Lex Mundi

Guide to Doing Business in Illinois

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I. GEOGRAPHY

A. Geography, Location and Climate:

Illinois, the fourth largest state in the nation, has a land area of approximately 57,918 square miles. Illinois' territory includes 750 square miles of inland water and the 1,575 square miles of Lake Michigan that is under the state's jurisdiction. The largest city in Illinois is Chicago, and the state capital is Springfield. The geographic center of Illinois is Chestnut. The state has a mean elevation of 600 feet, and is comprised almost entirely of Central Lowland flatlands. Illinois is bordered by six states; Wisconsin, Michigan, Indiana, Kentucky, Missouri and Iowa. The Mississippi River forms the western boundary line of the state.

Illinois has an average precipitation rate of thirty-seven inches per year, with the southwestern part of the state receiving the most precipitation. The average temperatures in January range from less than twenty-four Fahrenheit degrees in the northwestern part of the state to more than thirty-four degrees in the southern areas of the state. The average temperatures in July range from seventy-five degrees in the northeast to seventy-nine degrees in the south, the hottest area in the state. Daytime highs range from eighty-four degrees in Chicago to ninety degrees in East St. Louis.

B. Cultural/Ethnic Background:

The first Europeans to explore the region, arriving in 1673, were the French, Jacques Marquette and Louis Joliet. Cahokia, the first permanent settlement, was established by French settlers in 1699 near present day East St. Louis. In 1763, at the end of the French and Indian Wars, Great Britain acquired the area. Illinois was involved in the Revolutionary War and in Indian Wars by the time the 19th century began. On December 3, 1818, Illinois became the twenty-first state to join the United States. Soon thereafter, a period of great migration began in the Illinois region due to the 1825 opening of the Erie Canal. The United States' 16th president, Abraham Lincoln, moved to Illinois in 1830, was licensed to practice law in 1837, and was elected President of the United States in 1860. Following the Civil War, a wave of immigrants arrived in Chicago. In the late 19th century, the state was the site of two major labor battles, the Haymarket Riot in 1886 and the Pullman Strike in 1894. These bitter disputes between labor and management came during a period of unrest among the state's factory workers, miners and railway workers.

The twentieth century was one of change in Illinois as well. In 1900, Illinois was one of the top three manufacturing states in the nation. The twenties brought both development and strife to the state. During this decade, Illinois built a paved highway

system and the Illinois Waterway, which connected Lake Michigan to the Mississippi River. However, the rise of prohibition spurred Chicago's infamy for illegal alcohol smuggling and gang wars. The following decade's Depression was hard on Illinois farmers, who suffered through a huge decline in farm prices and a long drought. The second half of the century was marked by a slowing of the population increase statewide. The farming communities were particularly hard-hit. During the 1950s some farm areas lost between twenty and thirty percent of their citizens. Industry declined as well, but in the latter part of the century new incentives were offered for businesses, and Illinois saw an increase in business and technology.

The 2000 census ranked Illinois' population fifth in the nation, with 12,419,293 people, reflecting a population forty-nine percent male and fifty-one percent female. Seventy-three percent of the citizens of Illinois are white. African Americans make up fifteen percent while Hispanic/Latinos and Asians make up twelve percent and three percent, respectively. People with mixed racial backgrounds represent two percent of the population. Other races comprise the remaining six percent of the state's population.

C. Investment Climate:

At an estimated $445 billion, Illinois' gross national state product was ranked fourth among the states in 1999. Furthermore, Illinois is home to thirty-nine of the nation's largest companies on the Fortune 500 list. In recent years, Illinois has worked hard to continue to develop its investment and business opportunities despite a weakened economy.

One way the Illinois' governor has tried to enliven the state economy has been through the implementation of the Illinois FIRST program. Illinois FIRST is a five-year, $12 billion initiative to help the state acquire investments and business opportunities. There are two key elements to the Illinois FIRST program. The first element is the EDGE (Economic Development for Growing Economy) credit, which is a job-creation tax credit. The second element is the Prime Sites program. This program provides money earmarked to assist companies with capital, site preparation, and construction costs. A prime example of the Illinois FIRST program at work can be seen in Ford's commitment to build a $400 million North American automotive supplier manufacturing campus on the Southeast side of Chicago. Lulled by the state's $100.9 million incentive package that includes infrastructure improvements funded by Illinois FIRST, the Ford site will create 1000 new jobs for Illinois residents over a ten year period.

In addition to Illinois FIRST, the state has funded a $1.9 billion program, "VentureTECH," for infrastructure improvements intended to bring high-tech growth to the state. In addition, the state has committed $20 million over a five-year period to market Illinois' high tech assets. Illinois has not been regarded as a key state in the development of technology industries, but is striving to move into the forefront with these new programs. The state plans to build on the foundation of its ranking of fifth in the nation with regards to the number of engineers and scientists residing and working in a state. Chicago has the third largest number of high-tech workers in the nation's cities, boasting 288,000 such employees.

Chicago is home to a number of large exchanges that contribute to the global economy. The Chicago Board of Trade is the world's oldest derivatives exchange. It was established in 1848, and over the years has expanded from only dealing in agricultural instruments to include financial contracts, futures contracts, and futures options in the Dow Jones Industrial Average. The Chicago Mercantile Exchange, an international marketplace for global risk management, provides a twenty-four hour electronic trading system in futures and options. The Mercantile Exchange has four major product areas: interest rates, stock indexes, foreign currencies and agricultural commodities. In late 2000 it became the first United States financial exchange to de-mutualize by converting its membership interest into common stock shares that trade separately from exchange trading privileges. The Chicago Stock Exchange is heralded as the most technologically advanced exchange in the United States, and is also the country's fastest-growing exchange. It is the only exchange in the country that actively trades top NASDAQ issues under exchange trading rules.

Other investment opportunities in the state mirror the state's rural and urban resources. Illinois' corn farmers have benefited from recent environmental laws requiring the use of ethanol in gasoline. Ethanol, a corn derivative, is good news for corn farmers who have withstood a ten-year low in corn prices. New ethanol plants are in consideration in Illinois, with some farmers discussing forming ethanol plant cooperatives. In Chicago, Illinois' largest urban setting, commercial real estate is a booming industry, due in part to the city's diverse tenant base. New construction in the West Loop area of the city is growing, and the same area also enjoys the highest rents and is the strongest leasing area in the city. The East Loop has recently seen the biggest jump in rent prices in the city.

II. BUSINESS ENTITIES

A. Corporations

1. Contact Information for Illinois Department of Commerce and Corporation Commission:

Illinois Department of Commerce

620 East Adams Street	100 West Randolph St., Suite 3-400
Springfield, IL 62701	Chicago, IL 60601
(217) 782-7500	(312) 814-2828

Secretary of State/Business Services

501 S. Second St.	69 W. Washington, Suite 1240
Room 328 Howlett Building	Chicago, IL 60602
Springfield, IL 62756	(312) 793-3380
(217) 782-6961	

2. Application Process for Incorporation:

Registration as a corporation in Illinois requires Articles of Incorporation (charter papers) to be filed with the Secretary of State indicating the purpose of the corporation. The corporation is also required to file annual reports with the Secretary of State. If the name of the business will include the word “Corporation”, “Company”, “Limited”, “Incorporated”, or an abbreviation of once of such word.

3. Procedures Concerning Charter Papers:

The incorporators must sign duplicate originals of the charter papers with their names and addresses stated beneath or opposite their respective signatures. Notarization is not necessary. The duplicate originals may be mailed or delivered to the Department of Business Services office in Springfield or Chicago.

4. Laws Governing Corporations in Illinois:

The Business Corporation Act of 1983 as amended by the legislature and as interpreted by Illinois State courts contains the rules governing corporations in Illinois. The Act governs the formation and operation of a closed corporation, the purposes and powers of a corporation, and the duties and responsibilities of officers, agents, and directors. The Act also governs the formation of bylaws, and amendments to bylaws and articles of incorporation (charter papers).

5. Laws Concerning Incorporation:

Under Illinois law, one or more incorporators may form a corporation. An individual over the age of 18 or a corporation may be an incorporator. Any action taken by an incorporator need not be preceded by a meeting of all the incorporators if written consent is provided by all the incorporators. Once the certificate of incorporation has been issued the existence of the corporation begins. It is conclusive evidence against everyone except the state, that all the conditions have been met to form a corporation under Illinois law.

6. Corporate Mergers:

Under Illinois law, two or more corporations can merge to form a new corporation by adopting a plan of merger that sets forth the name of the new corporation and any changes to the consolidated articles of incorporation. Also, the articles of incorporation may be amended to carry out a plan of reorganization. The law requires that the articles of reorganization contain a statement of its approval by an affirmative majority vote of the board of directors and their signatures signifying their adoption of the plan. The articles of merger or consolidation must be filed with the Recorder’s office in the county that the new corporation’s registered office will be located.

One or more domestic corporations may also merge with one or more foreign corporations. The corporation must sign an agreement that allows it to be served with process in Illinois and make the Secretary of State the irrevocable agent to

accept service of process. This is only necessary if the surviving corporation will be governed by any law other than Illinois, but will continue to do business in Illinois.

B. Partnerships

1. Defined:

a. General Partnership ("GP"):

Under Illinois law, a GP is defined as the association of two or more persons to carry on as co-owners a business for profit. The sharing of profits and joint tenancy do not automatically create a partnership, but the receipt of a share of profits where the person has a shared interest in the property creates a rebuttable presumption of partnership. However, if the profits were received as a debt, wages, rent, annuity to widow or widower, or interest from a loan or payment for the sale of goods, then a partnership is not presumed to exist.

b. Limited Partnership ("LP"):

All partnerships are GP's unless they are formed by two or more persons and have one or more general partners and one or more limited partners. In order to form an LP, a certificate of LP must be executed and filed in the office of the Secretary of State. The certificate must indicate: (1) the name of the LP; (2) the purpose of the LP; (3) the address of the office and registered agent; (4) the name and address of the general partner; (5) the address where records such as a partner list, tax filings & partnership agreements are kept; (6) a brief statement of the partner's distribution rights; and (7) the latest date the LP is to dissolve.

An LP is formed once the certificate of limited partnership is filed. A Federal Employer Identification Number (FEIN) must also be obtained.

2. Advantages of an LP over a GP:

In many states, an LP creates more advantages to the potential partners than a GP; Illinois is not an exception. In Illinois, a limited partner is not personally liable for damages arising in tort or contract due to actions of the partnership unless previously agreed to in the partnership agreement or to the extent he participates in the control of the business thereby leading third parties to believe he is a general partner. Also, failure to observe usual company formalities or requirements relating to the exercise of company power is not a reason to impose personal liability on the members or managers of a limited partnership.

C. Sole Proprietorship

1. Explanation of Sole Proprietorship:

The sole proprietorship is the simplest way of doing business. Unfortunately, because the owner does not have a distinct existence separate from the corporation, the liability is unlimited. On the other hand, the absence of other shareholders allows for easy management. Like all corporations, a sole proprietor would potentially pay taxes at two levels, once at the corporate level, and also at the shareholder level if any dividends were distributed.

D. Joint Ventures

1. Explanation of Joint Ventures:

There are no substantive differences in Illinois between a partnership and a joint venture. Under Illinois law, a joint venture is a partnership that exists for a specific enterprise or transaction, while a partnership exists to engage in certain type of business.

E. Not-for-profit Corporations and Cooperatives:

1. Procedure for Forming a Not-for-profit Corporation:

The incorporator of a non-profit corporation may be a corporation (for profit or not-for-profit) domestic or foreign, or a person over the age of 18. The requirements for the articles of incorporation are the same as those for a not-for-profit corporation. Illinois requires the majority of the directors or incorporators to meet to adopt the bylaws and elect officers once the certificate of incorporation has been issued.

2. Laws Applicable to Non-Profit Corporations:

Under Illinois law, not-for-profit organizations may be organized exactly or similarly to pursue one or more of over twenty purposes including charitable, educational, religious and scientific purposes. Any person who exercises corporate powers without the authority to do so is jointly and severally liable for all debts and liabilities arising from the actions taken.

Membership certificates and dividends are prohibited and none of the cash or assets may be distributed to the directors or officers. The not-for-profit may have "members" who may be divided into classes, such as voting or non-voting. These members can contribute cash or property that can be evidenced in writing, but the writing cannot bear any similarity to a stock certificate.

The rules applicable to the duties and powers of a not-for-profit's directors, officers, and agents are generally the same as a for-profit-corporation. The laws concerning mergers are the same, regardless if the entity is for profit or not.

F. Other Entities

1. Branch Office:

A branch office includes any location established by a savings bank where deposits are received, loans are made, or checks are paid. In Illinois, places where records of the above transactions are kept are not considered branch offices, nor are automatic teller machines. Any corporate fiduciary may establish branch offices at any location. If the company is a trust company it must obtain approval from the state. Banks and savings and loans associations only have to give notice of the intent to establish a branch office.

2. Independent Distributors:

In Illinois, there are several classifications for independent distributors, such as motor fuel distributors or bottle and soft drink distributors. Independent distributors are exempt from the requirements of the Franchise Disclosure Act (see F.3 infra) in Illinois. An independent distributor/supplier relationship does not automatically create a franchiser/franchisee relationship.

3. Licensing and Franchising:

In Illinois, most businesses are required to be registered or licensed by the Department of Revenue. Also, the Department of Professional Regulation requires licenses for certain professions.

The Franchise Disclosure Act requires the franchiser to register with the Illinois Attorney General and provide the franchisee complete information regarding their franchiser-franchisee relationship, details of contract, the prior business experience of the franchiser and other information relevant to the franchise offered for sale.

4. Sales Representatives:

Under Illinois law, a sales representative is any person who contracts with a principal to solicit orders and who is compensated, in whole or part, by commission. It does not include one who places orders or purchases for his own account or for resale, or a person who qualifies as an employee of the principal under the Wage Payment and Collection Act (see B (1)(c) infra). Corporations may also serve as sales representatives. Illinois law requires that 13 days after the termination of a contract between a sales representative and the principal all commissions be paid. If the amount is not paid, then the principal can be liable for a sum of up to three times the amount owed.

III. TRADE REGULATIONS

A. Federal Antitrust Law

The antitrust laws of the United States are primarily reflected in five federal statutes: The Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, and the Hart-Scott-Rodino Act.

1. The Sherman Antitrust Act of 1890

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

2. The Clayton Act of 1914

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

3. The Robinson-Patman Act of 1936

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

4. The Federal Trade Commission ("FTC") Act

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

5. The Hart-Scott-Rodino Antitrust Improvements Act of 1976.

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

6. Enforcement of Antitrust Acts:

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

B. Regulation of International Trade and Investment

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

1. Restrictions on Foreign Investment:

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

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

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

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

2. Reporting Requirements for Foreign Direct Investment:

All foreign investments in a U.S. business enterprise which result in a foreign person owning a 10% or more voting interest (or the equivalent) in that enterprise are required to be reported to the Bureau of Economic Analysis, a part of the U.S. department of Commerce. Pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108) and the regulations promulgated thereunder (15 C.F.R. 806), such reports must be made within 45 days after the investment transaction. Depending on the site of the entity involved, quarterly, annual and quintennial reports may be required thereafter.

3. The International Investment and Trade in Services Survey Act:

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

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

A "foreign person" is any person who resides outside of the U.S. or is subject to the jurisdiction of a country other than the U.S. "Direct investment" is defined as the ownership or control, directly or indirectly, by one person of 10% or more of the voting interests in any incorporated U.S. business enterprise or an equivalent interest in an unincorporated business enterprise. Because the IISA further defines "business enterprise" to include any ownership in real estate, any

foreign investor's direct or indirect ownership of U.S. real estate constitutes a "direct investment" and falls within the requirement that reports be filed with the BEA.

