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ATTORNEYS AT LAW

DOING BUSINESS IN MISSISSIPPI

A LEGAL GUIDE

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OVERVIEW OF LEGAL GUIDE

With passage of recent legislation, Mississippi offers an appealing environment for new businesses and existing industries. The attorneys at Butler Snow created this guide as a reference tool for businesses seeking to relocate or expand into Mississippi as well as in-state businesses. This guide provides useful information for the formation, structure and operation of various business entities.

Butler Snow attorneys regularly counsel with our clients on the formation and operation of business entities, on complex transactions and on issues related to expansions and new locations in Mississippi. The firm has played a key role in corporate mergers and acquisitions in a variety of businesses over the last several years, many of which have involved hundreds of millions of dollars.

Butler Snow's breadth and depth provide its clients the legal advice, counsel and services necessary for making and implementing key decisions.

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OVERVIEW OF BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

THE FIRM

With over 135 lawyers and with offices in Jackson, Mississippi, on the Mississippi Gulf Coast and in Memphis, Tennessee, Butler Snow offers a full range of legal services. Butler Snow's business lawyers bring a strategic focus and extensive business experience to matters as diverse as commercial real estate, governmental and administrative issues, environmental, labor and employment, tax and corporate, healthcare, intellectual property protection and commercialization, and biotechnology. The firm's litigation lawyers are noted for defending pharmaceutical and medical device companies and for defending other health-related lawsuits. In addition, our litigation lawyers have substantial experience in commercial litigation, product liability defense, insurance issues and transportation-related litigation.

As one of three national preferred provider law firms for a Fortune 250 company, Butler Snow has handled or coordinated on a nationwide basis that company's products liability work, labor and employment litigation and trademark litigation, as well as a significant portion of its commercial litigation and mass tort litigation. For this same client, Butler Snow lawyers have managed or coordinated this client's transactional and contracts work, employment advice work and employee benefits work. With a variety of additional clients, the firm serves as national or regional counsel with respect to litigation, either for particular products or certain areas of the country.

The vast majority of Butler Snow's work, however, is in representing other national and regional companies for their Mississippi and mid-South related matters, as well as our substantial number of locally based businesses and individuals.

THE PEOPLE

Butler Snow's lawyers are professionally acclaimed and practical in their approach. This is reflected in the firm's 23 attorney listings in 18 practice areas in *The Best Lawyers in America, 2005-2006*[®], including Business Litigation, Corporate, Mergers & Acquisition and Securities Law, Environmental Law, Labor and Employment Law, Personal Injury Defense Litigation, Real Estate Law and Tax Law. The firm and individual lawyers were also ranked highly in *Chambers & Partners - America's Leading*

Business Lawyers, 2004®, which noted that Butler Snow “has a truly regional presence and a substantial share of the local market.” In the 2003 edition, which actually ranked the state’s law firms, Butler Snow was rated as the top firm in Mississippi and noted the its “strong business law practice,” “deep resources” and “sophisticated practices in healthcare, real estate, IP and complex litigation.” In *Chambers USA, America's Leading Business Lawyers 2005*, 10 attorneys from Butler Snow were named as “Leaders in their Field” in eight separate practice areas.

Five litigation attorneys are Fellows of the American College of Trial Lawyers, four are members of the American Board of Trial Advocates (one of whom served as its national President), two are recognized in the International Who’s Who of Product Liability Defense Lawyers, six are members of the International Association of Defense Counsel, and two are members of the Products Liability Advisory Council. Butler Snow’s trial lawyers have directed and served on the faculty of the IADC Defense Counsel Trial Academy, the ABA’s TIPS National Trial Academy and the National Advocacy Center for the United States Department of Justice.

Butler Snow embraces diversity in terms of race, gender and social-economic background, which accounts for a wide range of perspectives utilized for the clients’ legal and business needs. Lawyers include alumni of more than 30 undergraduate colleges and universities and more than 20 law schools. Many Butler Snow lawyers joined the firm immediately after law school and have spent their entire careers at the firm. Others have served in the armed forces, had distinguished careers in government or amassed experience in the corporate world, either working with industry leaders or pursuing their own entrepreneurial endeavors. In each instance, Butler Snow lawyers bring to each client the savvy, practical, real-world applications and knowledge needed to help that client succeed.

For more information on Butler Snow, please visit our website at www.butlersnow.com.

Table of Contents

	<u>Page</u>
I. INTRODUCTION.....	1
1. CULTURAL BACKGROUND.....	1
2. INVESTMENT CLIMATE AND RECENT SIGNIFICANT ECONOMIC EVENTS	2
II. BUSINESS ENTITIES.....	3
1. CORPORATIONS	3
(a) Introduction.....	3
(b) Formation.....	3
(c) Articles of Incorporation.....	3
(d) Name	3
(e) Bylaws	3
(f) Shares	3
(g) Limited Liability	4
(h) Preemptive Rights	4
(i) Shareholders	4
(j) Board of Directors	4
(k) Officers	5
(l) Authority of Shareholders, Directors and Officers.....	5
(m) Mergers and Share Exchanges	5
(n) Taxation	5
(o) Annual Reports	5
2. PARTNERSHIPS.....	6
(a) General Partnership.....	6
(b) Limited Partnership	6
3. LIMITED LIABILITY COMPANIES.....	7
(a) Formation.....	7
(b) Certificate of Formation	7
(c) Name	7
(d) Limited Liability Company Agreement	8
(e) Members	8
(f) Managers	8
(g) Limited Liability	8
(h) Limited Liability Company Interest.....	8
(i) Capital Contributions; Sharing of Profits and Losses	8
(j) Distributions	8
(k) Assignment of LLC Interests	9
(l) Mergers	9
(m) Taxation	9
(n) Annual Reports	9
4. SOLE PROPRIETORSHIP.....	9

5.	JOINT VENTURES	9
6.	NONPROFIT CORPORATIONS	10
	(a) Formation.....	10
	(b) Articles of Incorporation.....	10
	(c) Name	10
	(d) Membership.....	10
	(e) Members	10
	(f) Directors.....	11
	(g) Mergers	11
	(h) Annual Reports	11
III.	STATE TRADE REGULATIONS.....	11
1.	MISSISSIPPI CONSUMER PROTECTION LAWS	11
IV.	STATE TAXATION OF MISSISSIPPI.....	12
1.	OVERVIEW.....	12
2.	PERSONAL INCOME TAX.....	12
3.	CORPORATE INCOME TAX	13
4.	CORPORATE FRANCHISE TAX	14
5.	AD VALOREM TAX.....	14
6.	SALES AND USE TAX	15
7.	SUB-S STATUS	15
8.	TAX BENEFITS.....	16
V.	MISSISSIPPI LABOR & EMPLOYMENT.....	16
1.	STATE CONSIDERATIONS.	16
	(a) State Labor Laws	16
	(b) State Discrimination Statutes.	17
	(c) Drug and Alcohol Testing.....	17
	(d) Off-Duty Conduct.....	17
	(e) Covenants Not to Compete.....	17
	(f) Wage and Hour Laws.	18
	(g) Child Labor.	18
	(h) Workers' Compensation.	18
	(i) Unemployment Insurance.....	19
	(j) Right to Work Act.	19
VI.	MISSISSIPPI ENVIRONMENTAL CONSIDERATIONS.....	19
1.	ENVIRONMENTAL LAWS.....	19
	(a) Mississippi Air and Water Pollution Control Law.....	19
	(b) Mississippi Solid Waste Disposal Act.	19
	(c) Underground Storage Tank Act of 1988.....	20
	(d) Radioactive Waste Transportation Act.	20

(e)	Mississippi Safe Drinking Water Act of 1997	20
(f)	Mississippi Surface Coal Mining and Reclamation Law.	20
(g)	Mississippi Surface Mining and Reclamation Law.	20
(h)	Mississippi River Timberlands Control Act of 1991.	20
(i)	Channel Maintenance Act.....	20
(j)	Coastal Wetlands Protection Act.	21
(k)	Mississippi Water Resources Law.....	21
(l)	Mississippi Scenic Streams Stewardship Act.	21
(m)	Mississippi Prescribed Burning Act.	21
(n)	Mississippi Brownfields Voluntary Cleanup and Redevelopment Act.....	21
(o)	Mississippi Individual Onsite Wastewater Systems Law.	21
(p)	Mississippi Oil and Gas Development, Production, and Distribution Law.	21
(q)	Mississippi Lender Liability Law.....	22
VII.	INTELLECTUAL PROPERTY LAW IN MISSISSIPPI.....	22
1.	TRADEMARKS/SERVICE MARKS	22
2.	TRADE NAMES	22
3.	TRADE SECRETS.....	23
4.	RIGHTS OF PUBLICITY/PRIVACY	23
5.	UNFAIR COMPETITION/DECEPTIVE TRADE PRACTICES.....	23
VIII.	STATE COURT SYSTEM.....	24
1.	STATE TRIAL COURTS	24
2.	STATE APPELLATE COURTS	26
3.	STATE TAX COURT	26
IX.	FINANCING INVESTMENTS.....	27
1.	TAX-EXEMPT FINANCING	27
2.	MISSISSIPPI COMMERCIAL BANKING	28
3.	MISSISSIPPI SECURITIES REGULATION.	29
4.	MISSISSIPPI USURY LAWS.....	30
X.	REAL ESTATE TRANSACTIONS SECTION.....	30
1.	OWNERSHIP	30
2.	CONCURRENT OWNERSHIP	31
3.	SPOUSAL RIGHTS	31
4.	PURCHASE/SALE OF PROPERTY	32
5.	FORECLOSURES.....	32
6.	EASEMENTS	32
7.	LEASES.....	33

8. ZONING.....	33
9. EMINENT DOMAIN	34
10. MINERAL RIGHTS	34

I. INTRODUCTION

1. Cultural Background

Mississippi has five distinct regions. The culture in these five regions varies greatly, one aspect that makes Mississippi so attractive. Within a day's driving time, you can enjoy the rich literary legacies of Oxford in the hills and stroll on the white sands of the beaches in Biloxi.

The Coastal region is home to casinos and resorts that offer golf and charter fishing, as well as spas, 24-hour gaming, dining and live entertainment. The Coast is also home to the Stennis Space Center, one of NASA's leading facilities for technology development, and the Northrop Grumman shipyards in Pascagoula. Further north are the historic districts of Hattiesburg and Laurel, which showcase exquisite Victorian and turn-of-the-century mansions built by lumber barons. Located in Laurel is the Lauren Rogers Museum of Art, Mississippi's oldest and one of its finest art museums.

The Capital/River region stretches from Jackson to the historic towns that line the bluffs of the Mississippi River. Jackson is home to exceptional historical, art and natural science museums, boutique shopping, and restaurants representing virtually every culinary style. Other history-rich cities include Natchez, home to the nation's largest collection of antebellum mansions; Port Gibson, the town that General Grant deemed "too beautiful to burn"; and Vicksburg, where the tide of Civil War turned most emphatically in favor of a United States of America.

