. Any person may commence a civil action against any person, including the state or any other governmental agency who is alleged to be in violation of any rule, regulation or requirement under this chapter. The plaintiff must give 60 days notice to the Director, DOH, and the alleged violator, prior to filing suit. The State, if not a party, may intervene as a matter of right.

Like CERCLA, at §9603, there is a duty to report obligation, at §128D-3. A person in charge of a facility shall immediately notify the DOH as soon as that person has any knowledge of any release of hazardous substances in a quantity exceeding the standards in CERCLA §9603.

There is an innocent landowner exception under §128D-6(d). §128D-6(g) provides that no indemnification or other agreement is effective to transfer liability; however, nothing in the statute bars the parties from negotiating indemnification agreements as between themselves. Pursuant to §128D-18, liability is joint and several, although as between liable parties, there is the right of apportionment and contribution

Like the federal Brownfields legislation, Hawai'i has made it a goal to encourage prospective developers, lenders and purchasers to voluntarily clean up contaminated property through a Voluntary Response Program. Under §128D-31 – 41, in order to qualify for an exemption from liability, a prospective purchaser may enter into a voluntary response agreement with the DOH prior to becoming an owner. Requesting parties conduct investigation and response activities with oversight from the DOH and HEER. When the work is completed to the DOH's satisfaction, the requesting party will receive a "letter of completion" which will carry with it an exemption from liability as provided in Chapter 128D.

b. State Contingency Plan: Hawaii Administrative Rules ("HAR") 11-451. HAR 11-451 establishes the state contingency plan ("Plan") to implement, administer and enforce Chapter 128D HRS. The Plan identifies the hazardous substances, pollutant or contaminants which are subject to the Plan's requirements and procedures, designates reportable quantities, establishes notification requirements, describes the process the DOH may follow to solicit the cooperation of potentially responsible parties, establishes the methods for collecting data, describes the criteria for listing and prioritizing sites for response actions, describes factors which may be considered by the DOH in determining the type of response action to be taken, and describes those response actions which the DOH may implement or require.

c. Hawaii Pesticides Law: HRS 149A and HAR 4-66. The statute and administrative rules provide for the licensing, labeling and permit requirements to distribute, sell or transport pesticides in the state. The law is administered by the State Department of Agriculture.

d. State Water Code: HRS 174C and HAR 13-167 through 171. The State Water Code is administered by the Commission on Water Resource Management, under the State Department of Land and Natural Resources. The Commission plans and coordinates programs for development, conservation, protection, control and regulation of water resources. It's administrative rules establish well construction, pump installation and in-stream flow standards, and designate and regulate water management areas. A Hawaii Water Plan is formulated to serve as a long range guide for water resource management. Water quality issues are administered by the DOH.

e. Coastal Zone Management : HRS 205A. Among the land use objectives of this chapter are to protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems; reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution; promote the protection, use, and development of marine and coastal resources to assure their sustainability; adopt water quality standards; and regulate point and non-point sources of pollution to protect, and where feasible, restore, the recreational value of coastal waters. This chapter mandates that the various county planning commissions make findings that proposed development projects are consistent with the policies and objectives of protecting and preserving historic and pre-historic resources before a special management area use permit can be issued.

f. Environmental Response Tax: HRS 243-3.5. There is imposed, pursuant to the environmental response revolving fund procedures set forth in §128D-2, a state environmental response tax of 5 cents on each barrel or fractional part of a barrel of petroleum product sold by a distributor to any retail dealer or end user, other than a refiner, of petroleum product. The tax on each barrel shall be used pursuant to section 128D-2 to address concerns relating to drinking water. The tax imposed by this subsection is paid by the distributor of the petroleum product.

g. Solid Waste: HRS 340A. County agencies are primarily responsible for the collection and disposal of solid waste. The state, under this chapter may grant permits for disposal activities, including landfills. See HRS 342G, H, and J.

h. Safe Drinking Water: HRS 340E and HAR 11-19 through 21, 23, and 25. The safe drinking water statute and administrative rules establish primary drinking water regulations, set maximum contaminant levels, test water catchment systems, inspect water supply facilities, and plan for the provision of drinking water under emergency conditions. They also establish a state underground injection control (UIC) program in order to protect the quality of the state's underground sources of drinking water from pollution by subsurface disposal of fluids. Conditions are specified to govern the location, construction and operation of injection wells so that injected fluids do not migrate and pollute underground sources of drinking water. The statute and rules establish minimum standards and counties are not precluded from establishing more stringent standards.

i. Environmental Quality Control: HRS 341 and HAR 11-201. This statute creates an office of environmental quality control headed by a director of environmental quality control, placed within the DOH for administrative purposes. The office performs its duties under Chapter 343 (Environmental Impact Statements, see below) and serves the governor in an advisory capacity on all matters relating to environmental quality control. The statute also

creates an advisory environmental council and, within the University of Hawai`i, an ecology or environmental center.