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

4. The Agricultural Foreign Investment Disclosure Act of 1978:

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

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

5. Export Controls:

In general, U.S. export controls are more stringent and restrict a wider array of items than the export controls of most other countries. (See the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401-2420 and the regulations promulgated thereunder, 15 C.F.R. 730-799). Except for exports to U.S. territories and possessions, and in most instances, Canada, all exports from the U.S. are subject to an export "license." An export license is an authorization

which permits the exporting of particular goods or technical information. Two basic types of licenses exist, general licenses and individual validated licenses.

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

In contrast, individual validated licenses are required for those items for which the U.S. specifically controls the export for reasons of national security, foreign policy or short supply. If the export of a specific product to a specific destination is subject to an individual validated license requirement, it is necessary to apply for and obtain such a license from the Office of Export Administration, an office within the U.S. Department of Commerce, prior to the export. Certain commodities cannot be exported to any country without an individual validated license, while certain other commodities may require a validated license only for shipment to specified countries.

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

6. Foreign Trade Zones:

Foreign trade zones are areas in or adjacent to ports of entry which are treated as outside the customs territory of the U.S. In order to expedite and encourage trade, goods admitted into a foreign trade zone are generally not subject to the customs laws of the U.S. until the goods are ready to be imported into the U.S. or exported. These foreign trade zones are isolated, enclosed and policed areas which contain facilities for the handling, storing, manufacturing, exhibiting and reshipment of merchandise. Foreign trade zones are created pursuant to the Foreign Trade Zones Act (19 U.S.C. 81a-u) and are operated as public utilities under the supervision of the Foreign Trade Zones Board. Under the Foreign Trade Zones Act, the Board is authorized to grant to public or private corporations the privilege of establishing a zone. Regulations covering the establishment and operation of foreign trade zones are issued by the Foreign Trade Zones Board, while U.S. Customs Service regulations cover the customs requirements applicable to the entry of goods into and the removal of goods from these zones.

8. Anti-Dumping Law:

The U.S. anti-dumping law (19 U.S.C. 1671-1677) provides that if a foreign manufacturer sells goods in the U.S. at less than fair value and such sales cause or threaten material injury to a U.S. industry, or materially retard the establishment of a U.S. industry, an additional duty in an amount equal to the “dumping margin”

is to be imposed upon the imports of that product from the foreign country where such goods originated. Under the statute, sales are deemed to be made at less than fair value if they are sold at a price which is less than their "foreign market value" which generally is equivalent to the amount charged for the goods in the home market. The dumping margin is equal to the amount by which the foreign market value exceeds the U.S. price.

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

C. State Considerations

1. Antitrust Laws:

Antitrust law in Illinois is based on the Illinois Antitrust Act.

The purpose of this Act is to promote the unhampered growth of commerce and industry throughout Illinois by prohibiting restraints of trade which are secured through monopolistic or oligarchic practices and which act or tend to act to decrease competition between and among persons engaged in commerce and trade, whether in manufacturing, distribution, financing, and service industries or in related for-profit pursuits.

The Act establishes that a person shall be deemed to have committed a violation who shall (1) make any contract with, or engage in any conspiracy with, any other person who is, or but for a prior agreement would be, a competitor of such person for the purpose or with the effect of fixing, controlling, or maintaining the price or rate charged or paid for any service performed or received by the parties; (2) fixing, controlling, maintaining, limiting, or discontinuing the production, manufacture, mining, sale or supply of any commodity, or the sale supply of any service; and (3) allocating or dividing customers, territories, supplies, sales, or markets, functional or geographical, for any commodity or service.

The Act was intended to apply only to conduct relating to for-profit enterprises. O'Regan v. Arbitration Forums, 121 F.3d 1060 (7th Cir. 1997). The term "trade or commerce" includes all economic activity involving or relating to any commodity or service. "Commodity" means any kind of real or personal property, and "service" means any activity, not covered by the definition of "commodity," which is performed in whole or in part for the purpose of financial gain. "Service" does not include labor performed by natural persons as employees of others.

Although the federal Clayton Act, in its use of the term "commodity" does not include real property the Illinois Act does include real property and, therefore, is broader in its application than the federal law. The Illinois Act was patterned after the federal Sherman Act. It specifically provides that when the wording of

the Act is identical or similar to that of the federal antitrust law, the courts of Illinois must use the construction of the federal law by the federal courts as a guide in construing the Illinois Act. Despite this provision, however, the Illinois courts are not required to follow federal decisions although they may do so if they find them persuasive.

One significant difference between this Act and the Sherman Act (15 U.S.C. § 1) is that the Illinois Act codifies which restraints are legal per se as opposed to restraints that should be analyzed under the Rule of Reason. Under the Sherman Act, on the other hand, court determines if a per se violation exists or whether the Rule of Reason should apply.

Regarding preemption by federal laws, Illinois antitrust law mirrors federal antitrust law, therefore, there is no reason to presume that Congress intended to preempt state law. Thus, in an action against a defendant that is subject to federal regulation, the state antitrust action is not preempted by the federal regulation if an equivalent action, brought under federal antitrust law, would not be preempted. If, however, the federal regulatory scheme specifically preempts state action, then action under the Illinois Antitrust Act is preempted as well.

2. Franchise Regulation:

In Illinois, franchises are regulated by the Illinois Franchise Disclosure Act of 1987 and the Illinois Business Opportunities Sales Law of 1995, as well as a handful of other, industry-specific statutes, including the Motor Vehicle Franchise Act, the Farm Industrial and Construction Equipment Fair Dealership Act, the Beer Industry Fair Dealing Act, the Wine and Spirits Industry Fair Dealing Act, and the Soft Drink Industry Fair Dealing Act. A brief summary of each statute follows.

a. Illinois Franchise Disclosure Act of 1987

According to the Illinois Franchise Disclosure Act ("IFDA"), in order to have a "franchise," there must be an oral or written agreement by which: (1) the franchisee is granted the right to engage in the business of selling goods or services under a marketing plan or system prescribed or suggested in substantial part by the franchisor; (2) the operation of the franchisee's business pursuant to such a plan or system is substantially associated with the franchiser's trademark, trade name, etc. or other commercial symbol; and (3) the franchisee is required to pay, directly or indirectly, a franchise fee. All three elements must be present to have a franchise, and the absence of any one element will defeat a franchise.

The requirement of a prescribed or suggested marketing plan or system is generally satisfied by franchisor providing the franchisee with an operating manual setting forth a plan for how to sell the goods or services to the public. Even in the absence of such a manual, a prescribed or suggested marketing plan or system can still be found in a business relationship based on a variety of factors such as requirements of exclusivity, training and quotas, and promises of support in marketing, advertising and promotion.

IFDA also contains provisions regulating permissible franchise fees. The Act provides that a franchise fee may be present regardless of the designation given or the form of the fee, whether payable in lump sum or installments, whether in a definite or indefinite amount, or partly or wholly contingent on future sales, profits or purchases of the franchise business. A transfer fee, however, will not be considered a franchise fee if it is a reasonable representation of the expenses incurred in connection with the transfer.

IFDA also expressly prohibits a franchisor from attempting to solicit, from Illinois residents or persons desiring an Illinois franchise site, franchise sales at any trade show held in Illinois, unless the franchisor is registered with the Administrator or is otherwise exempt from registration. Accepting the name, address and telephone number of prospective franchisees for contact after registration does not constitute an offer or offer to sell. For more information on IFDA, please refer to 815 ILCS 705.

b. Business Opportunity Sales Law of 1995

Although originally designed to eliminate purported abuses in business arrangements such as rack-jobbing and vending machine distributorships, the scope of the Illinois Business Opportunity Sales Law ("BOSL") has been expanded—in part by legislative drafting, in part by judicial interpretation—to include compliance requirements for a variety of other business opportunities.

BOSL defines "business opportunity" as a written or oral contract or agreement whereby the seller provides to the purchaser products, equipment, supplies or services enabling the purchaser to start a business where the purchaser is required to pay more than $500 and in which the seller represents that he/she will either: (1) provide or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices, on premises neither owned nor leased by the purchaser or seller; (2) provide or assist the purchaser in finding outlets or accounts for the purchaser's products or services; (3) purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser; (4) guarantee that the purchaser will derive income from the business which exceeds the price paid to the seller; (5) refund all or part of the price paid to the seller, or repurchase any of the products, equipment or supplies provided by the seller or a person recommended by the seller, if the purchaser is dissatisfied with the business; or (6) provide a marketing plan, provided that the law does not apply to the sale of a marketing plan made in conjunction with the licensing of a federally registered trademark or federally registered service mark.

The BOSL specifically excludes from the definition of "business opportunity": (1) any offer or sale of an ongoing business operated by the seller and to be sold in its entirety; (2) any offer or sale of a business opportunity to an ongoing business where the seller will provide products, equipment, supplies or services which are substantially similar to the products, equipment, supplies or services sold by the purchaser in connection with the purchaser's ongoing

business; (3) any offer or sale of a business opportunity which is a franchise as defined by the Franchise Disclosure Act of 1987; (4) any offer or sale of a business opportunity which is registered pursuant to the Illinois Securities Law of 1953; (5) any offer or sale of a business opportunity by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator or a judicial offer or sale, of a business opportunity; or (6) cash payments made by a purchaser not exceeding $500 and the payment is made for the not-for-profit sale of sales demonstration equipment, material or samples, or the payment is made for product inventory sold to the purchaser at a bona fide wholesale price.

In order to register a business opportunity under the BOSL, the seller is obligated to file with the Secretary of State one of the following disclosure documents accompanied with the relevant fee: (1) the Franchise Offering Circular which the Secretary of State may prescribe by rule or regulation; or (2) a disclosure document prepared pursuant to the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Venture, 16 C.F.R. Sec. 436 (1979).

c. Motor Vehicle Franchise Act

The Motor Vehicle Franchise Act ("MVFA") regulates the actions of automobile franchisor toward dealers that may be considered unfair methods of competition or unfair and deceptive acts of business practice. The MVFA, as amended, also covers motorcycle dealers and all-terrain vehicles. A catch-all provision makes it unlawful for any franchisor or motor vehicle dealer "to engage in any action with respect to a franchise which is arbitrary, in bad faith or unconscionable and which causes damage to any of said parties or to the public."

d. Farm Industrial and Construction Equipment Fair Dealership Act

The Illinois Farm Industrial and Construction Equipment Fair Dealership Act ("FICEFDA") requires franchisers to repurchase their inventory from terminated dealers. FICEFDA applies to any dealer whose written or oral contracts required it to maintain an inventory of implements and/or parts. The repurchase price is fixed by statute at 100% of the net cost of new, unused and undamaged implements, farm machinery, attachments and accessories, construction equipment and industrial equipment and 95% of the current net price of unused and undamaged repair parts plus 5% of the current net price to cover the cost of packing and handling, unless the franchisor performed these services itself. "Current net price" is defined in the statute as the price listed in the wholesaler's or manufacturer's price list at the time of the termination, less any applicable trade, volume or cash discount. Any debt owing from the franchisee can be deducted from that price.

e. Beer Industry Fair Dealing Act

The Beer Industry Fair Dealing Act ("BIFDA") was developed to assure beer wholesalers the freedom to manage their businesses and establish their own selling prices and to assure brewers and the public of the availability of service and of a reasonable level of sales by brewers. BIFDA also regulates franchise terminations and coercive practices by brewers and wholesalers.

f. Wine and Spirits Industry Fair Dealing Act

This Act governs relationships between out-of-state wineries and Illinois distributors of liquor and wine. It does not cover Illinois wineries or wineries that have annual case sales in Illinois of less than 10,000 case per year. A "distributorship covered by the Act" is defined as a business relationship, express or implied, oral or written, between a covered winery and a distributor who has been granted the right to sell a designated product or products in a designated geographical area. Agreements covered include all oral and written agreements and arrangements as well as a course of dealing for definite or indefinite periods of time. Provisions of the Act setting rules and remedies regarding termination and cancellations of agreements apply to agreements entered into or renewed after the date of enactment. A provision requiring both parties to act in good faith and clarifying the powers of the state Liquor Control Commission applies to all agreements between covered wineries and their distributors whether entered into before or after enactment of the Act.

g. Soft Drink Industry Fair Dealing Act

The purpose of this Soft Drink Industry Fair Dealing Act ("SDIFDA") is to give independent soft drink bottlers, canneries and distributors protection against termination and unfair practices of suppliers similar to those given to beer wholesalers and wine and liquor wholesalers. The relationships covered by SDIFDA are between suppliers and distributors where the distributor has been granted the rights to, directly or through a cooperative or association (of which the distributor is a member), bottle or can one or more soft drink beverages and to sell, distribute, or deliver either the beverage or the syrup under trademarks owned or licensed by the supplier. Covered distributorships do not include relationships between suppliers and other entities owned by them.

3. Consumer Protection Laws:

The Consumer Fraud and Deceptive Business Practices Act ("CFDBPA"), 815 ILCS 505, provides comprehensive protection for consumers relating to a variety of sales of goods and services. A brief summary of several specific provisions, as well as a few general considerations, follows.

a. Automobile Buyer Protection

Automobiles are one of the most common, yet expensive, consumer purchases. Yet, despite the frequency of car sales and the large amount of money spent on cars each year, consumers know very little about the vehicles they buy,

in large part due to the complexity of the car itself. As a result, consumers may rely on a seller's representation that a given car is in good working order. Recognizing that car buyers are often at the mercy of car sellers, the state of Illinois has enacted two principal laws to protect car buyers.

(i) Illinois New Vehicle Buyer Protection Act (a.k.a. "Lemon Law")

The Illinois New Vehicle Buyer Protection Act, commonly known as the Illinois Lemon Law, protects consumers who buy or lease new cars, pickup trucks, and vans in Illinois. The law contains no warranties of its own. Rather, the statute provides consumers with a remedy if a dealer or manufacturer fails to honor its written warranties (Illinois has a similar law that enforces express written warranties for the purchase of new farm implements.).

According to the Illinois Lemon Law, a manufacturer or dealer must repair a vehicle in accordance with the warranty if the defect or problem is covered by the warranty and the owner reports it within the warranty period or 12 months after delivery of the vehicle, whichever comes first. As long as the problem is reported within the warranty period, the manufacturer or dealer must make repairs, even if the warranty subsequently expires.

The Illinois Lemon Law has special provisions for vehicles with serious problems –the "real" lemons. If the dealer or manufacturer is unable to repair a vehicle's problem after a reasonable number of attempts, the buyer or person leasing the vehicle has a right to go to the manufacturer's arbitration program or to court and seek a replacement vehicle or a full refund of the purchase or lease price.

The Illinois Lemon Law does not apply to problems that do not substantially impair either the use or market value of the vehicle. The law does not cover problems resulting from abuse, neglect, or unauthorized alterations to the vehicle.