The Pines region is home to sacred Native American homelands and post-card pretty historic towns. Columbus was the site of America's first Memorial Day observance, when a group of Civil War widows decorated the graves of both the Confederate and Union dead. To the west, the Natchez Trace Parkway towns of French Camp and Kosciusko still boast of the frontier charm that's made them popular stops since the 1700's. The Mississippi Band of Choctaw Indians' reservation is located near Philadelphia, where one of the state's popular casino resorts attracts thousands of visitors each day. Each summer, Philadelphia also hosts the Neshoba County Fair, or "Mississippi's Giant House Party."

Even before the casinos sprang up out of the cotton fields, the Delta was already famous as the birthplace of the blues and as the repository of the richest farm land "this side of the Valley Nile." Cities like Greenville and Greenwood are known for hosting lively festivals celebrating the area's rich musical and cultural heritage. Clarksdale's Delta Blues Museum showcases the history and cultural influence of America's only original music. Beloved southern writer Willie Morris grew up in Yazoo City and immortalized his hometown in the book *My Dog Skip*. In nearby Cleveland, musical events and Broadway plays often grace the stages of the Bologna Performing Arts center located on the campus of Delta State University. Acclaimed actor and Delta resident Morgan Freeman can often be found enjoying a meal at his own gourmet restaurant, Madidi, in Clarksdale.

The Hills region stretches across the northeastern quarter of Mississippi, from the edge of the Mississippi River Delta to the foothills of the Appalachian Mountains. Most of the more than 500 Civil War battles waged on Mississippi soil were fought in this area. Aspiring authors and lovers of literature are drawn to Oxford, home of the University of Mississippi (or Ole Miss as it is affectionately known), hoping some of the magic that inspired William Faulkner or John Grisham and dozens of others still lingers. One of the world's most enduring cultural icons, Elvis Presley, was born in Tupelo.

2. **Investment Climate and Recent Significant Economic Events**

Mississippi offers a favorable business climate, with competitive wage rates and taxes. An already favorable business climate has recently become even more so, owing to two significant events.

First, Nissan recently located one of its major automotive manufacturing facilities in Canton, just north of Jackson. This \$1.4 billion project is the first automobile manufacturing facility located in the state and has created 5,300 direct jobs and over 26,000 indirect jobs since commencing manufacturing operations in June, 2003. In addition, there have been 30 new automotive suppliers that have located in various locales across the state related to the Nissan project.

Second, in June of 2004, Mississippi enacted comprehensive tort reform legislation. Among the most significant elements of the legislation include: (i) venue reform that set more specific limits on a plaintiff's ability to choose a forum that bears no direct relationship to the acts or omissions giving rise to the claim; (ii) imposition of a \$1 million cap on the recovery of non-economic damages except in certain limited instances; (iii) elimination of joint and several liability except when the joint tort-feasors are found to have acted in concert; and (iv) innocent seller provisions that protect sellers of defective products where such sellers had no actual or constructive knowledge of the product defect giving rise to the claim and did not manufacture or modify the product in any manner that gave rise to the defect. In addition, the previously enacted caps on punitive damages were lowered for defendants with a net worth of less than \$750 million. Other provisions included: (i) extensive reform of jury service and payment rules; (ii) limitations on premises liability to independent contractors; and (iii) waiver of the medical privilege between co-defendant physicians.

In light of the above events, Mississippi should grow more attractive to business development in the state. With more protection for business from lawsuit abuse and the advancement of the workforce with Nissan, the future of Mississippi's business community looks bright.

II. BUSINESS ENTITIES

1. Corporations

(a) **Introduction.** Patterned after the Model Business Corporation Act, the Mississippi Business Corporation Act (the "Corporation Act") was adopted in 1987, replacing the existing statutory framework governing business corporations. The Corporation Act is contained in Miss. Code Ann. § 79-4-1.01 *et seq.* Documents required to be filed under the Corporation Act must be filed with the Mississippi Secretary of State, Business Services Division, 700 North Street, Jackson, MS 39202. The primary telephone number of the Business Services Division is (601) 359-1633.

(b) **Formation.** A Mississippi corporation is formed by the filing of articles of incorporation with the Secretary of State. Articles of incorporation must be signed by one or more incorporators and submitted with the applicable filing fee, which is currently Fifty Dollars (\$50.00). Generally, if the articles of incorporation do not name the initial board of directors, then the incorporator(s) will elect the initial board of directors. Unless a later effective date is specified in the articles of incorporation, corporate existence begins when the articles are filed. The Constitution of the State of Mississippi provides that a corporation must be organized and commence doing business within two (2) years from the filing date of the articles of incorporation.

(c) **Articles of Incorporation.** The articles of incorporation must set forth the name of the corporation, the number of shares the corporation is authorized to issue and information as to any classes of stock, and any preferences, rights and limitations of such classes, the street address of the registered office, the name of the registered agent and the name and address of each incorporator. The articles may contain the names and addresses of initial directors, the purposes, management, and powers of the corporation, any provision allowed or required to be set forth in the bylaws, a provision limiting the directors' liability, and a provision requiring the corporation to indemnify the directors.

(d) **Name.** Mississippi requires that the name of a business corporation contain the word "Corporation," "Incorporated," "Company" or "Limited," or an abbreviation of one of these words. The name of a corporation must be distinguishable from the names of other corporations incorporated or qualified to do business in the State of Mississippi.

(e) **Bylaws.** The bylaws of the corporation must be adopted by the incorporators or the board of directors. The bylaws should contain provisions governing the corporation's business and affairs. They may be amended by the board of directors or the shareholders.

(f) **Shares.** The board of directors has the authority to issue shares of the corporation for any consideration deemed adequate. The corporation must authorize one or more classes of shares that together have unlimited voting rights, as well as one

or more classes of shares that together are entitled to receive the net assets of the corporation at dissolution. The same class of shares may have both voting rights and entitlement to the net assets upon dissolution. A corporation may acquire its own shares, and such shares that are acquired by the corporation constitute authorized but unissued shares.

(g) **Limited Liability.** A shareholder is not liable to the corporation or its creditors with respect to his shares except to pay the consideration for which the shares were authorized to be issued. Furthermore, a shareholder is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

(h) **Preemptive Rights.** The shareholders of a Mississippi corporation do not have a preemptive right to acquire the corporation's unissued shares unless the articles of incorporation expressly provide such right.

(i) **Shareholders.** Generally, shareholders act by resolutions approved by a majority of the vote at a meeting at which a quorum is present. Unless the articles of incorporation or the Corporation Act requires otherwise, a quorum is a majority of the votes entitled to be cast by the shareholders. A Mississippi corporation is required to hold an annual meeting of the shareholders of the corporation at the time and place stated in the bylaws. At the annual meeting, the shareholders elect the board of directors. Unless otherwise provided in the articles, directors are elected by a plurality of the vote at a meeting at which a quorum is present. For corporations incorporated before July 1, 2002, shareholders have a right to cumulate their votes for directors unless otherwise provided in the articles; for corporations incorporated on or after July 1, 2002, shareholders do not have a right to cumulate their votes for directors unless otherwise provided in the articles. A Mississippi corporation must hold a special shareholders' meeting if one is called by the board of directors or the person or persons authorized to do so by the articles or bylaws. In lieu of an actual meeting (either annual or special), the shareholders may act by unanimous written consent.

(j) **Board of Directors.** Absent an agreement among all the shareholders as permitted by Miss. Code Ann. § 79-4-7.32, a corporation must have a board of directors, and the board must manage and direct the business and affairs of the corporation. The board must consist of one or more individuals as specified in the corporation's articles or bylaws. The directors must be elected at the first annual shareholders' meeting and at each annual meeting held thereafter, unless the corporation has provided in its articles for staggered terms for its directors. Directors may act by resolution at a regular or special meeting of the directors where a quorum is present, or directors may act by unanimous written consent. Board meetings may also be conducted by any means by which the directors may simultaneously hear one another, which would include telephone and video conferences. Directors elect the officers of the corporation.

Each director is charged by Mississippi law to discharge the duties of a director in good faith, and in a manner that the director reasonably believes to be in the best interests of the corporation.

(k) **Officers.** Every Mississippi corporation must have at least one officer charged with keeping minutes of the directors' and shareholders' meetings and maintaining the records of the corporation. Corporations typically have a president, vice president, secretary and treasurer, and may have a chairman of the board, chief financial officer or other officers specified in the articles of incorporation or the bylaws. Mississippi law allows for one individual to simultaneously hold more than one office.

(l) **Authority of Shareholders, Directors and Officers.** The shareholders must vote on certain fundamental matters, such as substantive amendments to the articles of incorporation, mergers (subject to certain exceptions), share exchanges, a sale, lease, exchange or other disposition of the assets of the corporation which would leave the corporation without a significant continuing business activity, and dissolution. Other matters are solely within the authority of the board of directors, and the board of directors may delegate to certain officers the authority to perform actions within the ordinary course of business of the corporation.

(m) **Mergers and Share Exchanges.** A Mississippi corporation may merge with a Mississippi or foreign corporation or other entity pursuant to a plan of merger. Through a share exchange, a Mississippi corporation may acquire all of the shares of another domestic or foreign corporation or all of the interests of a domestic or foreign other entity in exchange for shares or other securities pursuant to a plan of share exchange. The plan of merger or share exchange must be approved by the board of directors and (except in certain circumstances) recommended by the board for approval to the shareholders and actually approved by the shareholders. A foreign corporation or other entity may be a party to the merger or share exchange only if the merger or share exchange is permitted by the laws under which the corporation or other entity is governed. The plan of merger must include the name of each entity, the name of the surviving entity, the terms and conditions of the merger, the manner of converting the shares of each merging corporation and interests of each merging other entity, and the organizational documents of the surviving entity. The plan of share exchange must include the name of each entity, the terms and conditions of the share exchange and the manner of exchanging the shares of each corporation and interests of each other entity. A merger or share exchange is made effective by the filing of articles of merger or share exchange with the Secretary of State.

(n) **Taxation.** Corporations are separately taxable entities with the income of the corporation being subject to Mississippi income tax laws. Corporations can qualify to be taxed similarly to a partnership, but only if they have a maximum of seventy-five (75) shareholders, none of whom is a nonresident alien, and all of whom must be individuals or certain types of trust.

(o) **Annual Reports.** A corporation organized in Mississippi or otherwise authorized to transact business in Mississippi must file an annual report each year

setting forth certain non-financial information such as the names and addresses of its directors and officers.

