

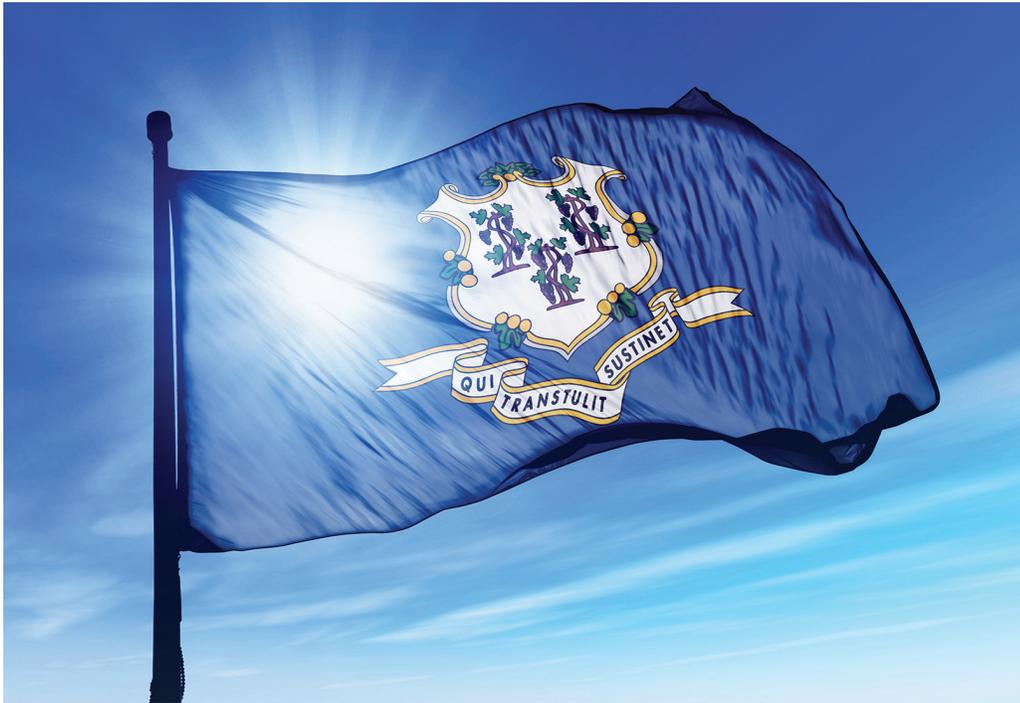
Connecticut

Prepared by Lex Mundi member firm,
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Doing Business in Connecticut

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July 2016

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I. **INTRODUCTION**

A. **Introductory Note**

This Guide reflects the laws of Connecticut as of July 2016. The reader should be aware that laws change and that appropriate steps should be taken to obtain current information.

B. **Geographic Description**

Connecticut is the most southern of the New England states, bordered on the west by New York, the north by Massachusetts, the east by Rhode Island and the south by the waters of Long Island Sound. It has an area of less than 5,000 square miles. Connecticut enjoys four distinct seasons - winter, spring, summer and fall - and its weather ranges from hot in the summer to cold in the winter, typical of the Northeastern United States. Connecticut is the third smallest state by area, the 29th most populous, and the fourth most densely populated of the 50 United States. Located mid-way between Manhattan and Boston, with easy access to both by train, automobile and plane, Connecticut has a population of over 3,500,000 people spread over one hundred sixty-nine (169) mostly small and attractive towns. Connecticut has five cities (Bridgeport, Hartford, New Haven, Waterbury and Stamford) with populations of over 100,000. As of the 2010 census, the population of Bridgeport was approximately 147,000 and the population of Hartford, which is the capital of the State, was approximately 125,000. New Haven, home to Yale University, has a population of 130,000. Stamford, home to many significant corporations, is located forty (40) miles from Manhattan and has a population of approximately 126,000. Connecticut's small town ambiance and physical beauty, distinct from but located so close to Manhattan and Boston, make it a very attractive place in which to work and live. Physically, Connecticut varies from coastal beaches and harbors to inland elevations of up to 2,300 feet, from busy cities to rural farmland, from fertile river valleys to wooded hills. Connecticut has a well-educated, skilled workforce and a diverse economy which includes manufacturing, commercial and financial services, insurance and agriculture. It has an excellent transportation system, served by rail, highways, a number of fine natural harbors, and well-developed port facilities in New London, New Haven and Bridgeport. Bradley International Airport is located in Windsor Locks, about halfway between Hartford and Springfield, Massachusetts, and there are twenty-five other commercial airports located throughout the state.