j. Air Pollution Control: HRS 342B and HAR 11-59 and 60.1. “Air pollutant” has the same meaning as in the Federal Clean Air Act. The DOH, by statute and administrative rules, establishes ambient air quality standards and permit programs, and controls open burning, fugitive dust and visible emissions, including motor vehicle emissions. Covered source permit applications are subject to EPA oversight and the permits are federally enforceable. Chapter 342B provides for civil and criminal penalties for violations.

k. Ozone Layer Protection: HRS 342C. This statute regulates the sale and use of chlorofluorocarbon and halon.

l. Water Pollution: HRS 342D and HAR 11-54 and 55. The statute and administrative rules are intended to prevent, control and abate water pollution. Chapter 342D also provides that the Director of the DOH may control all management practices for domestic sewage, sewage sludge and recycled water. HAR 11-54 establishes water quality standards. HAR 11-55 contains the regulations for NPDES permits.

m. Nonpoint Source Pollution Management and Control; HRS 342E. This statute establishes a program to administer, enforce and carry out all laws, rules and programs relating to nonpoint source pollution in the state, in coordination with the Clean Water Branch of the DOH. Nonpoint source pollution is pollution that does not originate from a point source, which is pollution from a discernable, confined and discrete conveyance.

n. Noise Pollution: HRS 342F and HAR 11-46. Permits are required to construct, modify, and/or operate an excessive noise source. The statute and administrative rules establish permit criteria and fees and establish the maximum permissible sound levels for various zoning districts.

o. Integrated Solid Waste Management: HRS 342G and HAR 11-58.1. Each of the four counties must submit to the DOH a solid waste management plan adopted by the county, for review and approval by the DOH. The procedures for a new “bottle bill” passed in 2002 are described, with some terms to take effect in 2004 and 2005.

p. Solid Waste Pollution: HRS 342H and HAR 11-58.1. Among other things, the statute and administrative rules establish standards for siting, operation and closure of landfills. Permits are required to transport petroleum contaminated soil, for solid waste management systems, and to operate, construct, modify, expand, or close a municipal solid waste landfill unit. HAR 11-58.1 establishes permit requirements for facilities disposing, recycling, reclaiming and/or transferring waste. The design criteria for landfills set forth in HAR 11-58.1 are based on 40 CFR 258, Subtitle D.

q. Special Wastes Recycling: HRS 342I. This statute describes the permitted procedures for recycling lead acid batteries and used motor vehicle tires.

r. Hazardous Waste: HRS 342J and HAR 11-260 through 266, 268, 270, 271, 279 and 280. The state promotes hazardous waste minimization, reduction and

recycling, exchange and treatment as the preferred means of managing hazardous waste, with disposal to be used only as a last resort. The statute and rules establish standards for generators, transporters, treatment, storage or disposal facilities, and persons who deal with hazardous waste fuel. Whenever the Director of the DOH determines there has been a release of hazardous waste into the environment, the Director may require the facility to take corrective action or may commence a civil action for appropriate relief, including injunctive relief. Permits are required for any persons who deal with used oil or used oil fuel, regardless of whether it is a hazardous waste. There exist extensive rules governing the identification and listing of hazardous waste, the permit program, and land disposal restrictions.

s. Underground Storage Tanks (USTs): HRS 342L, and HAR 11-281. Permits for USTs are issued by the Director of the DOH for a period of 5 years. Violations of the rules or permit conditions are grounds for administrative penalties of not more than \$25,000 for each tank for each day of violation, and a civil action for injunctive relief. Evidence of financial responsibility is required, which may be established by insurance, guaranty, surety bond, letter of credit, and qualification as self-insurer or other method satisfactory to the DOH. The administrative rules establish the standards applicable to USTs and tank systems, and the procedures for investigating a suspected release. An owner or operator is liable to the DOH for any costs incurred by the DOH in undertaking a response or enforcement action with respect to a release, to the same standard of liability as under section 311 of the Federal Water Pollution Control Act. No indemnification, hold harmless or similar agreement is effective to transfer liability from the owner or operator of a UST to any other person.

t. Asbestos and Lead: HRS 342P and HAR 11-501 through 504. This statute governs asbestos emission and lead hazard control, and provides for inspection of any building or place to investigate an actual or suspected source, use or presence of asbestos or lead to ascertain compliance with this chapter. Violators are subject to civil, administrative and criminal penalties.

u. Environmental Impact Statements (“EIS”): HRS Chapter 343 and HAR 11-200. Hawaii’s EIS law is patterned after the National Environmental Policy Act (NEPA) requirements. The law requires the preparation of environmental assessments (EA) and environmental impact statements (EIS) for many development projects. If one or more of eight specific triggers is present, then an EA or an EIS must be prepared and circulated to the public for review. Even though certain minor or routine activities can trigger the review law, they can be declared exempt from environmental review by the state or county agency that has oversight.