(ii) Illinois Used Car Warranty Law

Illinois also has a warranty law that covers the power train on new or used vehicles. The power train includes the engine block, engine head, internal engine parts, oil pan, gaskets, water pump, intake manifold, transmission and internal transmission parts, torque converter drive shaft, U-joints, rear axle and its internal parts and rear wheel bearings. Unless repairs are required as a result of abuse, negligence or collision, a retail automobile dealer in Illinois is liable for a portion of the cost of repairs on power train components for 30 days from the date of delivery. For cars up to two years old, the dealer is liable for 50 percent of the cost of repairs, cars over two years old but fewer than three years old carry a 25 percent liability to the dealer and cars between three and four years old require 10 percent coverage by the dealer. Cars older than four years are not covered.

b. Telephone and Mail Fraud (generally)

The telephone and the postal service have been used to defraud consumers. For example, telephone frauds can use promises of prizes, or mail frauds can attempt to get consumers' credit card numbers. If a consumer wants his or her name removed from direct marketing lists, a request can be made to either the Mail Preference Service, Direct Marketing Association, P.O. Box 9008, Farmingdale, NY 11735-9008 (junk mail), or the Telephone Preference Service, Direct Marketing Association, P.O. Box 9014, Farmingdale, NY 11735-9014 (telemarketing calls). Both services significantly reduce the amount of unwanted mail and telephone calls one receives.

c. Telemarketing Fraud

Pursuant to 815 ILCS 413, Illinois limits the lawful hours for telephone solicitation to 8:00 a.m. to 9:00 p.m. Businesses using the telephone to reach customers should be willing to take the time to explain the product or service and to send information in the mail if a consumer is truly interested in an offer.

d. Credit Card Scams

Pursuant to 815 ILCS 150, Illinois law gives consumers specific rights regarding requests for identification when paying by check. A seller may ask to see a credit card for verification, however, the seller may only record the type of card and its expiration date. Recording the credit card number in connection with any payment by check or draft is illegal and can carry a fine of up to $500 per occurrence.

e. Prize Mailings

Every year, thousands of Illinois residents receive letters telling them they have won a prize in a contest. Illinois has an Unsolicited Merchandise Act, 815 ILCS 430, which gives the recipient of a prize an absolute right to refuse delivery and no obligation to return unsolicited goods to the sender.

f. Home Solicitations

In response to the fraud associated with home solicitations, Illinois has passed laws that protect consumers from home solicitation and other fraud including campground memberships. The most important of these protection laws is commonly called the three-day cooling off law. This law covers anyone offering consumer goods or services away from their traditional place of doing business. It is against the law to misrepresent one's identity as a salesperson. A salesperson cannot misrepresent the true purpose of the deal or the true identity of the company and cannot misrepresent the true cost of the good or service by failing to mention additional hidden but required costs. The seller is required to provide a copy of any contract the consumer signs and must give notice of the buyer's right to cancel the contract (if for more than $25) within three business days. To cancel the contract, the buyer must give written notice to the seller within three days.

Written notice of cancellation is best sent by certified mail with return receipt requested so that the consumer has proof that the cancellation was sent and received. The three-day cooling off law does not apply to real estate, insurance, or securities or commodities by a registered broker-dealer.

g. Insurance Fraud

To sell insurance legally, a person must have a license from the state and an appointment from a legitimate insurance company. Anyone suspecting that they may not be dealing with a legitimate insurance agent should check with both the state government and the insurance company about the agent's status. In Illinois, questions about insurance fraud should be directed to the Illinois Office of the Attorney General.

h. Get-Rich-Quick Schemes

Work-at-home schemes that promise to pay a lot of money in return for easy, no-experience-required work that can be done at home, such as light assembly or addressing labels, also are governed by the Act. Many work-at-home schemes are frauds requiring the victims to purchase expensive materials from the company with no guarantee that the finished product will be purchased. Anyone interested in work-at-home should first contact the Illinois Office of the Attorney General or the Better Business Bureau.

i. Pyramid Schemes

A pyramid scheme is an illegal plan in which a large number of people at the bottom of a pyramid pay money to relatively few people at the top. New participants are recruited with the promise that, if they pay now, they can move up the pyramid and profit from later recruits. Pyramid schemes are illegal and deceptive because they are mathematically doomed to failure.

j. Hearing Aid Sales

Illinois has laws specifically designed to protect consumers of hearing aids against fraud. Anyone selling hearing aids must hold a permit from the Illinois Department of Health. Prohibited practices include engaging in conduct likely to deceive or defraud, fee-splitting, abusive or fraudulent selling procedures, and high-pressure sales tactics. Buyers must have a recommendation or a prescription to purchase a hearing aid. The seller of mail order hearing aids in Illinois must provide a 45-day money-back guarantee that permits the buyer to cancel the sale for any reason during that time. Anyone repairing a hearing aid must provide the consumer with an itemized bill. Penalties for violating hearing aid sales laws include criminal prosecution and civil penalties.

k. Funerals, Burial and Cremation

The Federal Trade Commission's Funeral Practices Trade Regulation Rule, as well as a number of Illinois state regulations, regulate the funeral services industry. These laws are designed to prevent fraud by making members of the general public better educated consumers of funeral goods and services. The federal rule require funeral directors to make their prices available over the phone and a general price list available at the start of any discussions with a consumer. At the conclusion of discussions, a funeral director must provide an itemized statement reflecting the goods and services chosen by the consumer.

Unless required by law, a funeral director must first obtain permission before embalming. A funeral director may not require a casket before a cremation, although a simple container is required. The federal rule forbids a funeral director from representing that state or local laws require embalming or a casket for cremation when they do not. It is an unfair or deceptive act for a provider of funeral goods and services to fail to furnish price information on each of the specific goods or services offered. Written complaints can be made to the Comptroller's Office, State of Illinois, Director of Cemetery Care and Trust, James R. Thompson Center, #15-500, 100 Randolph Street West, Chicago, IL 60601 (phone: (312) 814-2451).

l. Debt Collection Agencies

State and federal laws limit the kinds of activities that a collection agency can engage in as it tries to collect a debt. These laws only apply to third-party collection agencies and not to in-house collections.

Anyone weary of a collection agency's efforts can stop future contact by writing the agency a letter stating that he or she no longer wishes to be contacted about the debt. The agency must stop contacting the debtor, except to tell the debtor that it is stopping its collection efforts or that it will sue to collect the debt. If a debtor disputes the amount of money owed, he or she can write the collection agency requesting that it provide proof of the debt. The agency must then verify the debt before it can resume efforts to collect the debt.

Debt collectors must be discreet when contacting a debtor about a debt. They may not call a debtor at work unless the debtor is at least 30 days in default and the debt collector provides at least five days prior written notice of the intent to call the debtor's place of employment. If a collector calls someone at work, the collector cannot tell a boss or leave a message with a secretary that he or she is trying to collect a debt. Finally, debt collectors cannot harass a debtor, for example, they cannot call in the middle of the night, use vulgar language, or threaten physical harm to someone.

m. Consumer Reporting Agencies

Illinois laws and the Federal Fair Credit Reporting Act give consumers rights in dealing with consumer reporting agencies. The laws are designed to curb abuses in credit reporting and enable individuals to have mistakes in their credit

reports corrected. The federal law is more extensive than the state law and provides greater protection for the consumer. The federal law limits who can receive copies of reports, limits what reports can be used for, and provides federal civil penalties for non-compliance.

Under the federal law, if a consumer application for credit is denied, the creditor must tell the applicant if the application was denied because of information contained in a credit report. The creditor is required to tell the consumer which reporting agency issued the report. In many situations, the consumer can get a copy of the information in his or her report and the sources of that information. If employment, credit, or insurance is denied on the basis of information contained in a consumer report, the consumer has a right to receive a copy of the report free of charge. The consumer is given an opportunity to dispute items contained in a consumer report.

Under the state law, the consumer has a right to request a copy of his or her report once every 12 months. The consumer can be required to pay for reasonable copying charges, not to exceed eight dollars, and has a right to dispute items in the report. The primary benefit of the state law is that it gives consumers a state cause of action for non-compliance.

n. Home Repair Fraud

The Illinois Home Repair Fraud Act, 815 ILCS 515, protects consumers against misrepresentations in home repair contracts, false pretenses to induce home repair contracts, unreasonable prices charged for the value of contracts over $4,000, misrepresentation of the person or business, and damages to property while performing under a home repair contract. Penalties for violating the Home Repair Fraud Act can be civil or criminal. Penalties are enhanced when made against persons over 60 years old.

o. Pay-Per-Call Services

With the increase in the number of pay-per-call telephone services, the Illinois legislature passed the Pay-Per-Call Services Consumer Protection Act ("PSCPA"), 815 ILCS 520, requiring certain disclosures in advertising pay-per-call numbers. Pursuant to the PSCPA, all advertising of pay-per-call services in Illinois must include: (1) the cost for each call or fee per minute; (2) any availability limitations; (3) disclosure that callers under 12 must request parental or guardian permission; (4) repeated voice announcements in regular intervals for commercials in excess of 2 minutes 12 seconds to hang up with no charge; (5) introduction for the call must inform the consumer of the permission requirement for minors, a description of the service, an accurate summation of costs for the call and a notice that billing will begin after three seconds following the introductory announcement. Some calls are exempt from the introduction requirement. Violations of the PSCPA should be reported to the Office of the Attorney General for the State of Illinois.

IV. TAXATION

A. Federal Taxation

1. Federal Income Taxation:

Federal income taxes are not affected by where a business chooses to locate in the U.S. There are various methods of controlling the amount of the U.S. income tax-payable, and many of these apply to domestic corporations as well as foreign owned corporations or foreign individuals.

2. Personal Income Tax:

Individuals are subject to U.S. income tax on their worldwide income if they are U.S. citizens or resident aliens. Resident alien status is determined under a set of complex rules. Any individual who is not a U.S. citizen, who does not wish to be taxed as such, and who plans to spend a substantial amount of time in the U.S., should pay careful attention to these rules. Currently, the highest marginal U.S. individual income tax rate is 39.1% for ordinary income, 38.6% for 2002, and 20% for capital gains. A nonresident alien generally is subject to tax on dividends from U.S. corporations, as discussed below.

B. State Taxation

1. Explanation:

a. Personal Income Tax:

Individual personal income tax is based on the taxpayer's base income. Base income includes not only salary from employment, but also dividends, refunds from property taxes, any capital gain, and any money withdrawn for non-medical purposes from a medical care savings account. Each taxpayer is allowed an exemption of $2,000 unless he or she has been claimed as a dependent. Taxpayers are allowed an additional exemption of $1,000 if they or their spouse are over the age of 65 and/or the taxpayer or their spouse are blind. Each taxpayer is also allowed a tax credit of 5% of residential real property taxes paid.

b. Corporate Income Tax:

A 4.8% income tax is imposed on the net income of corporations. An additional personal property replacement tax at the rate of 2.5% on the corporation's net income is also imposed. Partnerships are not taxable as entities because the income is merely "pass-through" income. The base income of religious, charitable, civic, etc. is exempt from the state corporate tax.

c. Franchise Tax:

There is an annual franchise tax of 0.1% of paid-in capital and an initial franchise tax of 0.15% of paid-in capital. The initial franchise tax is paid the first year the certificate of incorporation or certificate of authority is issued.

d. Sales and Uses Tax:

The Illinois sales and use tax system codifies four separate taxes; the Retailers Occupation Tax (ROT), the Service Occupation Tax (SOT), the Use Tax (UT) and the Service Use Occupation Tax (SUT). The ROT imposes a 18% tax on the wholesale price of tobacco products. The UT imposes a 6.25% sales tax on the gross receipt from retail sales of personal property. The ROT also levies a use tax of 6.25%.

The SOT imposes an occupation tax of 6.25% on tangible personal property transferred to serviceperson as an incident to "sales of service." The SUT has a 6.25% tax on the selling price of property transferred to the serviceperson of property transferred as an incident to the sale of service.

2. "Sub-S" Status:

"Sub-S status," now called an "S Corporation," is recognized in Illinois. An S Corporation is subject to only federal taxes at the shareholder level only and not the Corporate level, what is sometimes called a "pass-through" tax. This benefit is subject to some disadvantages in that an S Corporation cannot generally take advantage of deductions like dividends received deductions. S Corporations in Illinois are subject to a 1.5% Personal Property Replacement Tax. Nonresidents are taxed on their share of the S Corporation's income derived from doing business in Illinois.

3. Tax Benefits to New Business and Foreign Investors:

The Illinois Enterprise Zone Program allows businesses to receive a tax credit to stimulate economic activity and neighborhood revitalization. Corporations, trusts, partnerships and S-corporations who make investments in property defined as "qualified property" receive a 0.5% tax credit against their state income tax on qualified property. Also, a retailer who sells materials to be used in the construction of a building within the enterprise zone may deduct those sales from their ROT tax.

The EZ Machinery and Equipment Sales Tax Exemption allows for a 6.25% state sales tax exemption. The business must make a $5 million investment that either creates a minimum of 200 full-time jobs in Illinois, retains a minimum of 2,000 full-time jobs in Illinois, or retains 90% of the existing jobs.

The Utility Tax Exemption allows a 5% state tax exemption if the business creates a minimum of 200 full-time jobs or retains a minimum of 1000 full-time jobs in Illinois.

V. LABOR AND EMPLOYMENT

A. Federal Considerations

1. Immigration:

With the globalization of world markets, employers located in the United States often seek to employ foreign personnel. A variety of permanent and temporary visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the United States employer and the foreign employer. Permanent residents are authorized to work where and for whom they wish. Temporary visa holders have authorization to remain in the United States for a temporary time and often the employment authorization is limited to specific employers, jobs, and even specific work sites.

a. Permanent Residence (the "green card"):

Permanent residency is most commonly based on family relationships, such as marriage to a United States citizen, or offer of employment. Permanent residence gained through employment often involves a time-consuming process that can take several years to obtain. Therefore, employers considering the permanent residence avenue for an alien employee should ascertain the requirements for that immigration filing prior to bringing the employee to the United States.

b. Temporary Visas

The following are the most commonly used temporary visas:

(i) E-1 Treaty Trade and E-2 Treaty Investor Visas

These are temporary visas for persons in managerial, executive or essential skills capacities who individually qualify for or are employed by companies that engage in substantial trade with or investment in the United States. E visas are commonly used to transfer managers, executives or technicians with specialized knowledge about the proprietary processes or practices of a foreign company to assist the company at its United States location. Generally, E visa holders receive a five-year visa stamp but only one-year entries at any time.

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

H-1B visas are for persons in specialty occupations that require at least a bachelor's degree. Examples of such professionals are engineers, architects, accountants, and, on occasion, business persons. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer-and-job-specific. H-1A visas are for registered nurses only.

(iii) L-1 Intracompany Transferee Visas

Most often utilized in the transfer of executives, managers or persons with specialized knowledge from international companies to United States-related companies, L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to seven years in certain categories. As in the case of certain E visa capacities, some L managers or executives may qualify for a shortcut in any permanent residence filings.

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

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

(v) TN Professionals

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

(vi) F-1 Academic Student Visas

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

(vii) J Exchange Visitor Visas

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

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

O-1 and O-2 visas are for persons who have extraordinary abilities in the sciences, arts, education, business or athletics and sustained national or

international acclaim. Also included in this category are those persons who assist in such O-1 artistic or athletic performances.

(ix) P-1 Athletes/Group Entertainers and P-2 Reciprocal Exchange Visitor Visas

These temporary visas allow certain athletes who compete at internationally recognized levels or entertainment groups who have been internationally recognized as outstanding for a substantial period of time, to come to the United States and work. Essential support personnel can also be included in this category.

When planning to bring foreign personnel to the United States, United States employers should allow several months for processing by the Immigration and Naturalization Service, as well as the Department of State and Department of Labor. Furthermore, employers should be aware that certain corporate changes, including stock or asset sales, job position restructuring, and changes in job duties, may dramatically affect (if not invalidate) the employment authorization of foreign employees.