C. **Investment Climate**

One-third of the U.S. economy and two-thirds of the Canadian economy lie within a one-day drive from central Connecticut.

Connecticut has one of the highest percentages of corporate and divisional headquarters and 16 Fortune 500 companies call Connecticut "home."

Connecticut By the Numbers

10 more reasons Connecticut is a great place to do business:

- Connecticut's workers are among the most productive in the nation, ranking fourth among states.
- Connecticut is a leader in patents, ranking seventh in the nation.
- Connecticut is a leader in business research and development, ranking number five per capita.
- Connecticut ranks eighth in states ready for growth in the "New Economy."
- Connecticut is a leader in venture capital deals, which are key to the development of small business, ranking number seven.
- Connecticut is ranked as the nation's fourth most innovative state.
- Connecticut is a leader in finance and insurance, ranking number three in total employment.
- Connecticut ranks third for the best quality of life of any state.
- Connecticut has a highly educated workforce ranking third with an adult population with advanced degrees.
- Connecticut ranks fifth in the number of scientists & engineers in the workforce.

Center for Technology and Innovation. Connecticut is home to vibrant high technology industries such as bioscience, aerospace, medical technology and defense. The state is a research and development hub, and a leader in emerging technologies – fuel cell, alternative energy, nanotechnology and the film & digital media industry.

Connecticut is home to many of the leading insurance companies, earning the nickname “Insurance Capital of the World.” The state’s financial services sector is recognized for its overall excellence, both in terms of workforce talent and innovation.

Dynamic Workforce. Connecticut’s employee productivity is at an all-time high, with output per worker more than 33% above the national average. In fact, 36% of the State’s population aged 25 and older has a college degree. Superior education and training will guarantee that you will get work done here and get it done right.

Connecticut has the second highest rate of advanced degrees with 13.3% of adults reporting an advanced degree for the 2000 Census. Connecticut’s workforce is ranked nationally as the most educated labor pool and ranked near the top in employee productivity.

Educational Excellence. Connecticut boasts over 45 colleges and universities, ranging from Ivy League to community colleges offering two-year degrees and job training programs to world-class research institutions turning out highly educated workers and entrepreneurs.

- Yale University
- Trinity College
- Wesleyan University
- University of Connecticut
- Fairfield University
- Quinnipiac University
- United States Coast Guard Academy
- Connecticut State University System
- Connecticut Community Colleges

Incentives for Growth. Connecticut has a wide array of incentives that help businesses strengthen their competitive edge. The state offers financing incentives and a number of business assistance programs to improve productivity and profitability.

D. **Government and Politics.**

At the State level, Connecticut's government has the familiar division among legislative, executive and judicial functions. There is a bicameral legislature, referred to as the General Assembly, consisting of a House and Senate. Elections for all seats in the General Assembly are held every two even-numbered years. The executive branch consists of six (6) state-wide offices. Elections for each of these offices are held every four years.

The Governor and Lieutenant Governor have primary responsibility for carrying out the executive functions of government. Persons elected to these offices run together on the same ticket. The other state-wide offices consist of an Attorney General, Secretary of the State, Comptroller and Treasurer. Of these, the Attorney General tends to be the most visible because that office, in addition to representing the State in civil matters, has fairly broad statutory authority to bring civil actions on behalf of the State and its citizens (criminal matters are the responsibility of the Chief State's Attorney, an appointed, rather than an elected, position).

The Secretary of the State has approximately fifty (50) constitutional and statutory mandates, among them responsibility for commercial recording, maintaining public documents and records, elections services, and administration of many corporation, limited liability company, limited partnership, limited liability partnership and statutory trust laws. The Comptroller is responsible for all public accounts and for approving and recording all obligations against the State. The Treasurer is responsible for receiving all cash receipts of the State and is responsible for maintaining those funds, as well as for investing various pensions, retirement and other funds.