2. Partnerships

(a) **General Partnership.** Mississippi general partnerships are governed by the Uniform Partnership Act, which is contained in Miss. Code Ann. § 79-12-1 *et seq.* (the "Partnership Act"). The Partnership Act defines a general partnership as "an association of two (2) or more persons to carry on as co-owners a business for profit and includes limited liability partnerships and foreign limited liability partnerships." Mississippi does not require a partnership to file or register with any governmental authority unless it is registering as a limited liability partnership. To determine if a partnership has been formed, Mississippi law will look to the intent of the parties, the control of the undertaking and profit-sharing. Intent can be expressed in written or oral form or it can be implied from the action or conduct of the parties. Mississippi courts have found profit-sharing to be the single most important factor in determining whether a partnership has been formed. Every partner is an agent of the partnership, and the act of a partner in carrying out the usual business of the partnership is binding on the partnership.

Absent registration as a limited liability partnership, each partner is of a Mississippi general partnership jointly and severally liable for all debts and obligations of the partnership. Any partner may voluntarily dissolve the partnership, or the partnership may be dissolved by death, disability or bankruptcy of any one partner.

Mississippi law does not require any rigid rules of operations for general partnerships, and partners are allowed to manage their business activities, and share in profits, by any ratio or formula on which they agree. Mississippi general partnerships are not taxed as separate entities, and their income and losses are allocated directly to the individual partners pursuant to the sharing ratios agreed to by the partners.

A Mississippi general partnership may obtain limited liability for its partners by registering with the Secretary of State as a limited liability partnership. A partner in a limited liability partnership is not liable for any debt or obligation of the partnership (whether arising in tort, contract or otherwise). The partner remains liable for his or her own omissions, negligence and wrongful acts.

A general partnership is not required to file an annual report with the Secretary of State.

(b) **Limited Partnership.** The Mississippi Limited Partnership Act was enacted in 1987, replacing Mississippi's Uniform Limited Partnership Act, and is contained in Miss. Code Ann. § 79-14-101 *et seq.* (the "Limited Partnership Act"). The Limited Partnership Act defines a limited partnership as a partnership formed by two (2) or more persons of this state and having one or more general partners and one or more limited partners. A general partner in a limited partnership has the same rights, powers, liabilities and restrictions of a general partner in a general partnership. A

limited partner is a passive investor with no rights to participate in the management of the partnership unless otherwise provided in the partnership agreement. A limited partner is not liable for the obligations of the limited partnership, but the general partners are jointly and severally liable for the obligations of the limited partnership.

A limited partnership is formed upon the filing of a certificate of limited partnership with the Mississippi Secretary of State's office. The certificate of limited partnership must include the name of the limited partnership; the street address and mailing address of the limited partnership's office; the name, street and mailing address of the registered agent for service of process; the name, street and mailing address of each general partner; the latest date upon which the limited partnership is to dissolve; and any other matters the general partners wish to include. The partners in a limited partnership share in the allocation of profits and losses, and participate in the distribution of cash and other property, in the manner provided in the limited partnership agreement. If the limited partnership agreement is silent, partners share based on their pro rata capital contributions. A Mississippi limited partnership may merge with another limited partnership or other entity if that other entity's governing laws permits a merger with a limited partnership.

3. **Limited Liability Companies.**

The Mississippi Limited Liability Company Act was enacted in 1994, and is contained in Miss. Code Ann. § 79-29-101 *et seq.* (the "LLC Act"). Limited liability companies ("LLCs") have become an increasingly popular entity for Mississippi businesses since the Internal Revenue Service issued tax regulations in 1997 ensuring partnership tax treatment for an LLC unless it elected to be taxed as a corporation. The LLC Act is modeled loosely on Mississippi's limited partnership act, and its hallmark is the flexibility given to LLCs in the governing of their affairs.

(a) **Formation.** A Mississippi LLC is formed by the filing of a certificate of formation with the Secretary of State. The certificate of formation must be signed by a person forming the LLC, or that person's agent or attorney-in-fact, and submitted with the applicable filing fee, currently Fifty Dollars (\$50.00). Unless a later effective date is specified in the certificate of formation, LLC existence begins when the certificate is filed.

(b) **Certificate of Formation.** The certificate of formation must set forth the name of the LLC, the registered office and agent of the LLC, the date of dissolution (if any) and whether full or partial management of the LLC is vested in a manager or managers. The certificate of formation may contain any other matters the managers or members elect to include. Unless otherwise provided in the certificate of formation or the limited liability company agreement, all members must agree to any amendment of the certificate of formation.

(c) **Name.** The name of each LLC must contain the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC," and must be distinguishable on the

records of the Secretary of State from the name of any corporation, limited partnership or other LLC organized or registered in Mississippi.

(d) **Limited Liability Company Agreement.** The members of the LLC may enter into a limited liability company agreement (an “LLC Agreement”) to govern the affairs of the LLC, the conduct of its business and the relations of its members. An LLC Agreement must initially be agreed to by all of the members, and unless otherwise provided in the certificate of formation or the LLC agreement, all members must agree to any amendment of the LLC Agreement.

(e) **Members.** Except to the extent that the certificate of formation provides for management of an LLC by a manager or managers, management of an LLC is vested in its members. If an LLC has no manager, each member is an agent of the LLC for the purpose of conducting the business and affairs of the LLC, and the act of any member binds the LLC. If the LLC has managers, no member (acting solely as a member) is an agent of the LLC. Unless otherwise provided by the certificate of formation or the LLC Agreement, each member is entitled to one vote on any matter entitled to be voted on by the members. The certificate of formation or LLC Agreement may provide for classes of member and the relative rights, powers and duties (including voting rights). Members have no statutory obligation to hold meetings, annual or otherwise, and the LLC Act does not prescribe rules for notice of meetings, quorum requirements or voting by proxy.

(f) **Managers.** Management of an LLC is vested in managers only if so provided in the certificate of formation. If an LLC has managers, every manager is an agent of the LLC for the purposes of its business and affairs, and the act of any manager binds the LLC. Managers are not required to be residents of Mississippi or members of the LLC. Unless otherwise provided in the certificate of formation or the LLC Agreement, managers are elected by the members.

(g) **Limited Liability.** A member is not liable, solely because he is a member, for any debt, obligation or liability of the LLC arising in contract, tort or otherwise.

(h) **Limited Liability Company Interest.** A limited liability company interest is a member’s share of the profits and losses of an LLC and the right to receive distributions of LLC assets.

(i) **Capital Contributions; Sharing of Profits and Losses.** The contribution of a member to the LLC may be in cash, property, services rendered or an obligation to contribute cash or property or render services. The profits and losses of an LLC are allocated among the members in the manner specified in the certificate of formation or LLC Agreement. Absent such provision, allocations are made in accordance with the members’ contributions to the LLC.

(j) **Distributions.** A member is entitled to receive distributions as provided in the certificate of formation or the LLC Agreement. No distribution may be made if the distribution would render the LLC insolvent. A member or manager who approves a

distribution made in violation of the LLC Act is personally liable to the LLC for the amount of the distribution in excess of the amount allowed by the LLC Act.

(k) **Assignment of LLC Interests.** Except as provided in the certificate of formation or the LLC Agreement, a limited liability company interest is freely assignable. An assignment entitles the assignee to share in profits and losses and to receive distributions to the extent of the limited liability company interest received, but not to become a full member. An assignee may become a member of an LLC if and to the extent the certificate of formation or LLC Agreement so provides, or if all of the members consent.

(l) **Mergers.** A Mississippi LLC may merge with a Mississippi or foreign entity pursuant to a plan of merger. Unless otherwise provided in the certificate of formation or the LLC Agreement, the plan of merger must be approved by the members. A Mississippi or foreign entity may be a party to the merger only if the merger is permitted by the laws under which the corporation or other entity is governed. The plan of merger must include the name of each entity, the name of the surviving entity, the terms and conditions of the merger, the manner of converting the interests of each merging entity into shares or other securities of the surviving entity, and the organizational documents of the surviving entity. A merger is made effective by the filing of a certificate of merger with the Mississippi Secretary of State. The LLC Act does not provide for a share exchange.

(m) **Taxation.** Mississippi law follows federal tax law's treatment of LLCs, whereby LLCs with more than one member are classified as partnerships unless they elect to be taxed as corporations. LLCs with one member are disregarded entities for tax purposes, and the single member is taxed like a sole proprietor.

(n) **Annual Reports.** Mississippi LLCs or other LLCs authorized to transact business in Mississippi are not required to file an annual report with the Secretary of State.

4. **Sole Proprietorships.** Mississippi does not recognize a sole proprietorship as a formal business entity and thus does not require any special filings other than any licensing requirements related to the specific kind of business or profession. The chief disadvantage of a sole proprietorship is that all of the assets of the individual owner are subject to claims of creditors of the business. Because a sole proprietorship is not a separate entity, it is disregarded for tax purposes, and the owner reports the income or loss of the business on his or her personal income tax return.

5. **Joint Ventures.** A joint venture is not a statutory entity but rather a relationship recognized under the common law. Mississippi courts have defined a joint venture to be an association of two (2) or more persons based on contract who combine their money, property, knowledge, skills, experience, time or other resources in the furtherance of a particular project or undertaking, usually agreeing to share the profits and the losses and each having some degree of control over the joint venture. A joint venture differs from a general partnership because it relates to a single transaction,

while a partnership usually relates to a continuing business. A joint venture is typically of a shorter duration than a general partnership, and the agreement is less formal. The statutory provisions of the Uniform Partnership Law are applicable to joint ventures.

6. **Nonprofit Corporations**

(a) **Formation.** Like its business corporation counterpart, a Mississippi nonprofit corporation is formed by the filing of articles of incorporation with the Mississippi Secretary of State. Articles of incorporation must be signed by one or more incorporators and submitted with the applicable filing fee, which is currently Fifty Dollars (\$50.00). Generally, if the articles of incorporation do not name the initial board of directors, then the incorporator(s) will elect the initial board of directors. Unless a later effective date is specified in the articles of incorporation, corporate existence begins when the articles are filed. The Constitution of the State of Mississippi provides that a corporation must be organized and business is commenced within two (2) years from the date of the articles of incorporation.

(b) **Articles of Incorporation.** The articles of incorporation must set forth the name of the corporation, the street address of the registered office, the name of the registered agent and the name and address of each incorporator. The articles may contain the names and addresses of initial directors, the purposes, management, and powers of the corporation, any provision allowed or required to be set forth in the bylaws.

(c) **Name.** A corporate name may not contain language stating or implying that the corporation is organized for a purpose not permitted under the nonprofit act. A nonprofit corporation need not contain the word corporation, incorporated, company or limited, or an abbreviation of such in its name. The corporate name must be distinguishable from the names of other business and nonprofit corporations registered in the State of Mississippi.

(d) **Membership.** A "member" is defined as a person who, on more than one occasion and pursuant to the articles of incorporation or the bylaws, has the right to vote in an election of directors. A Mississippi nonprofit corporation is not required to have members. If a Mississippi nonprofit corporation has members, all members have the same rights and obligations with respect to voting, dissolution, redemption and transfer, unless the articles of incorporation establish otherwise. No member may transfer a membership unless the articles or bylaws authorize a transfer. A member may resign at any time, but no member may be expelled or suspended except pursuant to a procedure which is fair and reasonable and carried out in good faith.