2. Labor and Employment Statutes

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

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

b. Americans with Disabilities Act ("ADA")

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

c. Employee Polygraph Protection Act ("EPPA")

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

d. Equal Pay Act ("EPA")

The EPA was an amendment to the Fair Labor Standards Act and is designed to promote equal pay for men and women who do the same jobs. Therefore, if the

minimum wage provision of the FLSA is applicable to one's business, then the EPA is applicable as well.

e. Fair Labor Standards Act ("FLSA")

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

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

The FMLA requires that eligible employees be allowed to take up to twelve weeks of unpaid leave per year for the birth or adoption of a child or the serious health condition of the employee or the spouse, parent or child of the employee. This Act applies to all employers engaged in commerce where the employer employs fifty or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

g. Federal Contractors

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

h. Other Federal Regulations

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

i. National Labor Relations Act and Labor Management Reporting and Disclosure Act

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

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

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

k. Title VII

Title VII is the broad civil rights statute enforced by the Equal Employment Opportunity Commission that forbids discrimination in hiring based on race, religion, gender and national origin. It applies to both public sector and private sector employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

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

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

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

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

3. Employee Benefits

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

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

b. Consolidation Omnibus Budget Reconciliation Act ("COBRA")

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

B. Illinois Employment Regulation:

1. Statutes:

a. Illinois Minimum Wage and Overtime Law

The law establishes minimum wages and overtime pay that must be paid to all covered employees. The law covers every employer, private (company or corporation) including not-for-profit, and public (governments), that has four or more employees. The adult minimum wage in Illinois is the same as federal requirements.

b. Wage Deductions for Benefits of Creditors (Garnishment) Act

The Act outlines when an employer must garnish employee wages, the procedures for a garnishment, liability of the employer for failure to comply with the garnishment order, and the legal amounts that can be garnished. Every employer, private and public, is covered under the Act. Employers who fail to meet all the court requirements could be assessed a debt.

c. Illinois Wage Payment and Collection Act

This Act details when payment must be made for wages, final compensation, vacation pay and other employee benefits. Every employer must pay employees for wages earned during the pay period at least semi-monthly or bi-weekly unless the employee is an executive, administrative, or professional employee as defined in the Federal Fair Labor Standards Act, in which case payment can be made once a month. Payment of wages earned during the semi-monthly or bi-weekly pay period must be paid no later than thirteen days after the pay period ends and all wages earned during a weekly pay period must be paid no later than seven days after the pay period ends. Wages earned on a daily basis should be paid within twenty-four hours after they were earned. Employees who are absent at the time fixed for payment must be paid upon demand at any time within a period of five days after the time for payment, and after the expiration of the five-day period, payment shall be made on five days demand. Payment for final compensation should be made at the time of separation but no later than the next regularly scheduled payday for the employee. Deductions from wages are prohibited unless required by law, approved by the employee, or are in response to a valid wage assignment or wage deduction order. A valid agreement can provide for a different payment of wages.

d. Wage Assignment Act

This Act details when employees can assign some portion of future wages to a third party, usually to secure a debt to the third party, and the amount of wages, salary, or commissions that may be collected for each work-week. The assignment must be in writing. Only private-sector employers are covered by this Act.

e. Illinois Human Rights

The Act declares that it is the public policy of the state to secure for all individuals within Illinois freedom from discrimination against any individual because of race, color, religion, sex, national origin, ancestry, age marital status, physical or mental handicap, or unfavorable discharge from the military service and to prevent sexual harassment in employment; to establish equal opportunity and affirmative action as policies of Illinois; and to protect citizens of Illinois against unfounded charges of unlawful discrimination. The Act further outlines the procedure for reporting violations of the Act and employee remedies for violations of the Act. The Act applies to every Illinois employer, private and public with 15 or more employees working during twenty or more weeks in the calendar year or in the year preceding the violation. The handicap and sexual harassment provisions apply to those with one or more employees.

The Act is enforced through the Illinois Human Rights Commission and there is also a Chicago Commission on Human Relations and Cook County Commission on Human Rights. Both deal with discrimination and apply to employers in the City of Chicago and Cook County, regardless of the number of employees.

Contact Information:

Illinois Human Rights Commission

Chicago
James R. Thompson Center
100 W. Randolph St., Suite 5-100
Chicago, IL. 60601
(312) 814-6269

Springfield
William G. Stratton Building
Room 404
Springfield, IL. 62706
(217) 785-4350

Chicago Commission on Human Relations
740 N. Sedpwith
Chicago, IL. 60610
(312) 744-4111

Cook County Commission on Human Rights
50 W. Washington St. (Daley Center)
Room 404
Chicago, IL 60602
(312) 443-3456

f. One Day Rest in Seven Act

The Act declares that every employer shall allow every employee, except certain specified employees, at least twenty-four consecutive hours of rest in every calendar week in addition to the regular period of rest allowed at the close of each working day. Every private employer in Illinois, regardless of size is

covered by the Act. Public employers are not covered. The Act also discussed exemptions from the Act, meal periods, and penalties for violation of the Act.

g. Illinois Personnel Records Review Act

The Act is intended to permit employees to review their personnel records, indicate the information that may be obtained in the personnel records, and allow employees to add statements to their file. Employees can request, in writing, permission to inspect their personnel files at least twice a year and ex-employees may request review of their files for up to one year after leaving. The employer has seven workdays to comply with the employee's request but can request a seven-day extension if needed. The right extends to any personnel documents that have been or will be used in determining the employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action. The right does not apply to letters of reference for the employee, test documents except the test score, materials relating to the employer's management planning, personal information about a person other than the employee if it would be an unwarranted invasion of the other person's privacy, records relating to any pending claim between the employer and employee which may be discovered in a judicial proceeding, and records alleging criminal activity by the employee, unless the employer acts adversely based on information in the records. The Act covers both public and private employees. Even though Illinois Supreme Court has held the Act to be unconstitutional, the Act has not been repealed. Spinelli v. Immanuel Evangelical Lutheran Congregation, Inc., 144 Ill. App. 3d 325, 494 N.E.2d 196 (1986), aff'd in part, rev'd in part, 118 Ill. 2d 389, 515 N.E.2d 1222 (1987).

h. Illinois Child Labor Law

The Act regulates the employment of children. The Act details the limited exceptions when minors fourteen to fifteen years old can work, the amount of hours they can work, and penalties for violation of the Act.

i. Illinois Clean Indoor Air Act

The law prohibits smoking except in designated areas. The law defines smoking as not only inhaling smoke but also having in one's possession a lighted cigarette, cigar, or pipe.

j. Health and Safety Act

The Act applied to all employers and imposes a duty on them to provide reasonable protection to the lives, health and safety of their employees. Employers who manufacture or use toxic substances are required to provide their employees with information about the products and the known and suspected health hazards of the substances. Training on handling toxic substances must also be provided. A list of the toxic substances used must also be given to the Illinois Department of Labor.

k. Workers Compensation Act

All employers have to provide employees compensation for work-related injuries, illnesses, or death. The Act applies to all injuries occurring within the state and without the state when the contract for employment is made in Illinois. The Act details when employers must pay for work related injuries and the procedure for reporting injuries and for payment.

l. Illinois Unemployment Insurance Act

The Act creates a compulsory unemployment insurance providing for the setting aside of reserves during periods of employment to be used in case of unemployment. The Act details when unemployment must be paid to an employee, the procedure for attaining and reporting the need for unemployment, and penalties for false unemployment claims.

m. "Time-Off" Laws:

(i) Time-Off for Voting

The law details when time off is required, which elections are covered in which time off must be given, and the procedure to request time off. All employers, private and public are covered by this Act. No payment for the time off is required, the request to take time off to vote must be made prior to Election Day, and if an employee would otherwise have at least two consecutive hours off outside the regular workday when the polls are open, no additional time needs to be granted.

(ii) Time-Off for Jury Duty

The Jury Act details the procedure for getting time off for jury duty. An employer cannot deny time off for jury duty, regardless of the work shift the employee was assigned to at the time of service of the summons. An employer however, cannot be obligated to compensate the employee for time taken off for jury duty.

(iii) Time-Off for Military Duty

The law outlines the procedure for requesting time off for military duty, the reemployment rights, the limits that can be put on reemployment, and benefit rights. The law applies to both private and public employees.

(iv) School Visitation Rights Act

The Act applies to both private and public employers. The Act permits employed parents and guardians who are unable to meet with educators during non-work hours to an allotment of up to 8 hours during the school year to attend necessary educational conferences. This time may be used only if the employee has exhausted all accrued vacation leave, personal leave, compensatory leave, and

any other leave that may be granted to the employee except sick and disability leave. The employee must submit a written request to the employer to request the time off.

(v) Time-Off for Official Meetings

The Act applies to both private and public employers and applies to certain elected officials to take uncompensated time off from employment for the purpose of attending official meetings. An official meeting is described in the Act as a gathering of a public body in which a quorum of members is needed to conduct public business. The request for time off must be given in advance of the time off needed.

2. Agencies:

a. Illinois Department of Labor (IDOL)

The Illinois Department of Labor (IDOL) enforces laws relating to wages, hours, and working conditions. It also enforces the School Visitation Rights Act, the Prevailing Wage Act, and the Private Employment Agencies Act, among others.

IDOL contact information:

160 North LaSalle Street
Suite C-1300
Chicago, Illinois 60601
(312) 793-2800

One West Old State Capitol Plaza
Room 300
Springfield, Illinois 62701
(217) 782-6206

b. Illinois Department of Human Rights (IDHR)

The Illinois Department of Human Rights (IDHR) administers the Illinois Human Rights Act. It investigates discrimination claims relating to the Illinois Human Rights Act and monitors compliance of public contractors in addition to delineating affirmative action requirements.

IDHR contact information:

100 West Randolph Street
Suite 10-100
Chicago, Illinois 60601

(312) 814-6200

222 South College Street
Springfield, IL 62704
(217) 785-5100

c. Illinois Department of Employment Security (IDES)

The Illinois Department of Employment Security (IDES) administers unemployment compensation claims, collection of unemployment insurance tax, job placement services, and workforce data compilation.

The Employer Hotline is (800) 247-4984.

401 South State Street
Chicago, Illinois 60605
(312) 793-5700

400 W. Monroe, Suite 303
Springfield, IL 62704
(217) 785-5069

d. Industrial Commission of Illinois (ICI)

The Industrial Commission of Illinois enforces the provisions of the Workers' Compensation Act and Occupational Diseases Act.

ICI contact information:

100 West Randolph Street - Suite 8-200
Chicago, Illinois 60601
(312) 814-6611

701 S. Second Street
Springfield, Illinois 62704
(217) 785-7084

VI. ENVIRONMENTAL LAW

A. Federal Considerations

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

RCRA's primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. RCRA is administered through cooperation between the EPA and state authorities. In addition, stated can apply to special permits to administer and enforce their own hazardous waste program which must be approved by the Administration. Once the state's programs have been approved, these will be enforced by the State in lieu of the Federal program and the State is responsible for issuing and enforcing permits for the storage, treatment, or disposal of hazardous waste

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 required phasing out land disposal of hazardous waste. The 1986 amendments 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. Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

CERCLA, or Superfund as it is commonly called, was enacted in 1980 to provide for the clean-up of uncontrolled or abandoned hazardous waste sites, as well as accidents, spills, and other emergency releases of contaminants. 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 APRPs 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:

a. "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.

b. "Owners or Operators" of the Facility at the Time of Release of the Hazardous Substances

Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of

c. Contractors for Waste Disposal

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 who arranged to have the waste disposed of.

d. Transporters of Hazardous Substances

Any person who accepts hazardous waste for transport to disposal or treatment facilities from which there is a release.

e. Defenses

There are limited defenses under Superfund. A PRP can avoid 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 or omission of an unrelated third party other than an employee or an agent if the defendant establishes by a preponderance of the evidence that (a) he exercised due care and (b) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result.

3. Clean Air Act ("CAA")

The CAA regulates air emissions under federal standards implemented and enforced by the states. The goal of the Act is to set an achieve National Ambient Air Quality Standards ("NAAQS"). 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 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. Clean Water Act ("CWA")

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. from a point source unless a National Pollutant Discharge Elimination System ("NPDES") 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. The permit limits are based upon EPA's effluent limitation regulations and are incorporated into a NPDES permit. The CWA operates in two levels, on the one hand, it allows the EPA to set effluent standards on an industry basis and on the other, it continued the quality standards for all contaminants in surface water.

The CWA effluent limitations for industrial dischargers also specify standards for pretreatment of pollutants that are introduced into 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:

1. Environmental Laws:

a. Illinois State Constitution

The Illinois Constitution has created a right to a "healthful environment". Under the Illinois Constitution, "[e]ach person has the right to a healthful environment. Each person may enforce this right against any party, governmental

or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."

b. Illinois Environmental Protection Act (415 ILCS 5/ *et seq.*)

The Illinois General Assembly provided for the enforcement of the constitutional right to a "healthful environment" in the adoption of the Illinois Environmental Protection Act. The Illinois Environmental Protection Act is the legislative base for Illinois environmental law. The Act creates the primary regulatory agencies the Illinois Environmental Protection Agency ("IEPA") and the Pollution Control Board ("PCB") charged with the responsibility of implementing environmental regulations. The Act further provides the framework for implementation of federal environmental statutes delegated for enforcement by the federal government to the states and also for implementation of environmental regulations promulgated by the state legislature. Under § 4(l) of the Act the IEPA is designated as the agency to implement and administer the following federal environmental statutes: Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*, except for §300h-4; Clean Air Act of 1970 ("CAA"), 42 U.S.C. § 7401, *et seq.*; Solid Waste Disposal Act, 42 U.S.C. § 3251, *et seq.* Noise Control Act of 1972, 42 U.S.C. § 4901, *et seq.*; Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9601, *et seq.*; and § 313 of the Emergency Planning and Community Right-to-know Act of 1986.

The Act also contains substantive prohibitions in air, water, and land pollution and establishes the programs through which regulation in these areas commences. Additionally, the Act targets specific areas of environmental concern such as refuse disposal, hazardous materials release and storage, noise pollution, and atomic radiation.

c. The Local Solid Waste Disposal Act

The Local Solid Waste Disposal Act governs solid waste management programs developed by local municipalities. While allowing local government to establish and execute waste management programs, the Act requires local governments to submit their plans for approval and report to the IEPA. The Act secures efficient implementation throughout the state while maintaining centralized oversight through the IEPA.

d. Solid Waste Planning and Recycling Act

Also governing local solid waste management, the Solid Waste Planning and Recycling Act aims at decreasing the generation of municipal waste through incentive based requirements. The Act requires municipal waste management programs to emphasize recycling and other alternatives to landfill disposal. Based on population size, local governments must implement programs that include recycling, composting yard waste, and other source reduction policies.

e. Illinois Solid Waste Management Act

Similar to the Local Solid Waste Disposal Act and the Solid Waste Planning and Recycling Act, the Illinois Solid Waste Management Act aims at developing alternatives to land disposal of solid waste. The Act sets forth a hierarchy of preferred methods of reducing reliance on landfill use: (1) source volume reduction, (2) recycling and reuse, (3) combustion with energy recovery, (4) combustion for volume reductions, and (5) disposal at landfill facilities.

f. Water Pollutant Discharge Act

The Water Pollution Discharge Act regulates discharge of oil and other water pollutants in accordance with the standards set forth by the PCB. The Act expressly prohibits discharges of pollutants in amounts that exceed PCB standards. The Act further authorizes appropriate agency action against persons discharging oil or other pollutants in violation of the quantities established by the PCB. Liability for removal costs and/or cleanup costs attaches to those in violation of the Water Pollutant Discharge Act and may be recovered by an agency incurring those costs in the course of removal or cleanup.

g. Illinois Water Well Construction Code

The Illinois Water Well Construction Code ensures that wells are properly located, constructed, and modified. The Illinois Department of Public Health ("IDPH") administers the public water system, closed loop wells, and monitoring wells and establishes rules and regulations pursuant to the administration. The Code sets forth the required parameters by which water systems are developed and provides remedies for violations of its provisions in the form of monetary fines and specific enforcement activity.

h. Illinois Water Well Pump Installation Code

The Illinois Water Well Pump Installation Code complements the Illinois Water Well Construction Code. The Water Well Pump Installation Code oversees the proper installation of the equipment that extracts water from wells. The IDPH has the authority to establish rules and regulations to implement the Code. Those rules and regulations set forth the requisite criteria for installation of water well pumps and other equipment.

i. Public Water Supply Regulations Act

The Public Water Supply Regulations Act governs the fluoride content placed in the public water system. The rules require a maximum / minimum fluoride content level and require custodians of public water supplies to submit samples to the Illinois Department of Public Health for inspection.

j. Public Water Supply Operations Act

The Public Water Supply Operations Act mandates supervision of public water systems by a certified water supply operator. The IEPA certifies water supply operators and governs over water supply operator qualifications and conduct. Subsequently, the PCB presides over complaints for violations of this Act.

k. Wastewater Land Treatment Site Regulation Act

The Wastewater Land Treatment Site Regulation Act requires persons intending to build or assume operation of a "wastewater land treatment site" or a "digested" sludge utilization site" apply to a "steering committee" for authorization. The committee decides whether or not to grant the application depending on criteria set forth under the Act. A "wastewater land treatment site" is defined by the statute as "any sewage lagoon, storage lagoon, sludge drying lagoon, irrigation field, however such lagoon or field is denominated, used for storing, draining, treating or purifying wastewater through bacterial action and natural soil filters if such site is located outside of the county in which the waste was produced, but does not mean a digested sludge utilization site."