The Judicial Branch consists of three levels: a Supreme Court, an Appellate Division and the Superior Courts. All judges are appointed for fixed terms by the Governor, subject to the General Assembly's consent.

Connecticut is a “home rule” state which means there is no county government. Instead, each of Connecticut’s 169 cities and towns govern their own affairs under the statutory authority granted to them by the General Assembly and each city’s or town’s individual charter. There are regional planning agencies which are active but do not have any real power.

II. BUSINESS ENTITIES

A. Corporations

Formation. The formation of a corporation under Connecticut law is governed by Chapter 600 of the Connecticut General Statutes, known as the “Connecticut Business Corporation Act” (the “Act”). The Act is the primary statute that governs the internal affairs of corporations organized under Connecticut law. Effective January 1, 1997, the Act contains a modern set of corporation laws providing considerable flexibility in the structure and governance of a business in the corporate form. The Act is based on the Model Business Corporation Act adopted by the American Bar Association. The Act is maintained and updated continuously by the Business Law Section of the Connecticut Bar Association in order to ensure that the CBCA is current and consistent with the Model Act.

Name. The first step in the formation of a Connecticut corporation is the selection of the name. Under the Act, the name of each corporation must contain one of the following: “corporation,” “company,” “incorporated,” “limited,” or “Societa per Azioni,” or the abbreviation “corp.,” “co.,” “inc.,” “ltd.,” or “S.p.A.” The name cannot describe corporate powers, purposes or authority which the corporation does not possess, and the name has to be such that it is distinguishable from other corporations already formed in Connecticut. A proposed corporate name can be cleared with the Office of the Secretary of the State and reserved for 120 days by a filing with the Secretary of the State and the payment of a nominal fee. A corporation existing under the laws of any other state may register its corporate name with the Connecticut Secretary of the State if the name is such as to distinguish it from the names of corporations already existing in Connecticut. This is done by the filing of an application for registration and the payment of a nominal fee.

Incorporation; Charter and Bylaws. A Connecticut corporation is created by filing with the Secretary of the State a Certificate of Incorporation which includes an appointment of registered agent, together with the initial filing fees. The minimum filing fee is \$325, which covers the filing of the Certificate of Incorporation, the appointment of a registered agent, and the organization and first report, and the initial one-time franchise tax for 20,000 authorized shares. The franchise tax is based upon the number of shares of capital stock which the corporation will have the authority to issue. It begins at \$.01 per share up to and including the first 10,000 authorized shares, \$.005 per share for each authorized share in excess of 10,000 shares up to and including 100,000 shares, \$.0025 per share for each authorized share in excess of 100,000 shares up to and including 1,000,000 shares and \$.0020 per share for each authorized share in excess of 1,000,000 shares. The filing of the Certificate of Incorporation may be expedited (24-hour service) by including an additional \$50 with the filing fee. The Certificate of Incorporation is signed by the incorporator, who may be the attorney representing the corporation.

The incorporator then elects the initial board of directors and adopts bylaws for the corporation. The initial directors would be those persons selected by the prospective shareholders of the corporation.

The bylaws of a Connecticut corporation contain provisions for the governance of the corporation, such as the manner of calling and holding shareholders' and directors' meetings, the quorum and voting requirements, the number of directors, the election, removal and filling of vacancies for directors and officers, the titles and duties of officers, the manner of amending the bylaws, and other routine corporate matters. The corporation's shareholders may amend or repeal the bylaws. A corporation's board of directors also may amend or repeal the bylaws, unless either: the Certificate of Incorporation reserves that power exclusively to the shareholders in whole or in part, or the shareholders, in amending, repealing or adopting a particular bylaw, expressly provide that the board of directors may not amend, repeal or reinstate that bylaw. Connecticut has no residency requirements for shareholders, directors or officers, and there is no requirement that meetings of directors or shareholders take place in Connecticut.