(e) **Members.** Generally, members act by resolutions approved by a majority of the vote at a meeting at which a quorum is present. Unless the articles, bylaws or the nonprofit act requires otherwise, a quorum is ten percent (10%) of the votes entitled to be cast by the members. A Mississippi nonprofit corporation must hold an annual meeting of the members of the corporation at the time and place stated in the bylaws. A nonprofit corporation must hold a special members' meeting if one is called by the

board of directors or the person or persons authorized to do so by the articles or bylaws. In lieu of an actual meeting (either annual or special), the members may act by the written approval of members holding at least eighty percent (80%) of the voting power.

(f) **Directors.** A nonprofit corporation must have a board of directors, and the board must manage and direct the business and affairs of the corporation. The board must consist of one or more individuals as specified in the corporation's articles or bylaws. If the nonprofit corporation has members, the directors must be elected at the first annual members' meeting and at each annual meeting held thereafter, unless the articles or bylaws provide for some other method of election of directors or provide that some of the directors are appointed or designated. Except for designated or appointed directors, Mississippi law requires that the directors' terms not exceed five (5) years. Directors may act by resolution at a regular or special meeting of the directors where a quorum is present, or directors may act by unanimous written consent. Board meetings may also be conducted by any means by which the directors may simultaneously hear one another, which would include telephone and video conferences. Directors appoint the officers of the corporation.

(g) **Mergers.** Mississippi law permits one or more nonprofit corporations to merge into a business or nonprofit corporation, provided that the plan of merger is approved by the board of directors and by the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less. The plan of merger must include the name of each corporation, the name of the surviving corporation and the terms and conditions of the merger.

(h) **Annual Reports.** A nonprofit corporation organized in Mississippi or otherwise authorized to transact business in Mississippi is not required to file an annual report with the Secretary of State.

III. STATE TRADE REGULATIONS

1. **Mississippi Consumer Protection Laws.**

Miss. Code Ann. § 75-24-1 grants the authority to the Mississippi Attorney General to create the "Office of Consumer Protection," which may bring actions in the name of the State against persons who have violated Mississippi's consumer protection laws. District and County attorneys have a duty to assist the Attorney General's office in prosecuting such matters. Section 75-24-5 sets forth a list of activities that are deemed to constitute unfair or deceptive trade practices. In addition, in interpreting what constitutes unfair or deceptive trade practices under Mississippi law, courts will look to the rules and standards enforced by the Federal Trade Commission and the federal courts.

Violations of the consumer protection laws can result in injunctive relief (Miss. Code Ann. §75-24-9) – civil penalties not to exceed \$10,000, one-half of which must be paid to the Attorney General’s office (Miss. Code Ann. §75-24-19), or criminal penalties, including fines ranging from \$1,000 to \$5,000 (Miss. Code Ann. §75-24-20).

Under Miss. Code Ann. §75-24-25, there are restrictions on prices that may be lawfully charged for goods during a state of emergency, the violation of which is punishable by fines ranging from \$250 to \$1,000 and a possible jail term of six (6) months.

In addition to the above general consumer protection statutes, there are specific consumer protection laws that address issues ranging from pyramid schemes to franchise arrangements. See Miss. Code Ann. §75-24-51 through Miss. Code Ann. §75-24-63.

IV. STATE TAXATION IN MISSISSIPPI

1. Overview

As a general proposition, the income of every resident individual, business corporation, association, trust or estate is taxed in the State of Mississippi. Source income of nonresident taxpayers is also taxed in the State of Mississippi. All taxes are administered by the Mississippi State Tax Commission and administrative and judicial review is available to taxpayers to protest Commission decisions. Mississippi income tax is also imposed on the net income from all property sold or owned by both residents and nonresidents whose business is carried on in the State of Mississippi. Generally, Mississippi follows federal rules and regulations in determining the tax consequences of most transactions, including, but not limited to, installment sales and alimony payments. Regulations adopted by the Mississippi State Tax Commission provide additional guidance for determining what is included in gross income subject to Mississippi income taxation.

2. Personal Income Tax

Income tax rates in the State of Mississippi are progressive. Rates applicable to income in excess of deductions are three percent (3%) on the first \$5,000 of taxable income; four percent (4%) on the next \$5,000 of taxable income and five percent (5%) on all taxable income in excess of \$10,000, with the brackets doubled for married taxpayers filing a joint return. In the case of nonresident individuals, income derived from employment, trade, business or other activities performed or carried on within the State of Mississippi is attributable to and subject to taxation in Mississippi. This includes the sale or disposition of tangible or intangible property and the rental of real or personal property located in the State of Mississippi. A nonresident is allowed deductions against Mississippi income to the extent the deductions are allowable and attributable to income allocable to the State of Mississippi.

Certain specified deductions can be taken by the taxpayer in arriving at net income. The taxpayer also may take the optional standard deduction. Deductions are allowed for employers for contributions to qualified retirement plans. Resident taxpayers are allowed exemptions, the amount of which depends on their filing status. Nonresidents and part-year residents are entitled to the same exemptions as residents; however, they must prorate these exemptions on the basis of net income from sources in the State of Mississippi.

3. **Corporate Income Tax**

The tax derived from the income of multi-state corporations is determined by the application of Mississippi State Tax Commission Regulations. All income of corporations is allocated, apportioned or directly assigned depending upon where the production of income takes place and upon whether such income is classified as either business or nonbusiness. Business income consists of (1) income arising from activities or transactions in the ordinary course of a taxpayer's trade or business (the "transactional test"); and (2) income from the acquisition, management and/or disposition of tangible or intangible property provided such acquisition, management and/or disposition constitutes an integral part of the taxpayer's regular trade or business operations (the "functional test").¹ Mississippi recognizes either of these tests as sufficient for the taxation of business income.

If business income of the corporation is derived in part from Mississippi and in part from outside Mississippi, only that portion of business income attributable to Mississippi is generally apportioned to Mississippi. If the business activity of a corporation occurs in Mississippi, and if such corporation is not taxable in another state, the entire income of the corporation is deemed to be attributable to Mississippi.²

Special allocation and apportionment rules apply to multi-state mineral producers, contractors, airlines, motor carriers, utilities, retailers, wholesalers, service companies, lessors, pipeline companies and manufacturers.³

Mississippi law contains an income tax exclusion for certain gains from sales of interests in domestic corporations, limited partnerships (but not limited liability partnerships) or limited liability companies.⁴ Subject to certain exceptions, this provision applies to gains from sales of stock of domestic entities held for more than one year.⁵ The gain exclusion also applies to the sale of at least 90 percent of the assets of a domestic corporation, provided the domestic corporation has held such assets for more than one year. However, this asset sale exclusion is only effective if the corporation is totally liquidated and dissolved within one year from the date of the asset sale.⁶ Special

¹ Miss. Code Ann. § 27-7-23; Income Tax Regulation 806 (II)(A). A 2001 statutory amendment broadened Mississippi's version of the functional test.

² Income Tax Regulation 806 (III)(A)(1).

³ Income Tax Regulation 806.

⁴ Miss. Code Ann. § 27-7-9 (f)(10).

⁵ Miss. Code Ann. § 27-7-9(f)(10)(A).

⁶ Miss. Code Ann. § 27-7-9 (f)(10)(B).

depreciation recapture rules also apply under this provision.⁷ Further, the gain exclusion is impacted by a federal election under Internal Revenue Code Section 338.⁸

Mississippi follows federal rules, regulations and revenue procedures dealing with corporate reorganizations to the extent they are consistent with Mississippi law.⁹

4. **Corporate Franchise Tax**

The Mississippi Corporate Franchise Tax is an excise tax on the privilege of doing corporate business in Mississippi. The Mississippi corporate franchise tax is imposed on all corporations, associations, joint-stock companies and partnerships treated as corporations for tax purposes.¹⁰ The amount of tax due is calculated based on the amount of capital employed by the taxpayer. Mississippi law specifies that the tax is equal to \$2.50 for each \$1,000 of the value of the capital of the organization.¹¹

Capital is measured by all stock, retained earnings and surplus of the corporate taxpayer. Capital includes deferred taxes, gains and income, as well as contingent liabilities and all true reserves. Capital generally does not include bad debt or depreciation reserves or any debts, notes or mortgages.¹² In addition, capital of a parent corporation does not include the capital of its subsidiaries provided such parent corporation meets the statutory definition of a holding company.¹³ Organizations exempt from the corporate franchise tax include, among others, mutual savings banks, many non-profit organizations, and business and civic leagues. Annual returns and tax payments are due on or before the fifteenth (15th) day of the third month following the close of the taxpayer's taxable year.¹⁴

Organizations doing business both within and without Mississippi apportion taxable capital among or between states based upon a personal property and gross receipts ratio.¹⁵

5. **Ad Valorem Tax**

An annual *ad valorem* tax is imposed on the true value of all taxable real and personal property situated in Mississippi, except specific property exempted by statute.¹⁶ *Ad valorem* taxes are levied by the county, city and school district in which the property is located. True value for purposes of the property tax means the market or cash value that a willing buyer would pay.¹⁷

⁷ *Id.*

⁸ Miss. Code Ann. § 27-7-9 (j) (5); Income Tax Regulation 801 (C).

⁹ Income Tax Regulation 802.

¹⁰ Miss. Code Ann. § 27-13-5.

¹¹ *Id.*

¹² Miss. Code Ann. § 27-13-9.

¹³ Miss. Code Ann. §§ 27-13-1 and 27-13-9.

¹⁴ Miss. Code Ann. § 27-13-5.

¹⁵ Miss. Code Ann. § 27-13-13.

¹⁶ Miss. Code Ann. § 27-35-3.

¹⁷ Miss. Code Ann. § 27-35-50.

The Mississippi Constitution includes five (5) classes of taxable property and establishes the assessment ratio for each class of property.¹⁸ The tax assessor multiplies this assessment ratio by the true value of the property to determine the assessed value of the property for tax purposes. The tax assessor then multiplies this assessed value by the appropriate millage rate to compute taxes due. Class I property (single family owner-occupied real property) is assessed at ten percent (10%) of true value, Class II (all other real property other than Class II or Class IV) at fifteen percent (15%) of true value, Class III (all personal property not included in Class IV or Class V) at fifteen percent (15%) of true value, and Class IV (property owned by public service corporations) and V (motor vehicles) at thirty percent (30%) of true value.¹⁹

Mississippi law establishes several partial and full exemptions to the *ad valorem* tax. Among the full exemptions are farm products, tools, livestock and timber.²⁰ Nonprofit organizations such as charities, churches, schools and hospitals may qualify for partial exemption.²¹ Certain government property may also be exempt.²²

6. **Sales and Use Tax**

The Mississippi Sales Tax applies to transactions involving the retail sale or rental of personal property.²³ The sales tax may also apply to the performance of certain enumerated taxable services.²⁴ The use tax is imposed on persons who use, store or consume tangible personal property within Mississippi.²⁵

The rates for the sales and use tax are the same but vary depending upon the type of property sold or used.²⁶ Rates range from seven percent (7%) for most tangible personal property to one percent (1%) for certain property used to generate electric power.²⁷ In addition, Mississippi Sales and Use Tax Rules exclude certain isolated or casual sales, except for sales of motor vehicles.²⁸

7. **Subchapter-S Corporations**

In Mississippi, subchapter S corporations are not taxable entities. Instead, income passes through and is taxed to the shareholders, similar to federal tax law. In effect, they are taxed similarly to partnerships. A corporation must file an election with the Mississippi State Tax Commission within sixty (60) days of filing the federal election

¹⁸ Section 112, *Mississippi Constitution of 1890*.