In 2000, the state legislature amended §343-2 to require disclosure of the effects, including significant adverse effects, on the cultural practices of the community and state. EISs will have to address the impacts their projects will have on “cultural beliefs, practices, and resources of native Hawaiians as well as other ethnic groups.”

The Office of Environmental Quality Control (OEQC) implements Chapter 343. Twice a month the OEQC publishes The Environmental Notice which informs the public of all the projects being proposed in the state that are subject to public review and comment.

v. State Environmental Policy: HRS 344. It is the policy of the state to conserve natural resources and enhance the quality of life. Various guidelines in support of that policy are identified.

VII. INTELLECTUAL PROPERTY

A. State Considerations

1. Trademarks, Service Marks, and Trade Names. Hawaii protects trademarks, service marks and trade names both under common law and under the state's registration statute, Chapter 482 HRS. In general, the common law confers exclusive rights to use a trademark, service mark or trade name on the person who is first to adopt it in connection with goods and/or services. If the trademark is descriptive or otherwise inherently non-distinctive, it is protected only if it has acquired "secondary meaning."

A trademark, service mark or trade name may be registered in Hawaii by filing an application for registration with the Director of the DCCA. The application must disclose the goods or services in which the trademark or service mark is used or the nature of the business for which the trade name is being used, and the manner in which the trademark or service mark is used in connection with the goods or services, the class in which the goods or services falls, and the date of first use of the trademark or service mark anywhere in the State of Hawaii. Applicants must state that they are the originator or assignee of the trademark service mark or trade name. If the trademark or service mark consists of words with stylized lettering or a design, a specimen must be provided with the application. The application forms may be obtained from the DCCA's website at www.hawaii.gov/dcca.

A certificate of registration will generally be issued if the trademark, service mark, or trade name set forth in the application is not substantially identical to a trademark, service mark, trade name, corporate name or the name of any other type of entity already registered with the DCCA subject to the following limitation.

A trademark or service mark shall be denied registration if it (1) comprises immoral, deceptive or scandalous matter; (2) comprises matter which may disparage or falsely suggest a connection with persons, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; (3) comprises the flag, coat of arms or other insignia of the United States, any state or municipality, or any foreign nation; (4) comprises the names, signature or portrait of a living individual, except with his written consent; (5) consists of a mark which (a) when used on or in connection with the goods and services is merely descriptive or deceptively misdescriptive (b) when used on or in connection with the goods or services is primarily geographically descriptive or deceptively misdescriptive; or (6) is primarily a surname.

Registration of a trademark, service mark or trade name is effective for five years from the date of registration. A registration may be renewed for successive five year periods by filing a renewal application within six months prior to the expiration of the current term. Registration of a trade name is effective for one year from the date of registration and may be renewed for successive ten year periods by filing a renewal application prior to the expiration of a term.

It is a deceptive trade practice under Chapter 481A HRS to pass off goods or services as those of another or to cause likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services.

Trademark counterfeiting is a class C felony under Section 708-875 HRS.

2. Trade Secrets Law. Hawaii has adopted the Uniform Trade Secrets Act, Chapter 482B HRS. The Act provides for injunctive relief to restrain actual or threatened misappropriation of trade secrets. The Act also provides for awards of compensatory damages in most cases of misappropriation. Compensatory damages may include both the actual loss caused by misappropriation and any unjust enrichment caused by misappropriation that is not taken into account in computing actual loss, or a combination thereof. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not to exceed twice the compensatory damages. An action for misappropriation must be brought within three years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence.

The Act defines "trade secret" as information, including a formula, pattern, compilation, program device, method, technique or process that: (1) derives independent 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 or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

VIII. DISPUTE RESOLUTION

A. State Court System

1. Lower Courts

a. District Courts. District Courts are courts of limited jurisdiction, having exclusive jurisdiction over traffic infractions, summary possession, ejectment proceedings (landlord-tenant) without regard to the amount of the claim, non-jury-trial civil cases where the relief sought is under \$10,000, and small claims cases where the amount in controversy is under \$3,500. The District Courts also have jurisdiction over: 1) civil cases where the debt, amount, damages, or value of the property claimed does not exceed \$20,000, 2) civil cases where the remedy sought is specific performance valued under \$20,000, 3) criminal offenses where punishment is by fine or by imprisonment not exceeding one year, 4) cases arising from violations of a county ordinance, and 5) petitions where restraining orders for relief from and for injunctions against harassment are involved.