Capital Structure. The Act is very flexible concerning the capital structure of a Connecticut corporation. Shares may be issued with a par value of not less than one cent per share or they may be issued without par value. Shares may be issued in different classes and series with different rights as to voting, payment of dividends, preference upon liquidation, conversion to other series of shares, redemption by the corporation, etc. In short, a Connecticut corporation may have a very simple capital structure with one class of stock or a very complicated capital structure with several classes of stock with different rights and privileges, depending upon the needs of the investors. The Certificate of Incorporation may be amended at any time to change the capital structure upon appropriate notice to the directors and shareholders and upon the obtaining of the director and shareholder approvals required by the Act. The directors must adopt the proposed amendment and submit it to the shareholders for their approval. The precise shareholder approval required would vary depending upon the rights and privileges of the various classes of stock and whether the amendment adds, changes or deletes a quorum or voting requirement. In general, unless the Act or the Certificate of Incorporation requires a greater vote, an amendment to the Certificate of Incorporation is approved if a quorum is present and the votes cast favoring the action exceed the votes cast opposing the action. If the corporation was incorporated before January 1, 1997 and has less than 100 shareholders, unless the Certificate of Incorporation expressly provides otherwise, the amendment must be approved by the affirmative vote of the holders of at least two-thirds of the voting power.

A Connecticut corporation may authorize the board of directors to issue so-called "blank check" preferred stock, whereby the board of directors could determine the relative rights and preferences of additional classes and series of preferred stock without going back to the shareholders to amend the Certificate of Incorporation. The Act expressly authorizes the board of directors to issue rights, options or warrants to acquire shares of the corporation's capital stock or other securities to be issued by the corporation. The board must determine the terms upon which the rights, options or

warrants are to be issued and the terms upon which, including the consideration for which, the shares or other securities are to be issued. The Act permits the board to delegate the authority to issue options, warrants or rights to the corporation's officers under certain circumstances. The Act also authorizes the use of so-called "poison pills" by permitting the board to place restrictions or conditions on the holders of rights, options or warrants by certain persons owning or offering to acquire a specified number or percentage of the corporation's outstanding shares or other securities.

Under the Act, the board of directors authorizes the issuance of shares for a consideration which the board of directors deems appropriate. Shares may be issued for any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation. Shares with par value may be issued for such consideration as the board of directors decides, provided that the value of that consideration cannot be less than the par value of the shares which are issued for it. Shares without par value may be issued for whatever consideration is deemed appropriate by the board of directors. Shares issued in accordance with these requirements are considered fully paid and non-assessable, and the shareholder who has paid the subscription price is under no obligation to the corporation or its creditors with respect to such shares. A Connecticut corporation may purchase from its shareholders shares of its own stock provided that after giving effect to the purchase it has a positive net worth and the corporation would be able to pay its debts as they become due in the usual course of business.

Purposes and Powers of Connecticut Corporations. A corporation may be formed under the Act for the transaction of any business or the promotion of any purpose which is not illegal except: that of a state bank and trust company, a savings bank, a savings and loan association; a telegraph, gas, electric or water company requiring the right to take or condemn lands; or an insurance, surety, or indemnity company unless the corporation is licensed as an insurance company by the State of Connecticut or is an affiliate of an insurance company incorporated and licensed under the laws of the State of Connecticut. In order to go into any of these businesses or to organize a corporation to carry out any of these purposes, special procedures are necessary. These include, depending on the type of business, a special charter to be granted by the legislature, approval of various boards or commissions which regulate the particular industry, or other special procedures. A Connecticut corporation has broad powers to take any action which is necessary or appropriate in furtherance of the corporate purpose as long as such action is not illegal under some other provision of law. A Connecticut corporation may sue and be sued, have perpetual existence, receive, buy, hold, sell or give away property, make donations for charitable purposes, invest funds not currently needed, borrow money, issue promissory notes and other evidence of indebtedness, grant mortgages or pledges of its real or personal property, enter into contracts, including guarantees, and carry on business anywhere outside of Connecticut if not prohibited by the laws of that place.

Compliance with Securities Laws. The issuance of shares by a Connecticut corporation is subject to compliance with federal and state securities laws. In general, if

a corporation has less than ten shareholders, an exemption from the requirements of Connecticut's state securities laws is available. These laws also contain other private offering and limited offering exemptions, some of which refer to, or incorporate, provisions of the federal securities laws. However, careful consideration should always be given to compliance with state and federal securities laws, and a Connecticut attorney knowledgeable in these areas should be consulted.