¹⁹ Miss. Code Ann. § 27-35-4.

²⁰ Miss. Code Ann. § 27-31-1.

²¹ Miss. Code Ann. § 27-31-1, *et seq.*

²² *Id.*

²³ Miss. Code Ann. § 27-65-17.

²⁴ Miss. Code Ann. § 27-65-23.

²⁵ Miss. Code Ann. § 27-67-5.

²⁶ Miss. Code Ann. § 27-67-5.

²⁷ Miss. Code Ann. § 27-65-17.

²⁸ Sales and Use Tax Rule 17.

to be treated as a subchapter S corporation. Mississippi follows the federal law in the taxation of subchapter S corporations.

8. **Tax Benefits**

Mississippi law provides for incentive tax credits aimed at general economic development and keeping the state competitive. Among these are the Jobs Tax Credit, the credit for hiring persons receiving Temporary Assistance for Needy Families, the Income Tax Credit for Ad Valorem Tax Paid on Inventory, the National and Regional Headquarters Credit, the Research and Development Skills Credit and the Mississippi Bond Financing Corporation Debt Service Credit. In addition, a tax credit is available for certain taxes paid in other states. The Mississippi Legislature recently passed the Mississippi Broadband Technology Development Act²⁹ which offers an income and franchise tax credit for telecommunications companies investing in infrastructure needed for broadband technologies in Mississippi. Additionally, there is a Mississippi Reforestation Credit available to owners of nonindustrial private land who engage in approved reforestation practices.

V. MISSISSIPPI LABOR AND EMPLOYMENT

1. **State Considerations.**

(a) **State Labor Laws.** Although not codified, Mississippi remains an at-will employment state. This means, absent a contract to the contrary, the employer is free to terminate an employee's employment for a good reason, a bad reason or no reason at all (*Southwood Door Co. v. Burton*, 847 So. 2d 833 (Miss. 2003)). The Mississippi Supreme Court has created an exception to the employment-at-will doctrine. Discharged employees may bring a tort claim for wrongful termination when the employee is discharged for either refusing to participate in the employer's illegal acts or for reporting the employer's illegal acts to the employer or anyone else (*McArn v. Allied Bruce-Terminix Company, Inc.*, 626 So.2d 603 (Miss. 1993)).

The employment-at-will doctrine can be limited by the existence of a written contract governing the employment relationship (*Shaw v. Burchfield*, 481 So.2d 247 (Miss. 1985)). Employment documents such as employee handbooks, manuals or personnel policies may also constitute a written employment contract or an implied employment contract (*Hartell v. Packard Electric*, 626 So.2d 106, 110 (Miss. 1993)). Employers should include a clear and conspicuous disclaimer in any such document stating the document does not create a legal contract and that all employment is at-will (*Buchanan v. Ameristar Casino Vicksburg, Inc.*, 852 So. 2d 25 (Miss. 2003)).

²⁹ S.B. 2979 (April 19, 2003).

(b) State Discrimination Statutes.

Mississippi does not have any state statute prohibiting private employers from discriminating in employment, with the exception of discrimination on the basis of a person's military service. Mississippi law does prohibit discrimination in employment on the basis of a person's military service (MISS. CODE ANN. § 33-1-15). Mississippi statute also mandates that employees required to leave their employment for reasons connected with serving in the military be restored to the same or similar position upon their return (MISS. CODE ANN. § 33-1-19).

Mississippi prohibits discrimination in public employment, or by any employer benefiting from public funds (MISS. CODE ANN. § 43-6-15). In public employment, it is unlawful to discriminate on the basis of race, sex, or religion (MISS. CODE ANN. § 43-6-15). In addition, it is unlawful to discriminate in public employment against the blind, visually handicapped or otherwise physically handicapped unless the physical handicap considerably affects the requirements of the job (MISS. CODE ANN. § 43-6-15).

(c) Drug and Alcohol Testing.

Mississippi does have an alcohol and drug testing statute (MISS. CODE ANN. § 71-7-1 *et seq*). The statute applies to all public employers and to private employers who choose to be covered, with an exception for private employers who are subject to federal law or federal regulation governing the administering of drug and alcohol tests. A private employer elects to be covered by the statute by publishing written notice to employees and applicants containing certain information required by the statute. The statute also requires employers utilizing a testing program under the Act to have a Medical Review Officer who is the sole person authorized to review the test results.

For private employers, opting coverage under the statute does not make the testing program per se legal; the law does limit successful claimants to reinstatement, lost compensation, court costs and attorney fees. The law also requires courts to draw certain presumptions in favor of employers who comply; namely, the presumption that challenged test results are accurate and that the employer had reasonable cause to test an employee whose test sample is confirmed positive.

(d) Off-Duty Conduct.

Mississippi law holds an employer cannot require an employee as a condition of employment to refrain from using tobacco products during non-working hours, as long as the employee complies with applicable policies regulating smoking on company premises during working hours (MISS. CODE ANN. § 71-7-33).

(e) Covenants Not to Compete.

Employee non-compete clauses, though not favored, generally will be enforced in Mississippi if the clause is reasonable (*Frierson v. Sheppard Bldg. Supply Co.*, 154 So.2d 151 (Miss. 1963)). When determining the reasonableness of a non-compete

clause, courts look to duration of the restriction and geographic scope involved (*Redd Pest Control Co. v. Heatherly*, 248 Miss. 34, 157 So.2d 133 (1963)). The Court has refused to enforce a non-compete agreement when the employee was terminated in bad faith (*Empiregas, Inc. of Kosciusko v. Bain*, 599 So. 2d 971 (Miss. 1992)).

(f) Wage and Hour Laws.

Aside from child labor laws, Mississippi does not have state law governing wages or hours in the private employment context.

Mississippi statute requires employers engaged in manufacturing with fifty (50) or more employees and every public service corporation, to make full payment to employees for services performed at least once every two weeks or twice during a calendar month (MISS. CODE ANN. § 71-1-35). The payment must include all amounts due for services performed up to not more than ten (10) days previous to the time of payment (MISS. CODE ANN. § 71-1-35).

(g) Child Labor.

Mississippi statutory law provides no child under the age of fourteen (14) may be employed in any mill, cannery, workshop, factory or manufacturing establishment (MISS. CODE ANN. § 71-1-19). The state also regulates child labor in accord with school attendance. No child between the ages of fourteen (14) and sixteen (16) may be employed in any mill, cannery, workshop, factory or manufacturing establishment unless that child has complied or is complying with Mississippi compulsory school attendance law (MISS. CODE ANN. § 71-1-19). Employers must keep on file an affidavit from the child's parent or guardian, and a certificate of the superintendent or principal of the school of the district in which the child resides or in which they last attended school, stating the place and date of the child's birth, the child's last school attendance, the grade of study pursued, the name of the school, and the teacher in charge (MISS. CODE ANN. § 71-1-19).

State statute also regulates the hours children are allowed to work. Children between the ages of 14 and 16 are permitted to work in any mill, cannery, workshop, factory or manufacturing establishment no more than eight (8) hours in one (1) day, and no more than forty-four (44) hours in any one (1) week (MISS. CODE ANN. § 71-1-21). In addition, children between the ages of 14 and 16 cannot work in any such establishment between the hours of 7 p.m. and 6 a.m. (MISS. CODE ANN. § 71-1-21). Fruit and vegetable canneries are exempt from Mississippi's child labor laws (MISS. CODE ANN. § 71-1-31).

(h) Workers' Compensation.

As in other states, Mississippi has a complex system of workers' compensation insurance, which provides payments to employees off work due to a work injury. The Workers' Compensation Act applies to all employers with five (5) or more employees (MISS. CODE ANN. § 71-3-5). The Act provides employees the exclusive remedy for

accidents arising out of and in the course of employment (MISS. CODE ANN. § 71-3-9). It is worth noting that the Mississippi Supreme Court has consistently refused to recognize a cause of action for termination based upon retaliation for filing a workers' compensation claim (*Buchanan v. Ameristar Casino Vicksburg*, 852 So.2d 25 (Miss. 2003)).

(i) **Unemployment Insurance.**

Mississippi does provide unemployment insurance (MISS. CODE ANN. § 71-5-1 *et seq.*). The Mississippi Employment Security Commission administers the unemployment insurance program.

(j) **Right to Work Act.**

Mississippi is a right to work state (MISS. CODE ANN. § 71-4-47). In addition, Article 7, Section 198-A of the Mississippi Constitution as amended June 7, 1960, declares that the public policy of the state supports the right of a person to work without regard to membership or nonmembership in any labor union or labor organization.

VI. MISSISSIPPI ENVIRONMENTAL CONSIDERATIONS

1. Environmental Laws

(a) **Mississippi Air and Water Pollution Control Law.**

The Mississippi Air and Water Pollution Control Law, Miss. Code Ann. § 49-17-1 through § 49-17-43, creates the Mississippi Commission on Environmental Quality. The Commission has supervision of administration and enforcement of the Mississippi Air and Water Pollution Control Law and the Mississippi Solid Waste Disposal Law (Miss. Code Ann. § 17-17-1 through § 17-17-67). The statutory authority granted to the Commissioner includes promulgating rules and regulations to prevent, control and abate pollution by setting air and water quality standards. The standards are set after conducting a public hearing and publishing due notice. The commission has authority to hold hearings, enter orders and assess penalties against alleged violators. In addition to the creation of the Commission, the law creates a Permit Board. The Permit Board has authority to issue, reissue, modify, revoke or deny permits regarding air and water pollution as well as solid and hazardous waste.

(b) **Mississippi Solid Waste Disposal Act.**

The Mississippi Solid Waste Disposal Act, Miss. Code Ann. § 17-17-1 through § 17-17-67, implements the responsibilities and restrictions in the disposal of solid waste. The Commission on Environmental Quality is charged with its enforcement.

(c) **Underground Storage Tank Act of 1988.**

The Underground Storage Tank Act of 1988, Miss. Code Ann. § 49-17-401 through §49-17-433, creates the Mississippi Groundwater Protection Trust Fund. This Act levies a tax on motor fuels which is used to sustain the Trust Fund. The Trust Fund is used for investigation of contaminated sites, replacement of potable water and rehabilitation of contaminated sites.