b. Circuit Courts. Circuit Courts are courts of general jurisdiction, having jurisdiction to hold jury trials in civil and criminal cases. The Circuit Courts also have exclusive jurisdiction in probate, guardianship, and criminal felony cases, as well as civil cases where the contested amount exceeds \$20,000. Circuit Courts share concurrent jurisdiction with District Courts in civil non-jury cases in which the amounts in controversy are between \$10,000 and \$20,000. The Circuit Courts also hear cases regarding mechanic's and materialman's liens and misdemeanor violations transferred from the District Courts for jury trial. There are four judicial circuits in the State of Hawaii. The Island of Oahu and other islands not in any other

circuit constitute the First Judicial Circuit, the Islands of Maui, Molokai, Lanai, Kahoolawe, and Molokini constitute the Second Judicial Circuit, the Island of Hawaii constitutes the Third Judicial Circuit, and the Islands of Kauai and Niihau constitute the Fifth Judicial Circuit. The Fourth Judicial Circuit was done away with when it merged into the Third Judicial Circuit. Circuit Court judges are appointed to 10-year terms by the Governor from a list provided by the Judicial Selection Commission, subject to approval by the state Senate.

c. Family Courts. The Family Courts endeavor to resolve matters involving families and children in a fair, speedy, economical, and accessible forum. Family Courts hear cases involving 1) children, 2) domestic relations, 3) domestic violence, and 4) other family law related cases. Cases involving children include delinquency, status offenses, abuse and neglect, termination of parental rights, adoption, guardianships, and detention. Domestic relations cases include divorce, child support, paternity, uniform child custody jurisdiction cases, and miscellaneous custody matters. Domestic violence cases include requests for civil restraining orders involving family members, persons charged with the offense of abuse of family and household members, and felony charges limited to offenses against household members. The other kinds of cases the Family Court hears include civil commitments, guardianships of adults, and adult abuse cases.

2. State Land & Tax Appeal Courts. As a practical matter, one judge is responsible for both Land and Tax Appeal Court matters. The Administrative Judge of the Circuit Court of the First Circuit, subject to the direction of the Chief Justice, assigns all Land and Tax Appeal Court cases to this judge in the Circuit Court of the First Circuit.

a. Land Court. The Land Court has exclusive original jurisdiction over all applications under the Torrens Act for the registration of title to land, easements or rights in land held and possessed in fee simple within the State, with power to hear and determine all questions arising upon the applications. It also has jurisdiction over other questions brought under the Land Court Registration law (Hawaii Revised Statutes Chapter 501). The Land Court does not have jurisdiction over lands which are not registered under the Torrens Act which are called regular system properties. The Land Court Registrar retains custody and control of all papers and documents filed under the Land Court Registration law.

b. Tax Appeal Court. The Tax Appeal Court hears appeals regarding real property taxation directly from assessments or from the Boards of Review. It is a court of record and decides all questions of fact and law including constitutional questions involving real property taxation without a jury.

3. Appellate Courts

a. Intermediate Court of Appeals. The Intermediate Court of Appeals is the second highest court in the state. It has concurrent jurisdiction with the Supreme Court and hears matters assigned to it by the Chief Justice of the Hawaii Supreme Court or the Chief Justice's designee. The Intermediate Court of Appeals has the authority to reverse, remand, modify, or affirm decisions from all trial courts. Its decisions are reviewable by the Supreme Court. One chief judge and three associate judges comprise the Intermediate Court of Appeals. The judges rule on cases in panels of three. The Governor appoints members of the Intermediate

Court of Appeals to an initial 10-year term from a list submitted by the Judicial Selection Commission, subject to confirmation by the state Senate.

b. Supreme Court. The Supreme Court of Hawaii is the highest court in the state. Its decisions are binding on all other Hawaii courts. The Supreme Court primarily reviews decisions of the trial courts in which appeals have been taken. The cases that are reviewed by appeal have been initiated in either a trial court or an agency. Appeals are generally decided on the basis of the written record, but in some cases, the court may hear oral arguments as well. The Court takes no evidence, except in original proceedings. The Supreme Court has original jurisdiction to 1) answer questions of law reserved to it by the trial courts or certified to it by a federal court, 2) entertain civil cases submitted on agreed statements of facts, and 3) decide questions arising in proceedings for extraordinary relief in the nature of writs of mandamus, prohibition, and habeas corpus. There are five Supreme Court Justices. Members of the Supreme Court are appointed to an initial 10-year term by the Governor from a list submitted by the Judicial Selection Commission, subject to confirmation by the state Senate. Each Justice may thereafter be retained by the Judicial Selection Commission. All five Justices participate in the discussion of each case. The Supreme Court is also responsible for the formulation of court rules, licensing and discipline of attorneys, and determining judicial fitness.