The Act goes on to define "digested sludge utilization site" as: "any storage basin or lagoon; drying field or bed; irrigation or application field; nutrient barriers; environmental transition zones; application field runoff storage reservoir; or any other area or facility related to the application of digested sludge to land, if such site is located outside of the county in which the digested sludge was produced.

l. Illinois Groundwater Protection Act

The Illinois Groundwater Protection Act aims at the preservation of the quality of groundwater resources of Illinois. The Act establishes several committees who are charged with the responsibility of implementing the primary goal to protect the groundwater of Illinois. These committees represent both public and private interests and work toward adopting policies that facilitate efficient resource management while complimenting industry interests.

m. Illinois Pesticide Act

The Illinois Pesticide Act regulates pesticide use including labeling, transportation, and actual application. The Act governs how pesticides handled and sets forth reporting and registration requirements for those involved with the handling of pesticides.

n. Lawn Care Productions Application and Notice Act

The Lawn Care Products Application and Notice Act regulates the use of chemical and other lawn care products. It requires persons using pesticides to obtain certification and also mandates persons notify the public of the presence of chemical lawn care products.

o. Hazardous Substances Constructions Disclosure Act

The Hazardous Substances Construction Disclosure Act provides the statutory authority to contractors and sub-contractors to suspend performance obligations under a contract without penalty if they discover hazardous materials. Contractors do not incur liability whilst performance is delayed and may withhold performance until such time as the hazardous materials have been removed and properly disposed.

p. Environmental Toxicology Act

The Environmental Toxicology Act requires the IDPH to investigate public health concerns reported by the citizens of the state of Illinois. The Act requires the IDPH to develop a program to respond to alleged threats to public health stemming from hazardous substances. Pursuant to the Act, the IEPA may request the IDPH to conduct a review and evaluation of threats to public health stemming from environmental exposure to hazardous substances.

q. Degradable Plastic Act

The Degradable Plastic Act calls for the Department of Commerce and Community Affairs to work with the IEPA in researching and evaluating the degradation process and the environmental impact of degradable plastics. Degradable plastics are those plastic capable of natural disintegration in the environment within three years of disposal. The Department is also charged with researching the prospects of generating new products from degradable plastics. Furthermore, the Act requires state government agencies and departments to use recyclable or degradable plastic products whenever feasible.

r. Toxic Pollution Prevention Act

The Toxic Pollution Prevention Act's primary goal is the reduction of the generation of toxic substances. The Act aims to eliminate toxic substance generation at the source in order to lower the amount of substances that require treatment and disposal.

s. Household Hazardous Waste Collection Program Act

This Act regulates the handling of household hazardous waste. Under the Act, this goal is realized through the creation, implementation, and oversight of local collection centers. These centers collect the hazardous waste products generated in homes, such as paint by-products, rather than allow such products to be disposed of in landfills and other land based waste disposal where their detrimental environmental impact would be exacerbated.

t. Junkyard Act

The Junkyard Act regulates the operation of junkyards and scrap-processing facilities located near Interstate and Primary Highway systems in the state of Illinois. The Act stipulates acceptable location for construction of junkyards and scrap-processing facilities and the physical upkeep of these businesses, including fencing and screening requirements intended to avoid creating public "eye-sores."

u. Response Action Contractor Indemnification Act

The Response Action Contractor Indemnification Act regulates the handling, treatment, and disposal of hazardous substances and pollutants and the abatement for asbestos in public and nonpublic facilities. The purpose of the Act is to ensure the safe and effective remediation of environmental hazards and concerns through the utilization of private contractors. Under this Act, private actors receive indemnification and legal representation from the state for any liabilities incurred as a result of cleanup efforts. The Act come in response to the realization that public resources alone are not sufficient to address the entirety of needed environmental responses. Therefore, the program fosters private investment under the shield of public protections.

v. Litter Control Act

The Litter Control Act prohibits the dumping, depositing, dropping, throwing, discarding, or leaving of litter on any public or private property in Illinois, including all bodies of water. Violators of this act are subject to criminal prosecution and monetary fines.

w. Recycled Newspaper Use Act

The Recycled Newspapers Use Act mandates that newsprint in Illinois by entities that publish newspapers will have "annual average recycled fiber usage" within the parameters set under the Act. The Act is designed to promote recycling and product reuse in the interest of reducing waste reduction.

x. Illinois Pollution Prevention Act

The Illinois Pollution Prevention Act promotes state pollution prevention activities and also supports federal pollution prevention programs. Under the Act, the IEPA compiles data and research analysis pertaining to the progress of pollution prevention into reports. From these reports stem recommendations for improvement in pollution prevention and improvements in environmental regulation.

y. Lead Poisoning Prevention Act

The Lead Poisoning Prevention Act prohibits the use or application of lead-bearing substances in homes and child-care facilities as well as use of lead-bearing substances in a number of consumer products, including toys and

furniture. Violations of the Lead Poisoning Prevention Act may incur criminal liabilities.

z. Illinois Clean Indoor Air Act

The Illinois Clean Indoor Air Act regulates the use of tobacco smoke in public places. It prohibits smoking in public places except in areas established and posted as smoking areas.

aa. State Fire Marshall Act

The State Fire Marshal Act creates the Office of the State Fire Marshal (OSFM). The Act established the powers and duties the OSFM. Generally, the OSFM works in tandem with the IEPA in the implementation of the several environmental acts in Illinois.

bb. Interagency Wetland Policy Act of 1989

The Interagency Wetland Policy Act of 1989 operates to stabilize the total acreage of wetlands in Illinois. The Act sets forth policies and procedures designed to ensure that there is no net-loss of existing wetlands as a result of development from state-supported activities.

cc. Hazardous Waste Technology Exchange Service Act

The Hazardous Waste Technology Exchange Service Act authorizes the Department of Natural Resources ("DNR") to establish a Hazardous Waste Research and Information Center for the purpose of stimulating research, training, and facilitation of the flow of technical information on source reduction and alternative technologies for hazardous waste between industry and the research community.

dd. Illinois Environmental Facilities Financing Act

The Illinois Environmental Facilities Financing Act authorizes the Illinois Department Finance Authority "to acquire, construct, reconstruct, repair, alter, improve, extend, own, finance, lease, sell and otherwise dispose of pollution control and surface mined land reclamation facilities." The Act transfers duties and obligations to the Illinois Development Finance Authority. These duties and obligation include determining the location and manner of construction of any environmental or hazardous waste treatment facility financed under the Act and the power to issue corporate bonds.

ee. Asbestos Abatement Act

The Asbestos Abatement Act's primary goal is to discover, contain and remove asbestos materials from state schools where such materials pose a significant health hazard. Under this Act, schools are required to develop a

response action plan providing a method of removal and disposal of asbestos materials. The Illinois Department of Public Health is responsible for the implementation of this Act.

ff. Gasoline Storage Act

The Gasoline Storage Act criminalizes storage, transportation, use, or sale of volatile combustible products in manners that endanger life or property. The Act's primary goal is to engender responsible handling of petroleum and other combustible products by carriers, vendors, and other parties commonly engaged in their use.

gg. Illinois Hazardous Materials Transportation Act

The Illinois Hazardous Materials Transportation Act regulates the transportation of hazardous materials. The Act authorizes the adoption of rules and regulations designed to ensure the safe transportation of hazardous materials. Violators of the rules and regulations adopted under this act are subject to penalties that range from substantial monetary fines to felony criminal liability. The Illinois Department of Transportation is the principle agency responsible for administering the Act.

hh. Uniform Hazardous Substances Act of Illinois

The Uniform Hazardous Substances Act of Illinois authorizes the Illinois Department of Public Health to search establishments where hazardous materials are manufactured or vehicles transporting hazardous materials in order to investigate whether the handler is complying with hazardous material regulations. The IDPH is responsible for enforcing the statute's prohibitions on improper handling of hazardous materials.

ii. Illinois Chemical Safety Act

The Illinois Chemical Safety Act requires businesses to establish a response system to ensure that the appropriate parties are prepared to address chemical spills and releases that threaten the environment. Response and safety plans must be submitted for approval to the IEPA. Furthermore, businesses must have copies of their safety plans on the premises as well as with the local emergency response officials. The Act is designed to ensure work-place safety as well as environmental protection.

jj. Indoor Air Quality Act

The Indoor Air Quality Act focuses on air contaminants other than tobacco smoke. Instead, the Act aims at developing standards and guidelines for curbing excessive levels of air contaminants and microbiological hazards. The main goal of the statute is to improve air quality in the interest of fostering public health.

kk. Keep Illinois Beautiful Program

The Keep Illinois Beautiful Program entails a board of seven members, including the Illinois Lieutenant Governor, whose duty it is to facilitate the overall environmental quality of the state of Illinois. This advisory board assists local governments in developing environmental awareness and facilitating environmental programs. It harbors the ability to allocate resources to local governments to develop programs promoting recycling, education, and waste reduction.

2. Environmental Agencies:

Illinois implements environmental policy and law administratively. Essentially comprised of four interdependent organizations, the Illinois Environmental Protection Agency ("IEPA"), the Pollution Control Board ("PCB"), the Hazardous Waste Advisory Council, and the Department of Energy and Natural Resources ("DENR"), Illinois environmental policy and law operates via regulatory enforcement, administrative oversight, business and government mediation, and criminal deterrence. Illinois environmental agencies enforce existing state and federal statutes to facilitate the state's constitutional policy of the right to a "healthful environment." *See* ILL. CONST. art. XI, § 2. Enforcement is directed toward maintaining and improving the air, water, and land quality throughout the state.

a. Illinois Environmental Protection Agency (IEPA)

Pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1, *et seq.,* the Illinois General Assembly created the Illinois Environmental Protection Agency (IEPA). The IEPA operates as part of the executive branch of the state of Illinois and harbors the primary responsibility for implementing state and federal environmental statutes. The duties and responsibilities retained by the IEPA include: monitoring environmental quality, conducting remedial actions in the event of environmental threats and/or contamination, administering the permit system to regulate actual or potential air and water contaminant emissions, landfill and waste administration, as well as issuance of administrative citations and other enforcement actions when necessary to compel compliance with environmental law.

The IEPA uses administrative inspectors operating out of one of three separate bureaus located within the IEPA (the Bureau of Air, the Bureau of Water, and the Bureau of Land) to ensure compliance with permit restrictions, environmental statutes, and other regulatory provisions. Inspectors report their findings upward through the bureaucratic hierarchy to eventually reach the Enforcement Decision Group ("EDG"). The EDG determines whether the IEPA should undertake any formal enforcement action. Formal enforcement action generally occurs in one or a combination of several mediums: a civil action commenced on behalf of the IEPA by the state attorney general, issuance of administrative citations and

orders, criminal action, economic sanctions, remedial action with subsequent cost recovery.

Contact Info:

IEPA
1021 North Grand Avenue East
Springfield, Illinois 62702
Tel: (217) 782-3397

b. The Pollution Control Board (PCB)

The Pollution Control Board was also created pursuant to the Illinois Environmental Protection Act. *See* 415 ILCS 5/1, *et seq.* The Illinois Pollution Control Board adopts environmental rules and regulations, adjudicates enforcement actions, processes permit denial appeals, and hears variance petitions. The PCB contains seven members appointed by the Governor of Illinois. The two primary functions of the PCB are the promulgation of regulations and the adjudication of enforcement matters, permit appeals, and variance requests. 415 ILCS 5/5. Thus, the PCB operates in both a quasi-legislative and a quasi-judicial capacity. In relation to the IEPA, the PCB is the agency that adopts regulations and hears enforcement and variance cases and permit appeals, while the IEPA brings enforcement actions, issues permits, and proposes regulations.

The PCB's must also consider and adopt regulations that implement the major federal environmental regulatory statutes that have been delegated to the state of Illinois. Although federal preemption works to constrain the extent of the PCB's discretion, it retains a good deal of authority in deciding how federal environmental statues should be implemented. The exact method of implementation is laid out in the several procedural rules promulgated by the PCB in its quasi-legislative capacity. *See* PCB procedural rules at 35 Ill. Admin. Code § 101.100, *et seq.*

Contact Info:

Illinois Pollution Control Board (Springfield Office)
600 S. Second Street - Suite 402
Springfield, IL 62704
Tel: (217) 524-8500
Fax: (217) 524-8508

Illinois Pollution Control Board (Chicago Office)
James R. Thompson Center
100 W. Randolph Street Suite 11-500
Chicago, IL 60601
Tel: (312) 814-3620
Fax: (312) 814-3669 - TDD: (312) 814-6032

c. Department of Natural Resources (DNR)

The DNR is the State Agency created by the Department of Natural Resources Act, in charge of protecting Illinois natural resources. The Department's duties include research and investigation of data relating to the technology and administration of the natural history, entomology, zoology, and botany of the state; the geology and natural resources; the water and atmospheric resources and the archeological and cultural history of the state. The department has law enforcement authority to ensure compliance with the issued laws and regulations that affect Illinois natural and recreational resources. For more information please contact:

Lincoln Tower Plaza
524 S. Second St., Room 500
Springfield, IL 62701-1787
(217) 782-7454

James R. Thompson Center
100 Randolph St. Suite 4-300
Chicago, IL. 60601
(312) 814-2070

VII. INTELLECTUAL PROPERTY

A. Federal Law

1. Copyright Law

Copyright is governed exclusively by federal law (Title 17, U.S.C.).

a. Generally

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

b. Copyrightable Works

Works of authorship that qualify for copyright protection include literary works, musical works (including lyrics), dramatic works, choreographic works, audiovisual works, pictorial, graphic and sculptural works, sound recordings and architectural works. The Computer Software Copyright Act of 1980 expressly made computer software eligible for copyright protection. The precise scope of copyright protection for computer software has not yet been fully defined. Constantly developing technology is likely to present many new issues, presently unforeseen. All works eligible for copyright protection must meet two specific

requirements. First, the work must be fixed in some tangible form; there must be a physical embodiment of the work so that the work can be reproduced or otherwise communicated. Second, the work must be the result of original and independent authorship. The concept of originality does not require that the work entail novelty or ingenuity, concepts of importance to patentability.

c. Advantages of Copyright Registration

Copyright protection automatically attaches to a work the moment that the work is created. However, "registration" of the work with the U.S. Copyright Office provides advantages. A certificate of registration is prima facie evidence of the validity of the copyright, provided registration occurs not later than five years after first publication. With respect to works whose country of origin is the U.S., registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, certain damages and attorneys' fees relating to the period prior to registration cannot be recovered in an infringement action. Registration also is a useful means of providing actual notice of copyright to those who search the copyright records.

d. Copyright Registration Application Process

In order to obtain registration of copyright, an application for registration must be filed with the U.S. Copyright Office. The application must be made on the specific form prescribed by the Register of Copyrights and must include the name and address of the copyright claimant, the name and nationality of the author, the title of the work, the year in which creation of the work was completed, and the date and location of the first publication. In the case of a work made for hire, a statement to that effect must be included. If the copyright claimant is not the author, a brief statement regarding how the claimant obtained ownership of the copyright must be included. An application must be accompanied by the requisite fee, and a copy of the work must be submitted.

e. Copyright Notice

Until 1989, all publicly distributed copies of works protected by copyright and published by the authority of the copyright owner were required to bear a notice of copyright. A copyright notice is no longer mandatory, but a copyright notice is still advantageous. For example, the defense of "innocent infringement" is generally unavailable to an alleged infringer if a copyright notice is used.