(d) **Radioactive Waste Transportation Act.**

The Radioactive Waste Transportation Act, Miss. Code Ann. § 45-14-51 through § 45-14-69, establishes that transportation of radioactive waste is a safety threat and that the cost of emergency response should be borne by the shippers. A permit and fee process is created to manage the transportation of radioactive waste.

(e) **Mississippi Safe Drinking Water Act of 1997.**

The Mississippi Safe Drinking Water Act of 1997, Miss. Code Ann. § 41-26-1 *et seq.*, is Mississippi's version of the Federal Safe Drinking Water Act.

(f) **Mississippi Surface Coal Mining and Reclamation Law.**

The Mississippi Surface Coal Mining and Reclamation Law, Miss. Code Ann. § 53-9-1 *et seq.*, is Mississippi's assumption of exclusive jurisdiction over regulation of surface coal mining and reclamation operations.

(g) **Mississippi Surface Mining and Reclamation Law.**

The Mississippi Surface Mining and Reclamation Law, Miss. Code Ann. § 53-7-1 *et seq.*, establishes a regulatory system of uniform standards and permitting governing mining and reclamation of materials such as clay, sand, gravel, soil and the like.

(h) **Mississippi River Timberlands Control Act of 1991.**

The Mississippi River Timberlands Control Act of 1991, Miss. Code Ann. § 49-20-1 *et seq.*, recognizes the impact of the timberlands on the state. Controls are set on the transfer and management of the river timberlands.

(i) **Channel Maintenance Act.**

The Channel Maintenance Act, Miss. Code Ann. § 49-26-1 *et seq.*, declares governmental responsibility for channel maintenance and the minimization of environmental impact.

(j) **Coastal Wetlands Protection Act.**

The Coastal Wetlands Protection Act, Miss. Code Ann. § 49-27-1 *et seq.*, recognizes the importance of preserving coastal wetlands and creates a permit-based system of wetland use.

(k) **Mississippi Water Resources Law.**

The Mississippi Water Resources Law, Miss. Code Ann. § 51-3-1 *et seq.*, establishes that the state will control and develop beneficial water use by effective and efficient management.

(l) **Mississippi Scenic Streams Stewardship Act.**

The Mississippi Scenic Streams Stewardship Act, Miss. Code Ann. § 51-4-1 *et seq.*, attempts to maximize voluntary private conservation and maintain sense of stewardship between stream users and riparian land owners by way of a nonregulatory framework.

(m) **Mississippi Prescribed Burning Act.**

The Mississippi Prescribed Burning Act, Miss. Code Ann. § 49-19-301 *et seq.*, authorizes and promotes the continued use of prescribed burning for ecological, silvicultural and wildlife management purposes.

(n) **Mississippi Brownfields Voluntary Cleanup and Redevelopment Act.**

The Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, Miss. Code Ann. § 49-35-1 *et seq.*, provides incentives for voluntary cleanup of land which is perceived to be contaminated due to past activities.

(o) **Mississippi Individual Onsite Wastewater Systems Law.**

The Mississippi Individual Onsite Wastewater Systems Law, Miss Code Ann. § 41-67-1 *et seq.*, established controls for implementing individual and community wastewater systems.

(p) **Mississippi Oil and Gas Development, Production and Distribution Law.**

The Mississippi Oil and Gas Development, Production and Distribution Law, Miss. Code Ann. § 53-3-1 *et seq.*, establishes that the waste of oil and gas is unlawful as well as establishing a permit based system of drilling and exploration.

(q) **Mississippi Lender Liability Law.**

The Mississippi Lender Liability Law, Miss. Code Ann. § 49-17-42, indicates that lenders may not be held liable for pollution control or environmental protection law under specified conditions.

VII. INTELLECTUAL PROPERTY LAW IN MISSISSIPPI

1. Trademarks/Service Marks.

Mississippi has adopted the Model State Trademark Act. However, the Mississippi Trademark Act expressly preserves common law trademark rights. A person acquires common law rights to a mark by being the first to adopt and use a mark in a geographic region which attains special significance through its association with certain goods or services.

A mark may be registered by filing an application with the Mississippi Secretary of State. In order to be registered, a mark must currently be in use in the ordinary course of business in Mississippi. A person may not reserve a right to use a mark in the future and nonuse of a mark for two (2) consecutive years is prima facie evidence of abandonment. A mark duly registered is effective for five (5) years, and may be renewed for successive five-year periods within six (6) months prior to the expiration of the current term. A mark and its registration are freely assignable with the goodwill of the business, or that part of the goodwill of the business that such mark represents.

The remedies for the infringement of a mark may include injunctive relief, profits derived by the infringer, actual damages incurred by the owner, destruction of any counterfeit/imitation goods and, in certain circumstances, treble damages. The owner of a “famous” mark may have further protection under the anti-dilution provision of the Act. A cause of action for dilution may be maintained even if there is no infringing use (i.e. likelihood of confusion) or there is no competition between the two parties. However, an owner of a “famous” mark is entitled only to injunctive relief against another’s use of a mark which dilutes the distinctive qualities of the owner’s mark unless the subsequent user willfully intended to trade on the owner’s reputation or to cause dilution of the owner’s mark. The statute provides a non-exclusive list of factors that a court may consider in determining whether a mark is “famous.”

2. Trade Names.

Mississippi does not have a statute that addresses the protection of trade names or assumed names and Mississippi does not provide for the registration of trade names.

However, Mississippi courts will generally afford the same protection to a trade name as it does to trademark rights acquired under common law.

3. **Trade Secrets.**

Mississippi has adopted the Uniform Trade Secrets Act. A trade secret is defined as any information, including a formula, pattern, compilation, program, device, method, technique or process that: (i) derives independent economic value, actual or potential, that is not generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Mississippi Trade Secret Act provides injunctive relief to control both actual and threatened misappropriation of trade secrets. Actions for misappropriation must be brought within three (3) years after the misappropriation is discovered or should have been discovered by the exercise of reasonable diligence. Damages may include both actual loss caused by the misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other method, damages may be measured by the imposition of liability for a reasonable royalty for unauthorized use or disclosure of a trade secret. Punitive damages may also be awarded in cases of willful and malicious misappropriation. Additionally, in cases of bad faith, attorney fees may be awarded to the prevailing party.

4. **Rights of Publicity/Privacy.**

Mississippi does not have a statute addressing the rights of publicity or privacy. Mississippi courts, however, recognize four distinct theories underlying a cause of action for invasion of privacy: (1) intentional intrusion on another's seclusion; (2) appropriation of another's identity; (3) public disclosure of private facts; and (4) presenting another to the public in a false light.

Commercial misappropriation is recognized as one of the variants of the common law right of privacy. Often referred to as the right of publicity, this tort protects the commercial value of individual identity and prevents unjust enrichment. Public figures are protected against dilution of the value of their identity and all individuals are protected against false implications of endorsement. The test for misappropriation is whether the primary purpose of the publicity is to gain economic advantage for which the user should be expected to pay. Damages are recoverable for proprietary or pecuniary loss as well as for mental and emotional suffering. A claim for invasion of privacy will only lie in cases of substantial interference with seclusion or privacy.

5. **Unfair Competition/Deceptive Trade Practices.**

Mississippi has enacted statutes protecting consumers from certain unfair or deceptive business practices. Those who violate the provisions of the act are subject to the authority of the Attorney General who may bring an action in the name of the state

against such person to restrain by temporary or permanent injunction the use of such method, act or practice. Any person who willfully and knowingly engages in unfair competition or deceptive trade practices may be subject to criminal and civil penalties. The following unfair methods competition or deceptive trade practices are statutorily prohibited:

- (i) passing off goods or services as those of another;
- (ii) misrepresentation of the source, sponsorship, approval or certification of goods or services;
- (iii) misrepresentation of affiliation, connection or association with, or certification by another;
- (iv) misrepresentation of designations of geographic origin in connection with goods and services;
- (v) representing the goods or services as having sponsorship, approval, characteristics, ingredients, uses, benefits or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (vi) representing the goods are original or new if they are reconditioned, reclaimed, used or second hand;
- (vii) representing the goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (viii) disparaging the goods, services or business of another by false or misleading representation of fact;
- (ix) advertising goods or services with intent not to sell them as advertised; and
- (x) advertising goods or services with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quality; and misrepresentations of fact concerning the reasons for, existence of, or amounts of price reductions.

VIII. STATE COURT SYSTEM

1. State Trial Courts.

Personal Jurisdiction. In order to establish personal jurisdiction over a nonresident defendant, a plaintiff must satisfy both the laws of the State of Mississippi and the terms of the Fourteenth Amendment to the United States Constitution. First, the nonresident defendant must be amenable to jurisdiction under Mississippi's long-arm statute, Miss. Code Ann. § 13-3-57, which provides in relevant part that any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified to do business in Mississippi, shall be deemed "doing business" in Mississippi (and subject to the jurisdiction of Mississippi courts) under three scenarios: If such person makes a contract with a resident of Mississippi to be performed in whole or in part by any party in Mississippi; if such person commits a tort in whole or in part in Mississippi; or if such person does business or performs any character of work or service in Mississippi. As noted above, the exercise of jurisdiction must also comport with the dictates of the Due Process Clause of the Fourteenth Amendment.

Venue. Regarding venue, Medical malpractice claims must now be filed in the county in which the alleged act or omission occurred. Cases against a manufacturer are limited to the county where its principal place of business is located, where a substantial act, omission or event occurred that resulted in the injury, or where the plaintiff obtained the product. If one of the locations is not the plaintiff's home county, he or she may not file there simply by suing a non-resident. That option, while still available, is limited to circumstances where venue cannot be asserted under any of the other venue provisions (Miss. Code Ann. § 11-11-3). In cases involving multiple plaintiffs, each plaintiff must establish proper venue independently.

The State Trial Court System. The state trial court system is comprised of courts of general jurisdiction and courts of limited jurisdiction. The courts of general jurisdiction are divided into the Circuit Court, dealing with matters of law, and the Chancery Court, dealing with matters in equity. The courts of limited jurisdiction are comprised of the Municipal Court, the Justice Court, and the County Court.

The Mississippi Circuit Court is divided into twenty-two (22) districts. The Circuit Court has original jurisdiction in all actions when the amount in controversy exceeds Two Hundred Dollars (\$200.00) and all other matters arising under the Constitution and laws of Mississippi which are not exclusively cognizable in another court (Miss. Code Ann. § 9-7-81). The Circuit Court also has appellate jurisdiction as prescribed by law and jurisdiction over cases transferred by the Chancery Court and cases remanded to it by the Mississippi Supreme Court (Miss. Code Ann. § 9-7-83). The Circuit Court is comprised of forty-nine (49) judges, each elected to serve a term of four (4) years.