IX. FINANCIAL AND SECURITIES MATTERS

A. Tax Exempt Financing. The Director of Finance of the State of Hawaii is empowered to issue special purpose revenue bonds which are exempt from state taxation for particular purposes, including gas and electric public utilities, nonprofit healthcare facilities, and industrial, manufacturing and processing enterprises. Other governmental agencies which can issue tax exempt bonds include the High Technology Development Corporation and the Aloha Tower Development Corporation. The counties and their boards of water supply may also issue tax exempt bonds.

B. Commercial Banking. Hawaii has both national banks and state-chartered financial institutions that provide business with a full range of commercial banking opportunities. A large percentage of the commercial banking business is held by locally based banks. Other than the Philippine National Bank, which maintains an agency in Honolulu, there are currently no foreign banks with offices in Hawaii, although several of the largest commercial banks offer international banking services.

Under Chapter 412 HRS, the Division of Financial Institutions within the DCCA is the primary regulator of Hawaii financial institutions. The Division is headed by the Commissioner of Financial Institutions, an appointed position.

C. Securities

1. General. The Uniform Securities Act (Modified) regulates the offer and sale of securities in Hawaii. The Act also regulates and requires the registration of dealers, investment advisors, salespersons and investment adviser representatives.

2. Registration. Securities offered for sale or sold within Hawaii must either be registered with the Hawaii Commissioner of Securities (the "Commissioner") or exempt from

such registration. Securities for which a registration statement has been filed with the Securities and Exchange Commission under the Securities Act of 1933 in connection with the offering of securities are exempt from registration pursuant to Section 485-4(14). Issuers of securities which are federal covered securities under Section 18(b) of the Securities Act of 1933 are generally required to file a notice and consent to service of process and pay a filing fee pursuant to Section 485-4.5 HRS and the rules adopted by the Commissioner.

Securities may be registered by qualification by filing an application for registration with the Commissioner pursuant to Section 485-10 HRS. The application for registration must contain the information specified in the statute and rules. The specified information is similar to the information required in a federal registration statement. The application must be accompanied by a consent to service of process and filing fee.

Certain securities, such as bonds secured by a first mortgage on agricultural lands, may be registered by notification pursuant to Section 485-9 HRSm which provides for filing of a short form statement with the Commissioner containing the information specified in Section 485-9 HRS(b).

3. Registration Exemptions. Section 485-6 exempts several types of transactions from the registration requirements.

Section 485-6(19) exempts offers and sales under SEC Rule 506 and 505. Rule 504 offerings are not exempt and must qualify under one of the other listed exemptions.

Section 485-6(9) HRS exempts offerings made to less than 25 offerees, wherever located, within a 12-month period, if all buyers represent that they are purchasing for investment (rather than a present view to resale), no commissions are paid, and no general advertising or solicitation occurs (the "25-offeree exemption"). No filing is required to qualify for the exemption, and there are no specified disclosure requirements. Nor are there any requirements as to sophistication of the offerees. The 25-offeree exemption is usually the best exemption for small offerings in conjunction with SEC Rule 504.

Section 485-6(10) HRS exempts the offer and sale of preorganization subscriptions for securities if no commissions are paid, the number of subscribers does not exceed 25, no commissions are paid, and no general advertising or solicitation occurs (the "25-purchaser exemption"). This exemption only applies for companies to be formed, i.e., the offer and sale of stock to the initial stockholders of a corporation or the initial partners of a limited partnership.

If any commission or other remuneration is to be paid, either directly or indirectly, in connection with the solicitation of investors, the 25-offeree exemption and the 25-purchaser exemption will not apply.

If the 25-purchaser exemption and 25-offeree exemption would not apply, the issuer may apply for an exemption under Hawaii's version of Rule 505. Hawaii does not have a counterpart to Rule 504. The application process involves the preparation of an short application based on the form provided by the State. The application form requires the issuer to disclose the nature of the issuer's business, the anticipated use of the proceeds, the name of any

broker-dealer retained to represent the issuer in the transaction, and other information. The issuer is not required to submit its disclosure memorandum with the application, but the Commissioner may, and often does, require submission of the document for review. A copy of the SEC Form D must be filed with the application if requested by the Commissioner.

Under the Hawaii rules, the amount of the expenses incurred in connection with the offering must be reasonable and in any event may not exceed 15% of the amount raised. These expenses generally include broker's commissions, fees payable to the principals or their affiliates upon closing, legal, accounting and printing costs.

Section 485-6(15) exempts "all transactions not involving a public offering within the meaning of section 4(2) of the Securities Act of 1933." The federal courts have interpreted this language (the so-called "Section 4(2) exemption") to include offerings in which (i) all of the offerees are wealthy and sophisticated or are represented by a qualified representative, (ii) all of the offerees have reasonable access to all material information regarding the investment or are provided with a disclosure memorandum setting forth such information, (iii) no general advertising or solicitation is made.