Directors. A Connecticut stock corporation may have a board of directors consisting of one or more directors. Normally directors serve for a period of one year, but the Certificate of Incorporation may provide for staggering the terms of the directors and for the directors to serve for terms of more than one year, with directors divided into not more than five different classes which expire in each year. The Certificate of Incorporation may provide that directors are elected by particular classes of stock. Directors may act at a meeting held in accordance with notice provisions contained in the bylaws, they may act by unanimous written consent in lieu of a meeting, and they may conduct meetings through the use of any means of communication by which all of the directors can hear each other at the same time. Directors may also waive notice of any meeting. If the board of directors takes action at a meeting, a quorum must be present. A quorum is usually a majority of the number of directorships, but the bylaws or the Certificate of Incorporation may provide for a quorum of no less than one-third of the number of directorships. The act of a majority of the directors present at a meeting at which a quorum is present at the time of the act is deemed proper action by the board of directors unless under certain circumstances the bylaws, the Certificate of Incorporation or the Act requires a greater number. Under the Act, directors may not designate an alternate or give a proxy for use at meetings of the directors.

Officers. The Act permits a corporation to have officers as described in its bylaws. The Act does not require any particular officers, but does require that one officer have responsibility for preparing minutes and maintaining the corporate records. Officers may be removed by the board of directors at any time with or without cause, but without prejudice to their contract rights, if any.

Fiduciary Duties. A director of a Connecticut corporation must carry out his or her duties as a director or member of a committee: (i) in good faith; (ii) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and (iii) in a manner the director reasonably believes to be in the best interests of the corporation. A director may rely on information, opinions, reports, or other statements prepared or presented by competent employees of the corporation, legal counsel, public accountants, or other competent professionals or experts. If the director has knowledge concerning a matter in question that makes reliance on this information unwarranted, however, he or she will not be entitled in good faith to rely on it. A director is not liable for any action taken as a director, or any failure to take action, if the director performed his or her duties in accordance with these standards.

An officer of a Connecticut corporation must carry out his or her duties as an officer in conformity with the Act's standards for officer conduct, which are substantially similar to those applicable to directors as described above.

Annual Shareholder Meetings; Shareholder Action. The Act requires a Connecticut corporation to hold an annual meeting of shareholders at a time and place stated in or fixed in accordance with its bylaws. Shareholders may call a special meeting of shareholders in accordance with the requirements of the Act. A corporation must notify its shareholders of the date, time and place of the meeting, not less than ten (10) days nor more than sixty (60) days before the meeting. The Act specifies the requirements of the notice of meeting. The bylaws of the corporation may fix or set how to fix the record date for one or more groups of shareholders entitled to vote at the meeting. A majority of the votes entitled to be cast on the matter to be voted upon by a voting group constitutes a quorum of the voting group for action on that matter, unless the certificate of incorporation or the Act specifies otherwise.

Unless otherwise provided in the certificate of incorporation or bylaws, directors are elected by a plurality of eligible votes cast. Other matters that require a vote of shareholders are approved if the votes cast within the voting group exceed the votes cast opposing the action, unless a different requirement is specified by the certificate of incorporation or by the Act. The actions required to be taken at an annual meeting, including the election of directors, may also be taken without a meeting by unanimous written consent of the shareholders entitled to vote on the action.

A Connecticut corporation is permitted to require shareholder approval for a specific corporate action by so stating in either its Certificate of Incorporation or bylaws. The Act requires a corporation to obtain the approval of shareholders for certain fundamental corporate changes, including most amendments to the Certificate of Incorporation, a merger or consolidation, the sale of all or substantially all of the corporation's assets or property or the dissolution of the corporation.

Indemnification of Officers and Directors, Limitation of Liability. The Act requires the indemnification of an individual who is made a party to a proceeding because the individual is a director of a corporation if the individual is wholly successful on the merits. The Act permits the indemnification of a director under other circumstances described in the Act. The Act also permits the indemnification of officers of a corporation under circumstances described in the Act and permits the inclusion in the Certificate of Incorporation of provisions limiting the liability of directors of a corporation to its shareholders. The Act also will permit a corporation to provide indemnification and advancement of expenses to directors, officers, employees and agents through common law rules and/or contracts between the corporation and the director, officer, employee or agent.