The Mississippi Chancery Court is divided into twenty (20) districts. The Chancery Court has jurisdiction over matters in equity, divorce, alimony, probate, guardianship and mental commitments. The Chancery Court also has jurisdiction over matters transferred by the Circuit Court or remanded to it by the Mississippi Supreme Court (Miss. Code Ann. § 9-5-81). The Chancery Court is comprised of forty-five (45) chancellors, elected to serve a term of four (4) years.

The Municipal Court is a court of limited jurisdiction. The court handles municipal ordinance violations and has limited criminal jurisdiction. Each municipality with a population of 10,000 or more must have a municipal judge and prosecuting attorney appointed by the governing authorities of the municipality (Miss. Code Ann. § 21-23-3). Mississippi has two hundred twenty-three (223) Municipal Courts and two hundred fifteen (215) judges.

The Justice Court is a court of limited jurisdiction. The Justice Court has jurisdiction over all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand, or the value of the property sought to be recovered does not exceed Two Thousand Five Hundred Dollars (\$2,500.00) (Miss. Code Ann. § 9-11-9). The court also has jurisdiction to hear misdemeanors and felony preliminaries. The number of Justice Court judges per county is based on population, and increases with population, with five (5) judges being the maximum number allowed

per county (Miss. Code Ann. § 9-11-2). Mississippi has ninety-two (92) Justice Courts with one hundred, ninety-one (191) judges, elected to serve a term of four (4) years.

The County Court is a court of limited jurisdiction. The County Court has jurisdiction concurrent with the Justice Court in all matters, civil and criminal of which the Justice Court has jurisdiction; and it has jurisdiction concurrent with the Circuit and Chancery Courts in all matters of law and equity wherein the amount of value of the controversy does not exceed, exclusive of costs and interest, the sum of Two Hundred Thousand Dollars (\$200,000.00) (Miss. Code Ann. § 9-9-21). The County Court also has jurisdiction over matters concerning eminent domain, the partition of personal property and actions of unlawful entry and detainer. *Id.* The County Court has twenty-four (24) judges in nineteen (19) counties, each of which is elected to serve a term of four (4) years.

2. **State Appellate Courts.**

The appellate court system is comprised of the Supreme Court and the Court of Appeals. The Supreme Court is the court of last resort in Mississippi. The Mississippi Supreme Court has appellate jurisdiction and has original jurisdiction in certain cases concerning public utility rates (Miss. Code Ann. § 9-3-9). Appeals from the Circuit Courts and Chancery Court go directly to the Supreme Court which may then assign cases to the Court of Appeals. A case originating in the Justice or Municipal Court which has been appealed to the County Court and then to the Circuit Court, can be appealed to the Supreme Court only when a constitutional question is implicated. The Supreme Court retains appeals concerning cases involving the death penalty, utility rates, annexations, bond issues, election contests and cases involving statutes found to be unconstitutional by the lower courts (Miss. Code Ann. § 9-4-3(1)). The Supreme Court also retains cases involving attorney discipline, judicial performance, and certified questions from a federal court. The Supreme Court is comprised of nine justices, three from each Supreme Court District, each of which is elected for a term of eight (8) years. The longest continuously serving justice serves as Chief Justice (Miss. Code Ann. § 9-3-11).

The Court of Appeals has the power to determine or dispose of any proceeding assigned to it by the Supreme Court (Miss. Code Ann. § 9-4-3(1)). Decisions of the Court of Appeals are not subject to review by the Supreme Court, except by writ of certiorari. The Supreme Court may also order any case pending before the Court of Appeals to be transferred back to the Supreme Court (Miss. Code Ann. § 9-4-3(2)). The Court of Appeals consists of ten judges, two from each court of appeals' districts (as defined in Miss. Code Ann. § 9-4-5(5)), each of which is elected for a term of eight (8) years (Miss. Code Ann. § 9-4-5(1)).

3. **State Tax Court.**

Mississippi has no state tax court. Instead, a taxpayer may challenge an assessment of taxes through two levels of administrative appeals within the State Tax Commission (Miss. Code Ann. § 27-3-29). First, the taxpayer may apply for a hearing,

in writing, to the Board of Review of the Mississippi State Tax Commission within ten (10) days of receiving notice of an adverse action. *Id.* If the taxpayer wishes to protest the decision of the board of review, the taxpayer may apply in writing for a hearing and correction of the decision within thirty (30) days after notice of the decision is mailed. *Id.* If unsuccessful in its administrative appeals, a taxpayer may file a petition in chancery court for judicial review. *Id.*

Mississippi statutory laws provide a similar procedure for particular disputes. The relevant Mississippi statutes dealing with procedure concerning income tax disputes are Miss. Code Ann. §§ 27-7-71, 27-7-73. Sales tax disputes are governed by the procedure set out in Miss. Code Ann. 27-65-45. Corporate franchise tax disputes are governed by the procedure set out in Miss. Code Ann. § 27-13-47.

The Mississippi State Tax Commission has the power to institute proceedings, actions and prosecutions against persons, officers or agents of corporations or others required to make returns of taxable property, for failure to comply with the tax law (Miss. Code Ann. § 27-3-33(1)). The State Tax Commission has the power to bring suit in the Chancery Court of the residence of the taxpayer or, in the case of a nonresident, in the Chancery Court of the First Judicial District of Hinds County (Miss. Code Ann. § 27-3-33(2)).

IX. FINANCING INVESTMENTS

1. Tax-Exempt Financing.

Tax-exempt financing programs in Mississippi offer eligible companies below market borrowing costs and certain economic development incentives. These financing programs are administered at two levels: statewide through the Mississippi Business Finance Corporation and locally through cities, counties, regional planning and development districts, and economic development authorities.

The Mississippi Business Finance Corporation (MBFC) is a statewide financing source that allows eligible companies to obtain tax-exempt financing and other incentives through a single contact. MBFC offers tax-exempt financing at variable or fixed interest rates through several programs including the Small Enterprise Development Finance Program, the Industrial Development Revenue Bond Program (Tax-Exempt and Taxable) and the MBFC Equipment Lease Program. MBFC also offers a sale/use tax exemption for eligible projects financed through MBFC programs; for many companies, the sale/use tax exemption is a key determinant in utilizing financing through MBFC.

Local Government Issuers offer tax-exempt financing to eligible companies through Industrial Revenue Bonds. Local Government Issuers may also grant certain ten-year ad valorem tax exemptions to eligible companies.

Pursuant to Miss. Code Ann. §21-45-1 *et seq.*, Mississippi cities or counties may issue tax increment financing bonds to encourage economic development within designated areas by financing public infrastructure improvements for public or private development projects without the necessity of issuing general obligation bonds. Public infrastructure improvements such as roads, utilities and drainage improvements are eligible to be financed by tax increment financing bonds. Tax increment financing bonds may have a maximum term of thirty (30) years and are eligible for a tax-exempt interest rate for eligible public improvements and a taxable interest rate for other projects. Tax increment financing bonds are limited obligations of the issuing local government secured solely by the additional ad valorem taxes and/or sales taxes generated by the project described under the tax increment financing plan for such bond issue.

Pursuant to Miss. Code Ann. § 19-31-35 *et seq.*, private developers in Mississippi may also take advantage of a significant economic incentive for the financing of basic project infrastructure through the creation of a public improvement district, commonly referred to as a "PID." Once established by a local government, a PID offers private developers the opportunity to have tax-exempt revenue bonds issued for the purpose of financing qualified infrastructure. Special assessments levied on the land and improvements within a PID serve as collateral for the bonds issued by the PID and are used to satisfy the debt service for the PID bonds. Interest rates, maturity and terms and conditions of any bonds issued by a PID will be based on the strength of the private developer, the type of development and the specifications of the bond purchaser.

2. Mississippi Commercial Banking.

Mississippi has one hundred two (102) state-chartered and national banks that provide businesses in Mississippi with a full range of banking opportunities. These institutions range in size from small community banks to large regional banks. While most banks in Mississippi are community banks, four multi-state banks are headquartered in Mississippi, and at least three regional banks headquartered outside of Mississippi have branch offices within the state. The larger banks in Mississippi are centered in Jackson, the state capitol, in Tupelo in northeast Mississippi, and on the Mississippi Gulf Coast.

Mississippi banks offer businesses a broad array of services, including financing alternatives such as working capital loans, real estate construction and term loans, Small Business Administration and U.S. Department of Agriculture loans, factoring and asset-based loans, and leveraged leasing transactions. Some Mississippi banks also offer tax-exempt financing, interest rate swaps, bankers' acceptance financing, private placement of debt and agency services. Additionally, many Mississippi banks offer relocation services in order to assist companies relocating to Mississippi. These services include personal banking services, home mortgage financing, community orientation programs, home-finding assistance, discount brokerage services and trust and financial planning. Although there are currently no international banks with offices

located in Mississippi, several banks offer international banking services, including export and import financing and letter of credit and foreign currency transactions.

3. Mississippi Securities Regulation.

The Mississippi Securities Act (Miss. Code Ann. §§ 75-71-101, *et seq.*, hereinafter the “Securities Act”) regulates the offer and sale of securities in Mississippi. The Securities Act exists for the protection of investors and is based on the Uniform Securities Act of 1956. The Mississippi Secretary of State is vested with the primary responsibility for enforcement of the Securities Act.

Miss. Code Ann. § 75-77-401 requires the registration of all securities offered or sold in Mississippi unless the securities or transaction qualifies for an exemption from registration. Securities can be registered with the Mississippi Secretary of State by qualification under Miss. Code Ann. § 75-71-405 or by coordination with the Securities Act of 1933. The Secretary of State also accepts SCOR filings.

The Securities Act recognizes a number of exempt securities and transactions. Miss. Code Ann. § 75-71-201 sets forth thirteen (13) categories of exempt securities. Eleven (11) of these categories are substantially identical to the exemptions found in section 402(a) of the Uniform Securities Act of 1956. Section 75-71-201(12) provides an exemption for securities of Mississippi cooperatives that operate only within Mississippi and whose stockholders are all Mississippi residents. Section 75-71-201(13) provides an exemption for certain oil and gas securities. Miss. Code Ann. § 75-71-203 sets forth twelve (12) transactional exemptions. The exemptions are substantially identical to the exemptions found in section 402(b) of the Uniform Securities Act of 1956.

Pursuant to § 75-71-301 of the Securities Act, it is unlawful for any person to transact business in Mississippi as a broker-dealer, agent, investment advisor or investment advisor representative unless that person is registered with the Securities Division of the Secretary of State. In order to apply for registration, NASD-member broker-dealers must submit an application form, a current, certified copy of the broker-dealer’s articles of incorporation or other organizational documents, certain financial information, and a non-refundable registration fee of Two Hundred Dollars (\$200). In addition to the above required items, non-NASD members must also post a Thirty Thousand Dollar (\$30,000) surety bond. An investment advisor must submit similar information.