Section 485-6(16) exempts transactions involving sales of securities to accredited investors. The exemption is based on the Model Accredited Investor Exemption. To qualify for the exemption, the issuer must file a notice with the Commissioner and pay a filing fee. Blind pools, developmental companies and issuers covered by certain "bad-boy" restrictions are not eligible to use the accredited investor exemption.

Section 485-6(18) HRS exempts offerings made to employees pursuant to SEC Rule 701.

4. Broker-Dealer and Investment Adviser Registration. To transact business in Hawaii as a broker-dealer, investment adviser, salesperson or investment adviser representative, a person (other than federally covered advisers) must be registered with the Commissioner. Federally covered advisers are subject to certain notice filing requirements. Hawaii participates in the Central Registration Depository system.

5. Anti-Fraud Provisions. The anti-fraud provision of the Securities Act, Section 485-25 HRS, makes it unlawful for any person to (i) employ any device, scheme, or artifice to defraud; (ii) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (iii) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

X. REAL ESTATE

A. Ownership. As a general rule, all recognized legal entities such as natural persons, corporations, trusts, limited liability companies, and partnerships can hold title.

1. Individuals. Any individual may own real estate in Hawaii, including aliens, with the exception that only citizens who have resided in Hawaii for five years are eligible to obtain residential leases on public lands.

2. Corporations. Foreign or domestic corporations may hold title to real estate.

3. Partnerships. Foreign or domestic partnerships may own real estate. Limited partnerships, limited liability partnerships and limited liability limited partnerships also may own real estate.

4. Limited Liability Companies. Foreign or domestic limited liability companies may own real estate.

5. Trusts. Trusts may own real estate in the names of the Trustees.

B. Concurrent Ownership

1. Tenancy in Common. Tenants in common do not enjoy the right of survivorship. Instead, the interest of deceased tenants in common passes to their heirs. Tenancy in common agreements may be used in Hawaii to set out the rights and liabilities of the co-tenants.

Conveyances of any interest in land made to two or more persons are construed as being to tenants in common in equal shares (unless otherwise stated), not in joint tenancy or as tenants by the entirety, unless it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy or by the entirety. Section 509-1 HRS.

2. Joint Tenancy. An express declaration of joint tenancy is required in order to be enforceable. Typically, a joint tenancy is created by a conveyance to two or more persons with the words "as joint tenants." Persons who hold property in joint tenancy enjoy rights of survivorship. This means that if one of the joint tenants dies, remaining joint tenants automatically become owners of the decedent's share in equal proportions.

3. Tenancy by the Entireties. Tenancy by the entireties is recognized in Hawaii and an express declaration of tenancy by the entirety is required in order to be enforceable. This method of holding title applies only to spouses or to reciprocal beneficiaries. Tenants by the entirety have the right of survivorship and the property cannot be reached by the creditors of only one of the parties.

C. Spousal Rights. Hawaii is not a community property state, although it was from 1945 to 1949. Community property established during that period is governed by Chapter 510 HRS to the extent it has not been divested.

1. Rights Upon Death. Dower and curtesy rights in real property have been extinguished.

Hawaii will apply the Uniform Probate Code, Chapter 560 HRS to determine the share of a spouse or reciprocal beneficiary if a property owner dies without a will. Regardless of the provision of a will, a spouse or a reciprocal beneficiary has a right of election to take an elective

share of the estate which is a percentage determined by the length of the marriage or relationship which ranges from 3% for a length of one year to 50% for a length of 15 or more years.

2. Death of a Partner. The death of a general partner will cause the dissolution and liquidation of a partnership unless the partnership provides otherwise. The death of a limited partner does not cause the dissolution and liquidation of a limited partnership unless the limited partnership agreement provides otherwise.

D. Purchase and Sale Transactions. Hawaii law requires that contracts for the sale or transfer of an interest in land must be in writing and signed by the party to be charged therewith to be enforceable. Section 656-1 HRS.

1. Purchase Agreements. Many real estate brokers prepare and furnish Hawaii Association of Realtors pre-printed or computer generated standard forms for use in residential transactions. Purchasers should review these agreements with counsel prior to execution. A purchase agreement should include all of the terms of the transaction including without limitation the price, payment terms, closing date, contingencies, description of the property, obligations to be assumed, if any, personal property to be included and excluded, warranties to be given at closing, prorations and escrow arrangements.

2. Conveyance Tax. A conveyance tax is levied under Chapter 247 HRS on all transfers or conveyances of realty or any interest therein by way of deeds, leases or subleases (for more than five years), assignments of lease, contracts for sale or any other document, subject to a narrow list of exceptions. The rate is 10 cents per \$100 of the actual and full consideration (excluding personal property). The tax is imposed on the seller or lessor but is sometimes assumed by the buyer or lessee in a purchase or lease agreement.