Annual Reports. A Connecticut corporation must file an annual report every year with the Office of the Secretary of the State, which is due in the anniversary month of its incorporation or at such other time as the Secretary of the State prescribes. The report must set forth the name and principal office of the corporation and the names and business and residence addresses of its officers and directors. Each foreign corporation authorized to transact business in Connecticut must also file an annual report with the Office of the Secretary of the State. Historically, annual reports were sent out in paper format and filed by corporations with the Secretary of the State in

paper form. Since 2012, the Act has required Connecticut domestic corporations and foreign corporations to file electronically all annual reports mandated for filing with the Secretary of the State, unless upon request, the Secretary of the State grants an exemption from the electronic filing requirement. Exemptions will only be granted if an entity does not have the capability to file by electronic transmission or make payment in an authorized manner by electronic means or if other good cause is shown. The Secretary of the State now sends each business entity a notice stating that the annual report is due and specifying how to complete and file it on-line. Each annual report filed since January 1, 2012 will afford the filing entity the opportunity to provide the Secretary of the State with an e-mail address for the delivery of future notices. Thereafter, the annual notice will be sent by regular mail or by e-mail, depending on the preferences of the business entity.

Merger, Consolidation, Dissolution and Sale of Assets. The Act permits a Connecticut corporation to merge with one or more other Connecticut corporations or one or more foreign corporations or other entities. A foreign corporation or a Connecticut or foreign other entity may be a party to the merger only if the merger is permitted by the laws which govern such foreign corporation or other entity. A merger, a sale of substantially all of the assets or dissolution must be approved by the board of directors of a Connecticut corporation and generally must be submitted to the shareholders for their approval. Unless the Act or the Certificate of Incorporation requires a greater vote, the merger, sale or dissolution must be approved by a majority of all the votes entitled to be cast. If the corporation was incorporated before January 1, 1997, unless the Certificate of Incorporation expressly provides otherwise, the merger, sale or dissolution must be approved by the affirmative vote of the holders of at least two-thirds of the voting power.

B. Connecticut Entity Transactions Act

The Connecticut Entity Transactions Act ("CETA") became effective January 1, 2014. CETA gives Connecticut businesses the flexibility to engage in additional business transactions which were not previously permitted under Connecticut law. CETA permits four kinds of business transactions:

1. Mergers among different types of entities such as corporations, general partnerships, limited partnerships and limited liability companies.
2. Interest exchanges between different types of entities such as corporations, general partnerships, limited partnerships and limited liability companies. An interest exchange occurs when owners of a business transfer their ownership interests in one entity for ownership interests in another entity. For example, all of the partners in a limited partnership transfer their partnership interests to a corporation in return for shares of stock of the corporation.
3. Conversion from one entity type to another type of entity. For example, a limited liability company may convert to a corporation.

4. Domestication permits an entity governed by the laws of a state to become governed by the laws of a different state. For example, a Delaware limited liability company could domesticate and become a Connecticut limited liability company.

It is important to note that even though a transaction is permissible under CETA, the CETA transaction may be a taxable transaction. Conversions, interest exchanges and mergers of different types of entities under CETA are generally taxable transactions. It is important to understand the income tax consequences of a potential CETA transaction with your tax advisor before completing any contemplated CETA transaction. A CETA transaction must include a plan of merger, plan of interest exchange, plan of conversion, or a plan of domestication.

Each CETA plan must be approved by each entity as follows: (i) in accordance with the laws of the jurisdiction of the entity and the public and private documents of the entity; (ii) if neither the laws of the jurisdiction of the entity nor the public and private documents of the entity provide for approval of an interest exchange, a conversion, or a domestication, then the CETA plan must be approved in accordance with the requirements, if any, of its governing laws or public or private documents for a merger; or; (iii) if neither the laws of the jurisdiction of the entity nor the public and private documents of the entity provide for approval of an interest exchange, a conversion, domestication, or a merger, then the CETA plan must be approved by all equity owners of the entity entitled to vote on any matter. A certificate of merger, certificate of interest exchange, certificate of conversion or statement of domestication must be filed with the Connecticut Secretary of State for each CETA transaction, as applicable.