If a copyright notice is used, the notice should be located in such a manner and location to sufficiently demonstrate the copyright claim. The notice should consist of three elements. First should be the symbol of an encircled "C" (©), or the word "copyright," or the abbreviation "copr." Second should be the year of first publication. Third should be the name of the copyright owner.

f. Works Made for Hire

In a "work made for hire" the employer is presumed to be the author. Authorship is significant because a copyright initially vests in the author. The parties can rebut the presumption of employer authorship by an express written agreement to the contrary. The term "work made for hire" applies to any work created by an employee in the course and scope of employment. On occasion there is dispute as to whether a work created by an employee arose from the employment. Employers often require execution of a formal employment agreement under which the employee expressly agrees that all copyright rights will belong to the employer. A similar agreement is also advisable in connection with the engagement of an independent contractor to perform copyrightable services for a business, but the employer should be aware that only certain types of works may be considered a "work made for hire" when created by an independent contractor. If the particular matter cannot be a "work made for hire," the employer should negotiate an agreement for the assignment of the copyright by the independent contractor.

g. Copyright Protection for Foreign Authors

Copyright protection is available under U.S. law for foreign authors until the copyrightable work is published. If the work has been published, the availability of continued U.S. copyright protection is dependent upon the location of the publication and the nationality or domicile of the author. Copyright protection continues in the U.S. subsequent to publication if publication by the foreign author occurs in the U.S., or occurs in a country that is a party to the Universal Copyright Convention or to the Berne Convention, or occurs in a country named in a Presidential Copyright Proclamation. If the work is first published by a foreign author outside the U.S., continued copyright protection in the U.S. is only available if the foreign author is either a domiciliary of the U.S. or a national or domiciliary of a country that is party to a copyright treaty to which the U.S. is also a party. A person is generally a domiciliary of the country in which the person resides as long as the person has the intention to remain there permanently.

2. Patent Law

Patent law is governed exclusively by federal law on Title 35 of the U.S. Code.

a. Generally

One who invents or discovers a new machine or device or a new manufacturing process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right for a specified time to make, use, import, offer to sell, or sell in the U.S. the patented invention. A patent provides the holder with a limited monopoly on the use of the patented invention. A valid patent forecloses use of the patented invention by any other party, even if another party independently conceives the identical invention.

A utility patent, which generally governs the functional aspects of a machine, manufacturing process, or composition of matter is enforceable beginning at the

grant of the patent and ending 20 years (plus up to 5 more years for certain delays) after the filing date of the regular patent application. A design patent, which covers the design or appearance of an article of manufacture, is enforceable for 14 years from the granting date of the patent. A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to 12 months to further develop the invention without filing a regular patent application. Anyone without authority from the patent holder who makes, uses, imports, or sells in the U.S. the patented invention during the life of the patent is considered to "infringe" the patent and may be liable for damages.

b. Effect of Foreign Patents

A foreign patent is generally not enforceable in the U.S. Furthermore, an invention that is the subject of a foreign patent cannot be the subject of a U.S. patent, unless an application for a U.S. patent is filed within one year following issuance of the foreign patent. Accordingly, an inventor who holds a foreign patent and who fails to apply for a U.S. patent within one year from the date of issuance of a foreign patent will usually have no recourse against others who use the invention in the U.S.

c. Patentability Under Federal Patent Statutes

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

In addition to being within one of the four classes and being fully disclosed, a utility invention must also be: (a) "novel," in that it was not previously known to or used by others in the United States or printed or described in a printed publication anywhere; (b) "non-obvious" to a person having ordinary skill in the relevant art; and (c) "useful," in that it has utility, actually works, and is not frivolous or immoral.

A design patent may be obtained for the ornamental design of an article of manufacture. A design patent offers less protection than a utility patent, because the patent protects only the appearance of an article, and not its construction or function.

A plant patent may be obtained by anyone developing a new variety of asexually reproduced plant, such as a tree or flower. Some plants may also be protectable with a utility patent or under the Plant Variety Protection Act, administered by the United States Department of Agriculture.

In order to determine novelty and, hence, patentability of an invention, it is often useful to search the records of the U.S. Patent and Trademark Office.

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

d. Patent Application Process

A U.S. patent application must be filed with the U.S. Patent and Trademark Office. A complete patent application includes four elements. First, the application must include the "specification." The specification is a description of what the invention is and what it does. The specification can be filed in a foreign language, provided that an English translation, verified by a certified translator, is filed within a prescribed period. Second, the application must include an oath or declaration. The oath or declaration certifies that the inventor believes himself or herself to be the first and original inventor. If the inventor does not understand English, the oath or declaration must be in a language that the inventor understands. Third, the application must include drawings, if essential to an understanding of the invention. Fourth, the appropriate fee must be included.

After a proper application is filed, the application is assigned to an examiner with knowledge of the particular subject matter. The examiner makes a thorough review of the application and the status of existing concepts in the relevant area to determine whether the invention meets the requirements of patentability. The patent review process takes from 18 months to three years. Rejection of a patent application by the examiner may be appealed to the Board of Patent Appeals. Decisions of the Board of Patent Appeals may be appealed to the federal courts. Provisional patent application requirements are less stringent than a regular patent application. The oath or declaration of the inventor and claims are not required and the application is held for the 12-month period without examination.

e. Markings

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

f. Rights to Patented Inventions

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

3. Trademarks

Trademark law is governed by both state and federal law.

a. Generally

A trademark is often used by a manufacturer to identify its merchandise and to distinguish its merchandise from items manufactured by others. A trademark can be a word, a name, a number, a slogan, a symbol, a device, or a combination thereof. A trademark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade name refers to a business title or the name of a business; a trademark is used to identify the goods manufactured by the business. A business that sells services rather than goods may also use a service mark to distinguish its services. Generally, service marks and trademarks receive the same legal protection.

b. Selection of Trademark

A manufacturer should carefully consider the trademark selected for its merchandise. The level of protection against infringement of a trademark varies with the "strength" or "uniqueness" of the trademark. "Descriptive" marks are the weakest and least defensible. A descriptive trademark is a name that describes some characteristic, function, or quality of the goods. A "fanciful" mark, the strongest type of mark, is a coined name that has no dictionary definition.

Evaluation should also include consideration of the likelihood of success in obtaining federal and state registrations of the trademark. For example, a trademark that is "merely descriptive" cannot be registered under either federal or Illinois law.

Selection of a trademark should be accompanied by a trademark search to determine whether another manufacturer has already adopted or used a mark that is the same or similar to the one desired. Publications provide lists of existing trademarks, registered and unregistered, and there are businesses that specialize in trademark searches. Actual and potential trademark conflicts should be avoided, lest the manufacturer become involved in an expensive infringement lawsuit. Of even greater concern is the potential loss of the right to use a mark after considerable expenditure in advertising merchandise bearing the mark.

c. Advantages of Trademark Registration

Under the trademark laws of the United States and Illinois, the principal method of establishing rights in a trademark is actual use of the trademark. "Registration" of a trademark is not legally required but can provide certain advantages.

Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant's exclusive right to use the mark in interstate commerce, strengthening the registrant's ability to prevail in any

infringement action. Federal registration is also a prerequisite for bringing a lawsuit under the federal trademark laws.

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

State registration provides some advantages, not as extensive as federal registration. State registration is usually advisable, particularly in situations in which a manufacturer's sales will occur only within the state.

c. Federal Registration Application Process

Federal trademark registration requires that a trademark application be filed with the U.S. Patent and Trademark Office. The application must identify the mark and the goods with which the mark is used or is proposed to be used, the date of first use, and the manner in which it is used. The application must be accompanied by payment of the requisite fee, a drawing page depicting the mark, and three specimens of the mark as it is actually used. After the application is filed, it is reviewed by an examiner who evaluates, among other matters, the substantive ability of the mark to serve as a valid mark and the possibility of confusion with existing marks. If the examiner rejects the application, the examiner's decision can be appealed to the Trademark Trial and Appeals Board. An adverse decision by that body can be appealed to federal court.

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

An applicant whose trademark is proposed for registration before actual use receives, upon approval of the application, a "notice of allowance." An applicant who receives a notice of allowance must within six months of the receipt of the notice furnish evidence of the actual use of the trademark. The applicant then is entitled to a certificate of registration. Failure to furnish evidence of the actual use of the mark within the time allowed results in rejection of the application.

d. Post-Certificate Federal Procedures

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

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

B. State Considerations:

1. Copyrights

a. Music Licensing Fees Act (815 ILCS 637/1 *et seq.)*

The law has three relevant sections. The first section regulates the duties and responsibilities of performing rights society (defined as an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners), vis a vis, copyright owners. It establishes that before entering into a contract, such societies must provides to the proprietor, in writing, the following: (1) A schedule of the rates and terms of royalties under the contract; (2) the opportunity to review the most current available list of the members or affiliates represented by the society; and (3) Notice that it will make available, the most current available listing of the copyrighted musical works in the performing rights society's repertory.

The second section establishes royalty contract requirements. Every contract for the payment of royalties between a proprietor and a performing rights society executed in this State shall be: (1) In writing; (2) signed by the parties; (3) written to include, at a minimum, information concerning the proprietor's name and address, name of the performing society, duration of the contract and schedules of rates and terms of royalties.

The third section establishes improper licensing practices. No performing rights society or any agent or employee thereof shall collect, or attempt to collect, from a proprietor licensed by that performing rights society, a royalty payment except as provided in a contract executed pursuant to the provisions of the Act.

b. Criminal Offenses – Unlawful Use of Recorded Sound or Images (720 ILCS 5/16-7)

The intent of this law was to prohibit and punish sound recording piracy as two separate offenses: transferring sound, and selling or using the items to which the sounds were transferred. People v. Zakarian, 121 Ill. App. 3d 987, 77 Ill. Dec. 366, 460 N.E.2d 422 (1 Dist. 1984). A person commits unlawful use of recorded sounds or images when he intentionally, knowingly or recklessly transfers, causes to transfer, sells, offers for sale, advertises for sale, uses, caused to be used, makes available for a fee, rental or any other form of compensation without the consent

or the owner. The unlawful use of recorded sound and images is a Class 4 felony; however, if the offense involves more than 100 but not exceeding 1000 unidentified sound recording or more than 7 but not exceeding 65 unidentified audio visual recording during any 180 day period the authorized fine is up to $100,000. If the offense involves more than 1,000 unidentified sound recordings or more than 65 unidentified audio visual recordings during any 180 day period the authorized fine is up to $250,000.

2. Patents

a. Illinois Fair Invention Development Standards Act (815 ILCS 620/101)

The purpose of this Act is to safeguard the public against fraud, deceit, imposition of financial hardship, and to foster and encourage competition, fair dealing, and prosperity in the field of idea and invention development services by prohibiting or restricting false and misleading advertising, onerous contract terms, harmful financial practices, and other unfair, dishonest, deceptive, destructive, unscrupulous, fraudulent, and discriminatory practices by which the public has been injured in connection with such development services. The Act specifically states that it is not its purpose to interfere with or further regulate, those persons who provide researching, marketing, surveying, or other kinds of consulting services to professional manufacturers, marketers, publishers or others purchasing such services as an adjunct to the traditional commercial enterprises in which they engage as a livelihood.

The law establishes that a firm that engages into such invention development must make certain disclosures. These include: (a) a statement of the fee charged, (b) a statement that the invention developer does not intend to expend more for the invention development services than the fee charged the customer, and (c) a statement that clearly states terms such as, "any contract for invention development services between you and ourselves will be regulated by law." The rest of this law sets out the specifics in what a contract requires between the customer and the invention developer.

b. Employee Patent Acts (765 ILCS 1060/)

This law gives employee rights to inventions under certain conditions. An employee is entitled to the rights of his or her own invention which was developed entirely on the employee's own time, unless: (a) the invention relates (1) to the business of the employer; or (2) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. The employee bears the burden of proof in establishing that his or her invention qualifies under this subsection. The employer must also, at the time of the employment agreement is made, provide a written notification to the employee.

3. Trademarks

a. Trademark Registration and Protection Act (765 ILCS 1036/)

This law establishes how to register a mark, what constitutes as a registrable mark, and when a mark is deemed to be abandoned. A mark shall not be registered if it consists of or comprises of: (a) immoral, deceptive or scandalous matter; or (b) matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or (c) the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or (d) the name, signature or portrait identifying a particular individual, except with the individual's consent; or (e) mark that is either: (i) descriptive; or (ii) geographically descriptive; or (iii) a surname; or (f) a mark that resembles a mark registered in this State of a mark of trade name previously used by another and not abandoned.

A trademark may be registered with the Illinois Secretary of State's Office and in any other state. A state trademark registration is not equivalent to federal registration. A trademark that is registered with the United States Patent and Trademark Office does not need to be registered with a state because federal registration gives the owner the rights to that trademark nationally. However, a party who has not registered a trademark federally may wish to register the trademark with the state and obtain trademark protection only within the state of Illinois.

A trademark registration in Illinois takes less time and money than the federal registration. A party must submit an application to the state with the appropriate filing fee. A trademark registered in Illinois is protected as long as the trademark continues to be used. The initial term of a trademark registration is ten years with subsequent renewal periods. Registering an assumed name or a corporate name in Illinois is not trademark registration and does not provide trademark protection or guarantee that the name is available for use as a trade name.

This law also establishes when a mark shall be deemed "abandoned." A mark is considered abandoned when either: (1) its use has been discontinued with intent not to resume that use; intent can be inferred through nonuse for 2 consecutive years, or (2) when through any course of conduct of the owner, including acts of omission as well as commission, it causes the mark to lose its significance as a mark.

b. Counterfeit Trademark Act (765 ILCS 1040/)

This law establishes that a person who knowingly distributes, uses or displays a trade mark, trade name, or service mark that is a spurious mark, identical with or substantially indistinguishable from the registered mark, commits counterfeit. A person who knowingly sells, offers to sell, holds for sale or uses fewer than 100 counterfeit items having a retail value of all counterfeit items but not more than $1,000 is guilty of a Class A misdemeanor. If the retail value is between $25,000 or more but less than $100,000, the person is guilty of a Class 4 felony and shall

be fined at least 25% but no more than 100% of the retail value of the items. A peace officer may, upon probably cause, seize any goods to which a counterfeit mark is attached with the possession of the person. The goods shall be destroyed upon the written consent of the defendant or by judicial determination.

c. Registered Container Trade Mark Act (765 ILCS 1050/)

This law establishes that any person who is the owner of any container upon which a trade mark has been placed or affixed, stamped, impressed, labeled, blown-in or otherwise marked thereon, may file with the Secretary of State a written statement or description of the trade mark used on a container. This statement or description shall be verified by the affidavit of the owner of the container or by the owner's agent. The law prohibits the sale or use of any such container by any person without the written consent of the owner of the container upon which a trade mark has been placed. Any person who violates this law shall, upon conviction, be guilty of a petty offense.

4. Trade Secrets and Computer Crime

a. Illinois Trade Secrets Act (765 ILCS 1065/)

The Illinois Trade Secrets Act provides protection for a broad category of sensitive business information. The Act provides both injunctive relief and damages for misappropriation of a trade secret. The Act defines a "trade secret" as information including, but not limited to, financial, technical, or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, or lists of actual or potential customers or suppliers, that is valuable because it is not generally known. It is important for businesses to realize that the definition requires them to take steps to keep the information secret; an employer may not claim misappropriation of a trade secret if there was no effort to treat the information as a secret.

An attorney experienced in this area can advise on the steps appropriate for a particular business to take in order to protect its trade secrets. By maintaining a strict policy regarding the identification, communication, and use of trade secrets, a business generally can avoid problems before they start. Some practical means by which a company can help avoid misappropriation of its secrets include reminding employees about confidential communications before and after the discussion of a trade secret, asking employees to sign confidentiality agreements, and marking sensitive communications with the word “secret,” or “confidential.”

b. Computer Crime, Criminal Offenses, Criminal Code of 1961

Computer crime is an area of the law in which the government appears to be playing catch-up with the growth in new technologies. Some variations of computer crime are so new that there are no specific laws to address them, and general laws in existence do not seem adequate in proscribing the particular illicit activities.