Miss Code Ann. § 75-71-501 sets forth Mississippi’s antifraud provisions related to the offer and sale of securities. The provisions are similar, in substance, to the federal antifraud prohibitions and standards. The registration exemptions contained in Miss. Code Ann. §§ 75-71-201 and 75-71-203 do not limit the application of the antifraud provisions of the Securities Act.

4. **Mississippi Usury Laws.**

Closed-end credit. The legal rate of interest on all notes, accounts and contracts is eight percent (8%). The rate is calculated according to the actuarial method. Parties may enter into a written contract for additional finance charges as authorized by law. A borrower may contract to pay a finance charge for any loan or credit that would result in a yield not to exceed ten percent (10%) or five percent (5%) per annum above the discount rate, excluding any surcharges, on 90-day commercial paper in effect at the Federal Reserve Bank. This rate is known as the "contract rate." Partnerships, joint ventures, religious societies, unincorporated associations, or domestic or foreign corporations may contract for a rate not to exceed fifteen percent (15%) or five percent (5%) per annum above the discount rate, excluding surcharges, on 90-day commercial paper and other lending transactions where the principal balance exceeds Two Thousand Five Hundred Dollars (\$2,500.00). Any borrower may contract for and agree to pay, and any lender may contract for and receive any financial charge agreed to in writing by the parties, regardless of the security taken or the purpose of the extension of credit, when the original principal balance or any aggregated advances exceeds Two Thousand Dollars (\$2,000), including renewal or extension. (See Miss. Code Ann. §75-17-1.) Usury is not a crime under state law; limits on interest rates are enforceable only by civil remedies. Liability for usury violations falls upon the lender and not the borrower. *Watkins v. Mississippi Bar*, 589 So. 2d 660 (Miss. 1991).

Special Interest Rate Provisions. Special interest rate provisions apply to revolving charge agreements and credit cards (Miss. Code Ann. §75-17-19); factory manufactured moveable homes (Miss. Code Ann. §75-17-23); and small loan licensees (Miss. Code Ann. §75-17-21).

Finance Charge. Finance charge is defined as any amount or rate paid or payable, directly or indirectly as an incident to or condition of an extension of credit, including, but not limited to, interest, fees, points, service charges, transaction charges, activity charges, carrying charges, time price differential, finders fee or any other cost or expense to the debtor related to making, arranging or negotiating an extension of credit. Miss. Code Ann. §75-17-25.

X. REAL ESTATE TRANSACTIONS

1. **Ownership.**

Generally, any natural person or legal entity may hold title to real property in Mississippi, with the exception of nonresident aliens. According to Mississippi law, although resident aliens may own and dispose of land, nonresident aliens may not normally acquire or hold land. However, nonresident aliens who are citizens of Syria or the Lebanese Republic may inherit property from citizens or residents of the State of Mississippi. Also, nonresident aliens may own up to three hundred twenty (320) acres of land in Mississippi for industrial development and five (5) acres for residential purposes.

Any legal business entity may own land in Mississippi, including corporations, partnerships and limited liability companies. In connection with any sale exceeding One Hundred Thousand Dollars (\$100,000) involving a nonresident seller or entity not qualified to do business in Mississippi, five percent (5%) of the amount realized by the seller must be withheld by the buyer and paid to the Mississippi State Tax Commission.

The power to purchase and sell property is an express power of corporations. Mississippi law provides that shareholder approval of the sale of assets is not necessary. However, a corporation's articles of incorporation may limit these express powers.

Partnerships may also freely own land in the state, and the property of a partnership is held by the partners as tenants in partnership. Each partner has an equal right with his partners to possess specific partnership property for partnership purposes. A determination of whether specific real property is an asset of the partnership is a fact question and is based upon the parties' intent.

An LLC may own property in Mississippi without limitation unless its certificate of formation prohibits such ownership.

2. **Concurrent Ownership.**

Concurrent ownership in Mississippi is similar to most other common law jurisdictions. According to Mississippi law, there is a preference for a tenancy in common in Mississippi. Otherwise, an instrument must clearly convey the intent of the parties to create any other type of estate.

The procedure for creating concurrent ownership in Mississippi is also noteworthy. A straw man is not necessary to create a joint tenancy or a tenancy by the entirety. Because of the statutory preference for tenancy in common, the conveying language must explicitly state that a tenancy in common is not being created.

Finally, the effect of divorce on a tenancy by the entirety is different than in many other states. When the parties to an estate of tenancy by the entirety divorce, the estate becomes a joint tenancy, not a tenancy in common, as in most other states.

3. **Spousal Rights.**

A spouse has many rights and responsibilities in the state. For example, Mississippi utilizes the right of renunciation to allow a surviving spouse to inherit property from the deceased spouse, regardless of the deceased spouse's will. Under this right, a surviving spouse may renounce the will and elect to receive one-half of the estate. A spouse's right to property in the event of divorce exists in the agreed upon settlement or court decreed settlement.

Responsibilities of a spouse include aiding in the process of a mortgage's execution. A mortgage on homestead property requires the signature of the spouse of the owner. Without the signature of the spouse, the mortgage is not valid and binding.

4. **Purchase and Sale of Real Property.**

The manner in which real property is acquired in Mississippi is similar to other common law states. Purchase agreements usually contain the following information: the buyer's identity and obligations; the seller's identity and type of deed; disclosure of any covenants, conditions or restrictions which bind the property; the purchase price and method of payment; a legal description of the property; any contingencies to the obligation to consummate the sale; stipulations for prorations; title evidence requirements; procedures for closing and transfer of the property; remedies if either party breaches the contract; and the terms in case of property damage or destruction prior to closing. All conveyances of real property must be in writing, signed and delivered by the transferor. A deed must be acknowledged and filed for record in the office of the Chancery Clerk of the county where the land is located. Real property may be conveyed by general warranty deed, special warranty deed or by a quitclaim deed. In Mississippi, there is no mortgage or transfer tax. The recording of a deed or deed of trust only requires the payment of nominal recording fees.

A lender may acquire a lien on real property by virtue of a deed of trust or a mortgage. However, the deed of trust is the instrument customarily used. Both a deed of trust and mortgage are void as to all creditors and subsequent purchasers without notice unless they are acknowledged by a notary public or other authorized officer and recorded with the Chancery Clerk of the county where the land is located.

5. **Foreclosures.**

Mortgages and deeds of trust can be foreclosed judicially or non-judicially. While the lengthy judicial foreclosure process can be used, the nonjudicial power of sale foreclosure is the most common. Mississippi does not have a statutory redemption period after foreclosure. Deficiency suits on installment obligations must be commenced within one (1) year of the date of the foreclosure.

6. **Easements.**

The creation of an easement according to Mississippi law is very similar to the laws of other states. The termination or abandonment of the easement occurs if the dominant owner does not use the easement for a lengthy period of time. A presumption of abandonment exists if the dominant owner does or allows any action inconsistent with the easement.

State law allows for the creation of some easements, including conservation and reforestation easements. Government entities and private nonprofit, charitable or educational groups may hold conservation easements. These easements are valid even if they do not comply with the normal requirements for an easement. A

reforestation easement is “an easement on open agricultural land located in the project area that restricts the future use of the property to woodlands that is purchased from a landowner by the Corps of Engineers or other governmental entity for purposes specifically related to the project.”

Implied easements occur when a person shows a continuous, apparent, permanent and necessary use for the property. In order for a use to be apparent, a person must demonstrate only that a reasonable inspection would discover the easement. An implied easement may also be established by evidence that access to the property is extremely convenient or necessary for the person to fully enjoy the property.

7. **Leases.**

There are few differences between residential and commercial leases in Mississippi. State law requires leases with a term of more than one (1) year be written, signed and delivered; and there is an additional recording requirement to give notice to a third party. The Residential Landlord and Tenant Act determines all issues regarding residential leases, including issues related to payment, use, retention, return and lien status of security deposits.

A landlord has many rights to secure payment of rent. First, the landlord may place a lien on any agricultural products on the leased property. A landlord also has a lien on any of the lessee’s personal property, other than inventory, located on the leased property.

Provisions for the termination of a lease are contained in the Residential Landlord and Tenant Act and require different degrees of notice for different types of leases. A tenant holding over after the expiration of the lease is liable for double the amount of rent normally due.

8. **Zoning.**

Counties and municipalities within the state have the authority to determine zoning in their area. These governing bodies may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. Regulations within a zone must be the same, but regulations from zone to zone may be different.

Zoning ordinances must abide by a comprehensive plan, and their purpose must be to lessen congestion in the streets; to secure property and persons from fire, panic and other dangers; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. A local planning commission may direct the comprehensive plan to oversee the zoning of the county or municipality, and this commission may be local or regional.

When a state statute conflicts with a local ordinance or zoning regulation, the local ordinance or regulation governs if it imposes a higher standard. Otherwise, the state statute governs in any other instance.

9. **Eminent Domain.**

Under Mississippi's eminent domain law, complaints are filed in the Circuit Court of the county where the land is located, as well as filing a lis pendens notice in the office of the Clerk of the Chancery Court. The defendants are then entitled to a hearing and must be given notice as to the fair market value of the property and be paid an amount of damages necessary to make the landowner whole.

The State Highway Commission, counties, municipalities, boards of supervisors, Mississippi Wayport Authority and the Mississippi Major Economic Impact Authority have authority to exercise eminent domain for public purposes.

10. **Mineral Rights and Environmental Laws.**

Miss. Code Ann. § 53-1-5 authorizes the creation of, and grants powers to the State Oil and Gas Board. Miss. Code Ann. § 53-1-7 states that the supervisor of the board shall be responsible for the administration and enforcement of Mississippi statutes related to mineral rights. The board governs all drilling and production in the state. Mississippi law provides that any aggrieved citizens may appeal the board rulings in Chancery Court of Hinds County, Mississippi. Violations of the related statutes carry a fine up to \$10,000 and possible imprisonment.

Mississippi law empowers the Mississippi Commission on Natural Resources to exercise all duties and responsibilities related to the geological and mineral survey for Mississippi, as well as surface mining issues, including reclamation of land. Under the statutes, a permit, a reclamation plan and a performance bond are required in order to conduct surface mining. Any surface mining is prohibited on lands which are a part of a national park, a national monument, national historic landmark, any property listed on the national register of historic places, national forest, national wilderness area and etc. Furthermore, with the assistance of the Mississippi Commission on Wildlife, Fisheries and Parks and the Mississippi Department of Marine Resources, some lands may be identified as unsuitable for all or certain types of surface mining. Violations of these laws carry a penalty of fines ranging in the amount of Five Hundred Dollars (\$500) to Twenty-five Thousand Dollars (\$25,000) in either civil or criminal fashion.

The information contained in this publication is not intended as a substitute for legal or other professional advice, and the authors neither intend nor accept any responsibility for omissions or statements that might prove to be misleading. The guide does not reflect any changes in Mississippi statutes or laws that may have occurred since the conclusion of the June 2004 Special Session of the Mississippi Legislature.

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