C. **Partnerships**

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. Connecticut law permits general partnerships, limited partnerships and limited liability partnerships. The distinguishing feature between general partnerships and limited partnerships is that general partnerships have only general partners, while limited partnerships have at least one general and at least one limited partner. Limited liability partnerships are a type of general partnership that is subject to additional statutory provisions.

An advantage of partnerships over corporations lies in the tax treatment of partnerships. A partnership pays no federal or state income taxes. Profits and losses are allocated to individual partners in accordance with the partnership agreement. Each partner includes that income with the partner's other income and pays taxes on it at the partner's tax rate.

1. **General Partnerships.** Connecticut General Statutes Sections 34-300 – 34-399 contain the Uniform Partnership Act (“UPA”) as adopted in Connecticut. The UPA regulates the organization and operation of general partnerships. It provides considerable freedom for partners to agree among themselves on the terms which will govern their partnership.

Organization. Unlike corporations, limited liability companies, limited partnerships or limited liability partnerships, no certificate or other document need be filed with the Connecticut Secretary of the State or any other governmental entity to establish a general partnership. A general partnership may even be based on an oral agreement between partners, although a written agreement is prudent.

Existence and Dissolution. A disadvantage of general partnerships is that unlike corporations their existence does not continue without limit. The UPA provides a number of events that will cause the “dissolution” of a general partnership. These events include the resignation, death, or bankruptcy of a partner. The dissolution of a general partnership generally requires the partners to liquidate the business of the general partnership. However, when the dissolution of a general partnership occurs inadvertently or is undesired, such as upon the death or retirement of one partner, the remaining partners may agree to continue the business of the general partnership and avoid liquidation. If the remaining partners cannot reach an agreement with the retired partner or the bankrupt or deceased partner's estate for the continuation of the business, the retired partner or his or her estate may obtain an accounting of that partner's interest.

Liability of General Partners Not in Limited Liability Partnerships. A notable feature of general partnerships is that partners are jointly and severally liable to third parties for partnership obligations. Thus the partnership format in general does not afford partners limited liability in the manner that corporations shield shareholders, officers and directors from liability for corporate obligations and limited liability companies shield members and managers from liability for company obligations.

Voting Rights of General Partners. The partnership agreement may grant to all or certain identified general partners the right to vote on any basis agreed to, separately or with all or any class of partners, on any matter.

Corporation and Partnership as General Partners. Connecticut places no legal restriction on having a corporation, partnership or limited liability company as general partner.

Withdrawal by General Partners. At any time, a general partner can withdraw from a general partnership by giving written notice to the other partners. If the withdrawal of a general partner does not cause the dissolution of the general partnership, the general partnership is required to purchase such partner's interest in the partnership. If the withdrawal breaches the partnership agreement, the general partnership may offset the damages caused by such withdrawal from the purchase price for such

partner's interest or may sue the withdrawing general partner and receive damages for breach of the partnership agreement.

2. **Limited Liability Partnerships.** A limited liability partnership is a form of general partnership which is governed by the UPA and the additional provisions in Connecticut General Statutes Section 34-406 to 34-434. A partner of a limited liability partnership is statutorily relieved of personal liability for liabilities of the partnership and any other partner much in the same way that corporate shareholders are shielded from liability for the liabilities of the corporation and members of limited liability companies are shielded from liability for liabilities of the limited liability company. Each limited liability partnership shall file an annual report with the Secretary of the State, which report shall be due upon the anniversary of the filing of the certificate of limited liability partnership.

Formation. To form a limited liability partnership in Connecticut, a partnership must file a certificate of limited liability partnership with the Connecticut Secretary of the State. The certificate must state the name of the partnership, the address of its principal office or, if not located in Connecticut, the address of a registered office, and the name and address of a registered agent for service of process in Connecticut; a statement of the character of its business; and any other matters the partnership may determine to include.

Name. The name of a registered domestic or foreign limited liability partnership operating in Connecticut must contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name. The name of a registered limited liability partnership must be distinguishable upon the records of the Connecticut Secretary of the State from, among other things, the name of any registered limited liability partnership, limited partnership, limited liability company or corporation existing under the laws of Connecticut as well as any foreign entity authorized to transact business in Connecticut.