Conduct specifically outlawed by federal statute includes gaining unauthorized access to confidential national security information; obtaining, without authorization, the financial information of a financial institution or a credit card issuer; intentionally accessing, without authorization, a computer of a federal department or agency; accessing a federal interest computer without authorization to further a fraud, obtain anything of value, or alter, damage, or destroy information; and trafficking in a password through which a computer is accessed, without authorization, if the computer affects interstate or foreign commerce or is used by or for the government.

Illinois law also recognizes the crimes of computer tampering, aggravated computer tampering, and computer fraud. It is illegal for a person knowingly and without authorization to access a computer, program, or data; access and damage or destroy a computer, program, or data; or to insert a "program" (virus) into a computer knowing that it contains information that will damage or destroy that computer or alter, delete or remove a program or data. A person who commits computer tampering and knowingly disrupts government or other public services or causes great bodily harm to a person is guilty of aggravated computer tampering. Computer crimes carry severe penalties, especially as the value of the property damaged or stolen increases in value.

VIII. DISPUTE RESOLUTION

A. Federal Court System

The U.S. Constitution establishes the federal judicial system as one of the separate branches of the federal government. Art. III lays out the requirements for an independent court system. The federal judicial map is divided into 13 Circuits. Trial courts of the federal court system are the U.S. District Courts. There are 94 federal judicial districts, including at least one district in each state, the District of Columbia and Puerto Rico. Federal Judges are appointed for life terms according to the requirements of Art. III; judges are nominated by the President and confirmed by the United States Senate. Appeals are taken to the particular Circuit Court of Appeals. Illinois belongs to the 7th Circuit that serves Illinois, Indiana and Wisconsin and sits in Chicago.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are mandated by either the U.S. Constitution and/or by federal statute. Federal courts have exclusive jurisdiction over bankruptcy, patents and copyright, antitrust, postal matters, internal revenue, admiralty, and federal crimes, federal torts, and customs. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, codified in 28 U.S.C. §1332, which involves disputes between citizens of different states with an amount in controversy exceeding $75,000. For a matter to be brought in federal court under diversity, there must be complete diversity between the parties, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second primary basis of federal jurisdiction requires that the matter in dispute involve a federal question. 28 U.S.C. § 1331 grants federal jurisdiction over all civil actions arising under the Constitution, laws or treaties of the

United States. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

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

These rules often set forth very specific guidelines for the handling of an action, and close attention must be paid to them. Thus, a party that is involved in a suit in a federal district court must be aware of that court's local rules as well as the Federal Rules of Civil Procedure.

B. State Court System

1. Trial Courts:

The Illinois trial court is the Circuit Court which is comprised of Circuit and Associate Judges. Illinois has 102 counties, which are divided into 22 judicial circuits, each of which is presided over by a Chief Judge elected by the Circuit Judges. The Chief Judge has general administrative authority over his/her circuit, subject to the general administrative authority of the Supreme Court. Circuit Judges may hear any case assigned to them by the Chief Judge and are elected by the state citizenry for a six year term. Associate Judges may not preside over a criminal case in which the accused is charged with an offense punishable by imprisonment for more than a year unless prior approval has been granted by the Illinois Supreme Court. Associate Judges are appointed by Circuit Judges, in accordance with Supreme Court rules, for a four year term.

The Circuit Courts in Illinois are courts of original jurisdiction. As such, they can hear almost any kind of case, with the exception of redistricting of the general assembly and the ability of the Governor to serve or resume office. The circuit courts also share jurisdiction with the Illinois Supreme Court to hear cases relating to revenue, mandamus, prohibition, and habeas corpus. However, if the Supreme Court chooses to exercise jurisdiction over any case of shared jurisdiction the circuit court may not decide the case. The circuit courts may also review cases from administrative agencies. Of the 22 circuits in the state, 19 are comprised of a conglomeration of between two and twelve counties. Cook, Will and DuPage counties all have their own circuit courts. In fact, the Circuit Court of Cook County is the largest unified court in the world, with more than four hundred judges and more than 2,400,000 cases filed in a given year. In 1999, the circuit courts of Illinois had 4.2 million cases filed in their courts.

2. Appellate Courts:

The Illinois appellate courts hear appeals from the state circuit courts and the Industrial Commission, and may also review cases from administrative agencies.

There are 5 districts in the appellate court system, and the appellate court judges are elected for 10 year terms. Cook County, the First District and also the largest, has 18 Appellate Judges. The remaining 101 counties are divided into 4 districts that each elect 6 Judges. The Second District seat is in Elgin, the Third in Ottawa, the Fourth in Springfield, and the Fifth District seat is in Vernon. Additional appellate court judges may be assigned to districts on an as-needed basis by the Illinois Supreme Court. In 1999, there were 8,903 new cases filed in the Illinois Appellate Courts.

The Illinois Supreme Court is the highest tribunal in the state. The seven Supreme Court Justices are elected to 10 year terms. The First District, Cook County, elects three Supreme Court Justices. The other Districts contribute one Justice each. The state Supreme Court hears appeals from lower courts and may exercise original jurisdiction in cases related to revenue, mandamus,, prohibition or habeas corpus.

Article VI of the 1970 Illinois Constitution reduced the mandatory appellate jurisdiction of the Supreme Court. Appeals from circuit courts are now made by constitutional right directly to the Supreme Court only in the case of death sentences. Appeals from the appellate courts as a matter of constitutional right occur in two situations. The first appeal of right stems from questions arising under either the Illinois or United States constitutions when the issue is presented for the first time and as a result of the Appellate Court's decision. The second appeal of right occurs when the Appellate Court certifies an issue as being of such heightened importance that it should be decided by the Supreme Court. The 1970 Constitution also granted the Supreme Court original and exclusive jurisdiction over matters of redistricting the General Assembly and the ability of the Governor to serve or resume office.

3. Tax Courts:

The Illinois' tax court system, constructed in Chapter 35 of the Illinois Compiled Statutes, is designed in such a way that each tax statute generally provides the applicable provisions regarding the administration and collection of taxes. The Illinois Department of Revenue administers and enforces Illinois tax law and there are no general provisions applicable to all taxes administered by the Department in Illinois law. However, the Protest Monies Act, Administrative Review Act and Administrative Procedures Act apply to all tax laws and include provisions concerning the payment of taxes under protest, judicial review of administrative decisions and orders and the adoption, amendment or repeal of rules. Tax law in Illinois is codified in different statutes concerning different kinds of taxable issues including: income taxes, use and occupational taxes, property taxes, estate taxes, excise taxes, utility taxes, collections, refunds and exemptions.

The General Assembly has the exclusive power to raise revenue by law and this power is limited solely by the Illinois Constitution. This power to tax cannot be suspended, surrendered or contracted away. The Illinois Department of

Revenue may make such rules and regulations as may be necessary to enforce its powers effectively. Because it is an administrative agency, the Department of Revenue must follow prescribed procedures for adopting, revising or repealing tax rules. Final actions of the Department of Revenue constitute "administrative decisions" as defined by the Code of Civil Procedure. The Administrative Review Law governs all such final actions. (For more information see Chapter IV supra.)

IX. FINANCING INVESTMENTS

A. Tax-Exempt Financing Opportunities

There are a number of public and private organizations that provide various tax-exempt financing opportunities in the Illinois.

For example, the Illinois Development Financed Authority ("IDFA") is a self-financed, state-authorized organization engaged in issuing tax-exempt bonds, making loans, and investing capital for businesses, non-profit corporations, and local government units statewide. IDFA was created by legislation in 1983. The legislation combined the operations of two other authorities, the Illinois Environmental Facilities Financing Authority and the Illinois Industrial Development Authority, to form IDFA. A self-funded agency, IDFA receives no funding from the State and the State bears no liability for the debt IDFA issues or incurs.

B. Commercial Banking Opportunities

In Illinois, there are over 3,000 commercial banking establishments with combined annual revenues exceeding $25,000,000,000 (from US Economic Census 1997). These establishments are primarily engaged in accepting deposits and granting withdrawals, making commercial, institutional, and consumer loans; and providing customer financial transactions.

C. Financial Institutions

Financial institutions in Illinois are regulated by the Illinois Department of Financial Institutions ("IDFI"). One of IDFI's divisions, Consumer Credit, is responsible for licensing and regulating consumer finance companies under ten statutes that cover a variety of financial businesses which directly impact the Illinois consumer. Those financial institutions include consumer installment lenders, debt management services, money transmitters, safe deposit boxes and title insurance companies. The Consumer Credit Division also handles and investigates complaints and consumer inquiries. Those financial institutions include consumer installment lenders and debt management services. The Consumer Credit Division can be contacted at (312) 814-5145.

Illinois has over 525 state-chartered credit unions that are regulated, chartered and examined by IDFI's Credit Union Division. The Credit Union Division is committed to ensuring a strong and credible regulatory environment. In accordance with national standards, IDFI uses the CAMEL Rating System as a regulatory tool to determine capital,

asset quality, management, earnings and liquidity. Examinations are performed on an annual basis to determine a credit union's financial condition and compliance with the Illinois Credit Union Act, the adopted rules and regulations, and all applicable State laws. The Credit Union Division can be contacted at (312) 814-2010.

The Currency Exchange Division of IDFI administers the Currency Exchange Act, which charges IDFI with the regulation of the currency exchange industry. IDFI currently licenses over 700 community currency exchanges and 400 ambulatory currency exchanges. The licensing procedure together with the mandated annual examinations guarantee that all Illinois currency exchanges adhere to the high standards established by the State. These currency exchanges not only cash checks but provide a number of other services. The Currency Exchange Division can be contacted at (312) 814-5153.

D. Securities

The Securities Department of the Illinois Office of the Secretary of State is responsible for the regulation of the securities industry in Illinois and protection of investors by ensuring compliance with the law and investigating any complaints of fraud or improper practices.

1. Registration of Securities:

Securities of issuers, including but not limited to, notes, stocks, bonds, debentures, certificates of interest or participations in any profit-sharing agreements, fractional undivided interests, limited partnership interests or, in general, any interest or instrument commonly known as a "security," must be registered with the Secretary of State prior to offer or sale, unless exempt under law.

An application for registration on Form U-1, Uniform Application to Register Securities, must be filed with the Secretary of State together with a prospectus or offering document and filing fee. The prospectus or offering document must disclose information about the issuer, the securities being offered for sale, how the proceeds from the sale of the securities will be used by the issuer, how the securities will be sold, and contain audited financial statements. The securities must be sold by a registered securities dealer or registered salesperson(s) for the issuer. Officers of the issuer may also offer or sell the securities provided no commission or other compensation is paid in connection with the sale of the securities. The prospectus or offering document will be reviewed for full disclosure. The securities will be registered when the application is complete and accurate provided there are no statutory disqualifications.

For those "small companies" relying upon Regulation D, Rule 504 if using general solicitation or advertising, or Regulation A under the Federal Securities Act or intra state filings, must accompany their registration with Form U-7, Small Company Offering Registration Form ("disclosure document") or other offering circular and a filing and examination fee.

2. Registration Exemptions

Securities issuers relying on Regulation D, Rule 505 or 506 under the Federal Securities Act may qualify for an exemption from registration under the law. A notice on Form D must be filed with the Secretary of State by the issuer within 15 days of receipt of consideration or the return of a subscription agreement by an investor in this State which results from an offer being made in reliance upon this exemption and be accompanied by a filing fee.

Securities issued to residents of Illinois, to less than 35 persons or less than $1,000,000 in aggregate sales, and where no general advertising or general solicitation has occurred in Illinois and no commission, discount or other remuneration exceeding 20% of the sale price of such security has been paid for such sales may qualify for an exemption from registration under the law.

A Report of Sale on Illinois Form 4G or Form D (Rule 504) must be filed with the Secretary of State by the issuer, controlling person or dealer within 12 months of the first sale to an Illinois resident in reliance upon the exemption. In addition to the name and address of the issuer and, if applicable, the controlling person and dealer, a description of the securities sold, and a representation that there was no general advertising or general solicitation, date of first sale to Illinois resident, and the total dollar amount sold or to be sold and be accompanied by a filing fee.

3. Broker-Dealer, Investment Advisor Registration

Persons engaging directly or indirectly, as agent, broker or principal, in the business of offering, selling, buying and selling or otherwise dealing or trading in securities must be registered as a broker-dealer with the Secretary of State, unless exempt under the law.

An application for registration on Form BD, Uniform Application for Broker-Dealer Registration, must be filed with the National Association of Securities Dealers, Inc. Central Registration Depository ("NASD/CRD") together with the filing fee. An unaudited balance sheet, and an Illinois form entitled Additional Information required by Section 130.810(b) (3)-(5) and (7) of the Rules for Registration as a Securities Dealer are also required to be filed directly with the Secretary of State. The applicant must have at least one examination-qualified principal to supervise sales activities in Illinois. The firm will be registered when the application is complete and accurate provided there are no statutory disqualifications.

A securities salesperson must be registered with the Secretary of State before he or she may offer, purchase or sell securities on behalf of a securities dealer, issuer or controlling person.

Firms that are members of the National Association of Securities Dealers, Inc. ("NASD") must complete and file a Form U-4, Uniform Application for Securities Industry Registration or Transfer, on behalf of each salesperson with the NASD Central Registration Depository (CRD) together with the filing fee. Non-NASD member firms, issuers, or controlling persons must file the Form U-4 on behalf of each salesperson directly with the Secretary of State together with the filing fee. Applicants must be at least 18 years of age and have passed the Series 63 or 66 Exam and the Series 7 or other

authorized exam depending on the type of securities activity to be conducted. The salesperson will be registered when the application is complete and accurate provided there are no statutory disqualifications.

D. Anti-fraud provisions

The Audit & Compliance Division of the Securities Department conducts on-site compliance examinations and for-cause audits of branch and main offices of firms registered to offer investment advice to Illinois consumers. The definitions of those firms subject to state regulation are determined by the SEC and the National Securities Markets Improvement Act of 1996 ("NSMIA"). Compliance examinations are conducted to review the books and records of the entity being examined, and are intended to assure compliance with the Illinois Securities Law and attendant rules. For-cause audits are usually conducted to assist in an enforcement inquiry. The Audit & Compliance Division currently has 17 auditors and compliance examiners, and field assistance is also provided by other Department personnel. The Division is in constant communication with, and routinely cooperates with, the U.S. Securities & Exchange Commission, as well as other state and federal regulatory agencies.

In Illinois, anyone holding themselves out to the public as offering investment management or financial planning services may have to register as an investment adviser. In order for a salesperson to rely on an exemption from the definition from an investment adviser they must not provide investment advice to more than 5 clients. All work product must also be approved by the dealer before it is distributed to the customer or the salesperson is deemed to be acting separate and apart from the dealer and the exclusion is not available. This is true regardless of whether any direct fee is involved, because all salespersons receive indirect compensation (e.g., commissions).

Due to recent changes in federal and state law, investment advisor representatives who conduct business in Illinois and federal covered investment advisor representatives with a place of business in Illinois must register with the Securities Department and are subject to compliance examinations and audits. A place of business of a federal covered investment adviser representative is defined as an office at which the investment advisor representative regularly provides investment advisory services, solicits, meets with, otherwise communications with clients, and any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communications with clients. Another change in the federal law requires audits of investment advisers with a principal place of business in another state to be conducted based upon the books and records requirements of the investment adviser's home state.

X. REAL ESTATE

A. Ownership

1. Aliens

All aliens may acquire, hold and dispose of title to real and personal property in the same manner and to the same extent as natural born citizens of the United States.

2. Corporations

In Illinois, domestic corporations and foreign corporations which have received a valid certificate of authority, are entitled to purchase, take, receive, lease, gift, legacy, own, hold, use, and otherwise deal in and with any real or personal property.

3. Partnerships

All property (real or personal) brought into the partnership stock or subsequently acquired on account of the partnership is partnership property. Unless there is a clearly expressed intention to the contrary, property acquired with partnership funds is partnership property. Title acquired in the partnership name may be conveyed only in the partnership name.

4. Limited Liability Companies

Each limited liability company organized under Illinois law may sell, convey, mortgage, pledge, lease, and otherwise dispose of all of or any part of its property and assets.