3. Proration of Real Property Taxes. At closing, the real property taxes will be prorated between the buyer and seller taking into account any arrearages or advance payments. The real property tax year runs from July 1 to June 30 and payments are due in two installments on August 20th and February 20th.

E. Closing and Costs of Real Estate Transfer. Closing of the transaction will generally be governed by the purchase agreement.

1. Documents. While there is no statutory form of deed, lease or mortgage in Hawaii, there are specific requirements for recordable documents in Chapters 501 and 502 HRS. In order to be recorded, a document must be acknowledged, must contain the address of the grantee, and leave the top three and one-half inches of space on the first page blank for the recording information.

2. Effect of Failure to Record. If a deed, or a lease for a term of more than one year, or a mortgage is not recorded, it is void as against any subsequent purchaser, lessee or mortgage, in good faith and for a valuable consideration, not having actual notice of the conveyance of the real estate, or interest granted therein, whose document is first duly recorded.

3. Escrow Agreement. Escrow agreements are not required for real estate transfers in Hawaii, although most transactions are closed through licensed escrow companies.

4. Conveyance Tax Certificate. Any instrument of conveyance presented for recordation is required to be accompanied by a Conveyance Tax Certificate, together with the conveyance tax due, or by a form for Exemption From Conveyance Tax.

F. Foreclosure. A mortgage can be foreclosed in Hawaii either by action in the Circuit Court or by power of sale if contained in the mortgage.

Traditionally, foreclosure by power of sale was not used in Hawaii since it was nearly impossible to obtain title insurance on the property thereafter. A new procedure enacted as to new mortgages executed after July 1, 1999 should make practical the use of power of sale foreclosures.

Foreclosures by civil action are heard by a judge and not by a jury. All prior and subsequent mortgage creditors must be joined. Mortgage creditors are entitled to payment according to the priority of their liens. The mortgagor, or any subsequent mortgagee, may defend the action for foreclosure and may show any matter in legal or equitable avoidance of the mortgage.

The new power of sale process is very precise and is governed by Part II of Chapter 667 HRS. Specific forms of written notices to the borrower, mortgagor and any guarantor and the public are required. The property is sold by auction in a public sale. After the sale, the foreclosing mortgage signs and records an affidavit giving all the particulars of the foreclosure process.

G. Land Contracts. Real property may be purchased in Hawaii under a land contract, called an Agreement of Sale. The use of an Agreement of Sale is usually the result of the unavailability of financing other than seller financing. Title is not transferred under an Agreement of Sale and a separate conveyance document is delivered once the payment obligations are satisfied. The conveyance document is sometimes held in escrow to facilitate the closing of the conveyance portion of the transaction. Interest received under an Agreement of Sale is subject to the Hawaii general excise tax.

H. Easements. A purchaser of real estate is said to have notice of an easement if the easement appears in the record chain of title, or, with respect to an easement appurtenant, if it would be noticed by inspection of the premises.

The property benefited by the easement is called the "dominate estate," while the property burdened is called the "servient estate." Under Hawaii law, the owner of the dominant estate is entitled to any use of the easement that is reasonably necessary for full enjoyment of the dominant estate.

Owners of an easement are allowed to make repairs so that the easement is reasonably usable. They are not allowed to make material alterations in the easement's character that place a greater burden on the servient estate. The owner of the easement is required to keep it in repair and may enter onto the servient estate as necessary to do so.

Absent an agreement to the contrary, the owner of the servient estate may use the burdened property for any purpose that does not unreasonably interfere with or obstruct the use of the easement by the owner of the dominant estate. An easement cannot be lost by mere non-use, but can be lost by abandonment.

I. Land Use and Zoning. The State Land Use Commission, a nine-member appointed body, oversees the classification of lands into urban, rural, agricultural and conservation districts. Various uses of the lands are permitted and/or prohibited within each land use district. Amendments to district boundaries involving land areas greater than fifty acres are processed by the Land Use Commission. Amendments to district boundaries involving areas of fifteen acres or fewer (other than with respect to conservation districts) are processed by county land use authorities.

County Zoning Ordinances further define the uses which are permitted or prohibited within the land use districts other than conservation districts, which are governed by the State.

Department of Land and Natural Resources. Certain areas are designated as Special Design Districts with additional regulations.

J. Leases

1. Residential. Leases on dwelling units are governed by the Residential Landlord-Tenant Code, Chapter 521 HRS. It places certain limitations on rental agreements and practices, specifies certain duties of the landlord and obligations of the tenant, requires certain disclosures, regulates security deposits, and specifies the remedies of the parties.

Much of the residential property in Hawaii has been held by a limited number of large landlords who issued ground leases for residential development. In 1967 a statute was adopted to force the involuntary sale of residential leaseholds, which after review by the U.S. Supreme Court, has led to the conversion of much of the residential ground leasehold property to fee simple ownership.

Discrimination in real property transactions is prohibited.

2. Commercial. Commercial leases are far less regulated than residential leases although there are some restrictions on certain covenants and methods of rental renegotiation.

XI. MISCELLANEOUS

A. Requirements for Qualification to Do Business. There are various ways to organize a business in Hawaii. They include sole proprietorships, general or limited partnerships, limited liability partnerships, corporations and limited liability companies. Except for sole proprietorships, these entities whether created in Hawaii or elsewhere are required to register with the DCCA. Forms for the creation of or registration of these business entities may be obtained from the DCCA's website at www.businessregistrations.com. Many professions and occupations are also required to be licensed by the DCCA, whether conducted by a sole proprietor or by another form of business entity.

The following activities do not constitute transacting business in Hawaii.

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors, shareholders, members, managers or partners or carrying on other activities concerning internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the entity's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning of real or personal property that does not produce income;
- (10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; and
- (11) Transacting business in interstate commerce.

A person or entity wanting to do business in Hawaii is also required to register with the Department of Taxation if it is responsible for reporting general excise or use tax or withholding for Hawaii employees.

B. Licensing and Regulatory Requirements. Licenses are required for a large number of occupations including the following:

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| Acupuncture Practitioners | Cable Television Systems |
| Alarm Businesses | Cemetery and Funeral Trusts |
| Motor Vehicle Industry | Chiropractic |
| Motor Vehicle Repairs | Collection Agencies |
| Motor Vehicle Rental Industry | Contractors |
| Barbering, Beauty Culture | Debt Adjusting |
| Boxing Contests | Unaccredited Degree Granting Institutions |
| No Rules Combat or Similar Contests | Dental Hygienists |

Dentistry
Dietitians
Dental Service Organizations
Electricians and Plumbers
Electrologists
Elevator Mechanics
Escrow Depositories
Hearing Aid Dealers and Fitters
Health Care Professionals
Marriage and Family Therapists
Massage
Medicine and Surgery
Mortgage Brokers and Solicitors
Naturopathy
Notaries Public
Nurses
Nurse Aides
Nursing Home Administrators
Occupational Therapy Practice
Opticians, Dispensing
Optometry

Osteopathy
Pest Control Operators
Pharmacists and Pharmacy
Physical Therapy Practice
Pilotage
Private Investigators and Guards
Podiatrists
Professional Engineers, Architects,
Surveyors and Landscape Architects
Psychologists
Public Accountancy
Radiologic Technology
Real Estate Appraisers
Real Estate Brokers and Salespersons
Solicitation of Funds from the Public
Social Workers
Speech Pathologists and Audiologists
Travel Agencies
Activity Providers and Activity Desks
Undertakers, Embalmers, Funeral Directors
Veterinary Medicine

The main licensing agency for the State is the DCCA.

The Hawaii Supreme Court governs the practice of law by its rules.

The counties may license certain other activities, including for example, auctions, outdoor advertising, pawnbrokers, hotels and bonding houses, peddlers, second hand dealers and scrap dealers.

Various industries are also regulated by state agencies including financial institutions, public utilities, time sharing and insurance.

C. Applicability of State Usury Laws. With respect to any transaction other than (1) a consumer credit transaction, (2) a home business loan or (3) a credit card agreement, it is lawful to stipulate by written contract for any rate of interest not otherwise prohibited by law. A consumer credit transaction or a home business loan is limited to 12% per year except for loans from regulated financial institutions, who can charge 24% per year. A credit card agreement is limited to 18% per year. If a greater rate of interest than permitted is contracted for with respect to a consumer credit transaction, a home business loan or a credit card agreement, the contract is not void but only the principal can be recovered and the debtor can recover costs. The receipt of interest at a greater rate than is permitted by law is subject to a fine of not more than \$250 or imprisonment for not more than one year or both.

D. Notice of Business Activities. Aside from the registration of various entities noted in Section XI. A. above and the obtaining of licenses for various professions, occupations and industries noted in Section XI. B. above, there is no notice requirement for business activities in Hawaii.

E. Business Name Registration Requirements. A trade name or the name of a corporation, partnership or limited liability company that is not substantially identical to any prior registered trade name or business entity name may be registered or reserved by application to the Director of the DCCA. A trade name registration is effective for five years and can be renewed for additional periods of five years by filing a renewal application within six months prior to the expiration of the current term. The name of a proposed business entity that is reserved is protected for a period of 120 days.