B. Concurrent Ownership

1. Tenancy in Common

Two or more people as tenants may own a parcel of real estate in common. In such a case, each tenant holds an undivided fractional interest in the property. The co-owners have unity of possession. In Illinois, a single deed may show the proportional interests of each tenant-in-common, or a separate deed may show each tenant's individual proportional interest. When a single. Where a single deed is silent as to the proportional interests of each tenant, the interest is presumed equal.

Tenants-in-common can each sell, convey, mortgage or transfer his or her interest without the consent of the other co-tenants. However, no individual tenant may transfer the ownership of the entire property. Because ownership is in severalty, when a co-tenant dies, the tenant's undivided interest passes per his or her will.

In Illinois, there is a statutory presumption in favor of tenancy-in-common.

2. Joint Tenancy

In a joint tenancy, title is held as though all joint tenants collectively constitute one unit. The death of one of the joint tenants does not destroy the ownership unit; it only reduces by one the number of people who make up the unit. This is known as the right of survivorship. Upon the death of a joint tenant, title to the property passes by law to the surviving joint tenant(s). The transfer is deemed to occur at the moment of death, thus bring the property outside the reach of the decedent's estate (and thus, not subject to creditor's claims).

A joint tenancy can only be created by the intentional, specific act of conveying a deed or giving the property by will as a joint tenancy. A joint tenancy is terminated by destroying any one of the four unities (possession, interest, time and title). Thus, any transfer of an interest would destroy the joint tenancy with respect to the transferor. The remaining joint tenants (if there are more than one) would still have joint tenancy among themselves, but the new holder of the property would take it as a tenant-in-common.

3. Tenancy by the Entirety

This method of holding of holding title applies only to husbands and wives – although in Illinois, married couples who take their homes as joint tenants do not automatically get a tenancy by the entirety. A tenancy by the entirety has all of the benefits of joint tenancy (i.e., right of survivorship), plus some additional protection against creditors. A home held by a married couple as tenants by the entirety may only be reached by creditors of joint debts of a husband and wife. In the case of individual debts, the property may not be partitioned, sold or encumbered without the permission of both spouses. Furthermore, neither spouse can convey their half-interest without the consent of the other.

C. Spousal Rights

In Illinois, during marriage a spouse may have homestead rights in the other spouse's property. A release of homestead rights must be in writing. A seller's spouse should be required to sign the sales contract and the deed, specifically releasing marital and homestead rights. In addition, the rights of each spouse in the real property will be governed by the type of tenancy at issue (i.e., tenancy in common, joint tenancy, or tenancy by the entirety).

D. Purchase/Sale of Property

1. Purchase

a. Drafting Purchase Agreements

A proposed real estate contract that has been filled in and signed by one party and presented to the other constitutes an offer to sell or purchase. The document will become a contract if and when the other party signs it without changing its terms. The proposed contract should contain a time limit during which the offer will remain open. In addition, contracts for the sale of real estate will often include certain contingencies and riders (i.e., attorney approval rider, mortgage commitment contingency, inspection rider, contingency on sale of buyer's home, zoning contingency, and so on).

b. Purchase Statements

The purchase statement or "bill of sale" is an independent document transferring title to personalty. It should be complete in itself and not refer to any other document to determine what is covered. Most bills of sale will contain warranties of title and

provisions covering freedom from liens as well as an exclusion of implied warranties. Normally, the signature of the seller is also acknowledged (although, not required).

c. Protection from Fraud

A purchaser who has been deceived as to the dimensions of residential property may have an action based on common law fraud or misrepresentation, or the Illinois Consumer Fraud Act.

d. Transfer Taxes

Unless the parties agree otherwise, the seller is responsible for furnishing and filling out the forms for the state and county tax; rules for municipal transfer taxes will differ. Transfer taxes may be imposed on either the seller or the buyer. The state of Illinois imposes a tax on transfer of real estate at a rate of $0.50 per $500 of consideration.

e. Proration of Taxes

At closing, the seller will normally pay the buyer at closing an estimated amount designed to cover the unpaid real estate taxes on the property up to and including the day of closing. The buyer, having been compensated, is then responsible for paying all real estate tax bills that arrive. The amount of proration is based on a percentage of the most recent, ascertainable full year's tax bill. Both parties are taking a chance using this method, since no compensation will be paid at a later date to either party based on the actual bill.

2. Closing

a. Deed

Generally, a deed must be recordable and the drafter must be aware of the requirements for recording. When a title company serves as a closing agent, it will take on the responsibility of physically taking the deed and other recordable documents to the recorder's office; however, it is the seller's attorney's responsibility to provide a deed that can be recorded. There are two commonly used types of deeds: warranty and quitclaim.

By statute, a warranty deed in Illinois should be substantially in the following form:

> The grantor [name and place of grantor], for an in consideration of [consideration], conveys and warrants to [grantee's name(s)] the following described real estate [description], situated in [county name] County, Illinois.
>
> Dated____________
>
> ____________________________
>
> Signature of grantor(s)

By statute, a quitclaim deed in Illinois should be substantially in the following form:

> The grantor [name and place of grantor], for an in consideration of [consideration], conveys and quitclaims to [grantee's name(s)] all the interest in the following described real estate [description], situated in [county name] County, Illinois.
>
> Dated____________
>
> ___________________________
>
> Signature of grantor(s)

b. Mortgage

Illinois is a lien-theory state. Mortgages are considered to be liens against the property. However, execution of a mortgage does not convey title to the lender. The buyer retains title.

c. Closing Statement

The closing statement will generally contain a list of "credits" by both the buyer and seller. Seller's credits generally include: purchase price, water, condominium assessment, insurance, real estate tax escrow, insurance escrow, reimbursement of deposit for utilities. Buyer's credits generally include: earnest money, purchase money mortgage, purchase contract balance, condominium assessment, water, gas, electric, prepaid rent, interest on security deposits, security deposits, janitor wages, janitor vacation, real estate taxes.

F. Foreclosures

Mortgage foreclosures in Illinois are governed by the Illinois Mortgage Foreclosure Law.

Most notes payable to commercial lenders will contain an acceleration clause whereby the lender can declare the entire remaining principal balance due if any single payment is late.

In order to obtain a foreclosure, the lender must initiate the process by first filing a complaint and serving a summons upon the borrower. The borrower then has 90 days from service to "reinstate" (i.e., revive the mortgage by payment of past due amounts, fees and costs). If the borrower fails to reinstate, the lender will obtain a judgment of foreclosure. Generally, the borrower can only exercise the right to reinstate once in 5 years. The borrower will then generally have 3 months from entry of judgment to "redeem" (i.e., pay the entire judgment amount, plus interest, fees and costs). If the borrower fails to redeem within the allotted time, the mortgaged property will be sold at a judicial sale.

Upon confirmation of sale, the purchaser takes title free and clear of all outstanding liens that were the subject of the foreclosure action even if the purchaser has knowledge of the claim and even if the purchaser is the original mortgagor.

G. 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 Illinois 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 materially 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.

H. Zoning

Under Illinois law, and whether or not so stated in the contract, a buyer takes title subject to all existing laws, including municipal and county ordinances. The fact that restrictive zoning or building codes apply to the property in question does not create an objection to title, and non-compliance with zoning ordinances does not create non-marketable or non-merchantable title. However, violation of a zoning or building restriction is a defect in title (which must generally be cured prior to closing).

I. Leases

A buyer of real property is subject to all earlier recorded leases and to rights of parties in possession. Any such lease or rights should specifically be set out in the contract as an exception to title; otherwise the seller may not be able to convey title as required under the contract.

Under the Lessor's Liability Act, every agreement exempting a landlord from liability for damages resulting from lessor's negligence is void as against public policy and is wholly unenforceable.

Leases in the Chicago area are also governed by the Chicago Residential Landlord-Tenant Ordinance. This ordinance covers all non-owner occupied residential rental buildings and all multi-family residential buildings containing seven or more rental residential units whether or not owner-occupied. The ordinance provides tenants with

certain rights. The ordinance also prohibits the limitation of any liability of the landlord or tenant and prohibits the indemnification of any such liability. The ordinance prohibits such one-sided terminations (i.e., where landlord can unilaterally terminate in the case of tenant sublet), and requires mutuality of termination rights. The law also requires security deposits to be segregated. Moreover, a landlord may not knowingly terminate a tenancy, decrease services, bring or threaten suit, or refuse to renew a lease if the tenant, in good faith, takes any action protected under the ordinance. The ordinance provides for awarding a prevailing tenant attorney's fees. The amount of fee is in the discretion of the court.

J. Mineral Rights

Any mineral right may be conveyed by deed or lease, which may be acknowledged and recorded in the same manner and with like effect as deeds and leases of real estate.

Under a mining lease, minerals belong to the lessor as long as they remain in the land, but lessee has the right to explore and reduce them to possession, upon which he pays the reserved royalty or rent.

The owner of the surface of the land under which the mining rights have been conveyed is entitled to subjacent support, and if he is deprived of the necessary support by the removal of mineral under the land, even if under the most approved system of mining, the person removing the support is responsible for any damages.

K. Eminent Domain / Regulatory Takings

In order to exercise the power of eminent domain, the condemning authority must undertake statutorily prescribed procedures that result in the formal transfer of title from the landowner to the condemning authority.

A "regulatory taking" is defined as an indirect or inverse condemnation because it results from the restrictive impact of a land-use planning or regulatory decision on the landowner's property. Factors to be considered in determining whether a regulatory taking has occurred (thus necessitating damages to the landowner) include: (a) the degree to which the regulation relates to or advances a legitimate state interest; (b) the balance between the state interest and the burden of securing a benefit on a single land owner when it is more properly borne by the general community; (c) whether the regulation entails permanent physical occupation; (d) whether reasonable investments were made prior to the general notice of the program; (e) the extent to which the economic effect deprives the landowner of all or substantially all beneficial use of the property; and (f) whether the regulation abrogates an essential element of private property.

XI. MISCELLANEOUS

A. Requirements for qualification to do business in Illinois:

There are several ways to organize a business in Illinois. They include: Sole Proprietorship, General and Limited Partnerships, Limited Liability Partnerships ("LLP"), Limited Liability Corporations ("LLC"), "S" Corporations, and "C" Corporations. Most businesses in the state are required to be registered and/or licensed by the Illinois Department of Revenue ("IDOR"). The main licensing agency in the state for most professions is the Illinois Department of Professional Regulation ("IDPR"). Individuals must be licensed by the IDPR before conducting business if one belongs to any of the several professions governed by the IDPR.

A person wanting to do business in Illinois may also be required to register with the Illinois Department of Revenue if the business is a sole proprietorship (either an individual or a husband and wife together), an exempt organization, or a government agency, if it is responsible for reporting Sales and/or Use Tax, sales for resale or withholding for Illinois employees. In addition, one may be required to register if one's company is a partnership, a small business corporation, or a corporation and that company conducts business in the state or with Illinois customers. Furthermore, it is illegal for an individual, including many types of businesses, to engage in retail sales of tangible personal property in the state without first acquiring a Certificate of Registration from the IDOR. Once the Certificate of Registration is obtained, it must be conspicuously displayed in the place of business for which it was acquired. The Certificate expires five years from the date of issue and will be automatically renewed if there are no open periods or outstanding balances on the account.

B. Licensing and regulatory requirements

Some occupations and occupational activities are regulated by federal, state and local governments to protect the health, safety and welfare of the public by ensuring that individuals who engage in such pursuits are qualified. New businesses should contact their local revenue department to determine if additional taxes apply to their business and professional activities. For instance, many communities restrict advertising, regulate pricing of goods or services, or require zoning permits. The main licensing agency for the state is the Illinois Department of Professional Regulation, and most businesses are required to be licensed and/or registered by the Illinois Department of Revenue as well. Some businesses are also required to make insurance contributions to the Illinois Department of Employment Security. The elements that establish the need for contributions are: 1) if the business has employed one or more workers in each of twenty or more calendar weeks; or 2) if the business has paid at least $1,500 in total wages during a calendar quarter.

C. Applicability of state usury laws

When an illegal profit is received by a lender on money loaned to a borrower, the profit is usurious. If a loan is usurious, then the loan agreement may be voided, any liens securing it are unenforceable, and the mortgagor may receive as penalty twice the amount of usurious interest and charges if the intent to charge a usurious rate is proven. Usury laws in Illinois are geared toward protecting the necessitous borrower from an unscrupulous lender. The state has declared that criminal usury is committed by any

person who knowingly receives interest, discount or other consideration at a rate greater than 20% per annum (either before or after the maturity of the loan) in exchange for a loan of money or other property, or forbearance from the collection of such a loan. Criminal usury in Illinois is a Class 4 felony.

The usury laws apply only to personal loans, not business loans. In contrast to persons requiring loans, a business, not-for-profit corporation or limited liability corporation has the power to borrow money for corporate purposes at any interest rate mutually agreed upon without regard to the restrictions of any state usury laws. It is important to note that usury laws only govern loans arising from a contractual relationship. Therefore, for example, interest rates from a court order are not pursuant to a contract and therefore, do not fall under the usury laws and are not subject to the restrictions of such laws.

D. Notice of business activities

Illinois requires different types of notice for different types of businesses. For example, when a general partnership or sole proprietorship is established, a notice must be published at least once a week for three consecutive weeks in a newspaper of general circulation in the county where the certificate was filed. Corporations must file Articles of Incorporation with the Secretary of State that outline the purpose of the business. Thereafter, the corporation must file annual reports to update its corporate information. When a person or entity wants to acquire an existing Illinois business, the purchaser of the assets must file a "Notice of Sale/Purchase of Business Assets." In addition, a Bulk Sales Release of Transferee Liability must be obtained from the Illinois Department of Revenue. Finally, those who plan to operate a franchise in Illinois have also notice requirements. The Franchise Disclosure Act requires that a franchiser register with the Illinois Attorney General. The Act also mandates that the franchiser provide the franchisee with complete information regarding the franchiser/franchisee relationship, details of the contract, prior business experience of the franchiser, and other relevant information. (For more information, see Chapter II, sect. (C) (2) supra.)

E. Restrictions on specific professions

The Illinois Department of Professional Regulation ("IDPR") is divided into two operating divisions, each with distinct duties and responsibilities. The Licensing and Testing Division of the IDPR is charged with ensuring that all professionals in the state meet the requirements outlined as essential to practice in their given fields. Professionals who fall into one of the several categories of regulated professions must properly complete an application for licensure with the IDPR. The method of applying, including examination, endorsement from another state, or acceptance of an examination in another state may vary from profession to profession. The specific licensing requirements are in the regulatory statute and administrative rules for each profession, and it is the responsibility of the Licensing and Testing Division to oversee these application and licensing processes.

The Enforcement Division of the IDPR, in concurrence with legislative mandates, is charged with administering and enforcing the forty-six administrative acts that regulate

the conduct of certain occupations in Illinois. The Enforcement Division investigates alleged violations. It has two units; the Investigations Unit which compiles the facts, and the Prosecutions Unit which seeks to prove the validity of the allegation. If and when the complaint is substantiated, it is presented to the Director of the Division for appropriate discipline. The IDPR publishes a monthly report detailing disciplinary action against licensees during that period. Information in the report includes the name of the disciplined professional, the city the recipient of discipline was practicing in at the time of the action, the nature of the discipline imposed and a description of the reason for discipline.

There are many professions regulated by the IDPR and those interested in a particular profession should verify with the agency before engaging in work that could be regulated and for which a license is needed. For general information please visit http://www.dpr.state.il.us/, or contact the IDPR at:

James R. Thompson Center
100 W. Randolph Suite 9-300
Chicago, IL 60601
(312) 814-4500

320 West Washington
Springfield, IL 62786
(217) 785-0800

F. Business name registration requirements

When a business name is different from the owner's full legal name, the Illinois Assumed Name Act requires the owner to register the business name with his or her local County Clerk, regardless of the structure of the business. If the name of the business includes either the word or abbreviation "Corporation," "Corp.," "Incorporated," or "Inc.," then the laws of Illinois require that the business actually be legally incorporated.