Statutory Agent for Service. A foreign registered limited liability partnership and a domestic limited liability partnership which does not have its principal office in Connecticut must maintain a statutory agent for service in Connecticut. A statutory agent can be: (1) a natural person who is a resident of Connecticut; (2) a domestic corporation, limited liability company, limited liability partnership or a statutory trust; or (3) a foreign corporation, limited liability company, limited liability partnership, or statutory trust which has procured a certificate of authority to transact business or conduct its affairs in Connecticut.

Amendment of Certificate. The certificate of limited liability partnership of a registered limited liability partnership may be amended by filing an amendment with the Connecticut Secretary of the State that sets forth the

limited liability partnership's name and the desired amendment to the certificate.

Insurance Requirement. A registered limited liability partnership that renders professional service is required to maintain a minimum of two hundred fifty thousand dollars of professional liability insurance.

Foreign Limited Liability Partnership's Authority to Transact Business in Connecticut. Before transacting business in Connecticut, a foreign limited liability partnership must file a certificate of authority with the Connecticut Secretary of the State. The certificate of authority must set forth: (1) the partnership's name and, if different, the name under which it proposes to transact business in Connecticut; (2) the jurisdiction where the limited liability partnership is registered and its date of registration; (3) the name and address of the agent for service of process; (4) the address of the office it is required to maintain by that jurisdiction or, if not so required, of the principal office of the partnership; (5) a representation that the partnership is a "foreign registered limited liability partnership"; (6) a statement regarding the nature of the business; and (7) any other matters the partnership wishes to include.

Vicarious Liability. Assuming compliance with the statutory requirements, a Connecticut limited liability partnership grants all partners the full range of limited liability afforded corporate shareholders and members in a limited liability company. Therefore, a partner in a limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution or otherwise, for the debts, obligations and liabilities of the partnership or another partner, whether arising in contract or tort. However, this shield of personal liability does not alter the partnership's liability for the partnership's own debts or liabilities or protect the partnership's assets from the claims of the partnership's creditors.

Direct Liability. Limited liability partnerships do not affect the liability of a partner for the individual negligence, wrongful acts or misconduct of such partner, or that of any person under the direct supervision and control of such partner.

3. **Limited Partnerships.** Connecticut General Statutes 34-9 to 34-38 contain the Revised Uniform Limited Partnership Act ("RULPA") as adopted in Connecticut.

Organization. A limited partnership must consist of at least one general partner and one limited partner. To form a limited partnership, all the general partners of a limited partnership must execute and file with the Connecticut Secretary of the State a certificate of limited partnership. A limited partnership is required to file an annual report with the Connecticut Secretary of the State.

Formation. In order to form a limited partnership, a certificate of limited partnership must set forth: (1) the name of the limited partnership and the address of the office in Connecticut where it maintains records that it is required to maintain; (2) the name and address of the agent for service of process; (3) the name and business address of each general partner; (4) the latest date upon which the limited partnership is to dissolve; and (5) any other matters the partners determine to include therein.

A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Connecticut Secretary of the State or at any later time specified in the certificate of limited partnership.

Notice. Filing the certificate of limited partnership with the office of the Connecticut Secretary of the State is the only notice that the partnership is a limited partnership and that those partners designated as general or limited are general or limited partners as listed, but is not notice of any other fact.

Name. The name as set forth in its certificate of limited partnership: (1) must contain the words "limited partnership" without abbreviation; (2) may not contain the name of a limited partner unless it is also the name of a general partner or the business of the limited partnership had been carried on under that name before the admission of that limited partner; and (3) shall be distinguishable upon the records in the office of the Connecticut Secretary of the State from the name of any other entity organized or registered as a foreign entity in Connecticut.

Permitted Businesses. With the exception of banking and insurance, a limited partnership may carry on any business which a partnership without limited partners may carry on.

Amendments to Certificate of Limited Partnership. To be amended, a certificate of limited partnership must be filed with the office of the Connecticut Secretary of the State. The certificate shall set forth: (1) the limited partnership's name; (2) the date the original certificate of limited partnership was filed; and (3) the amendment to the certificate. An amendment to a certificate of limited partnership must be filed within thirty days after the admission of a new general partner, withdrawal of a general partner, or continuation of its business after an event of withdrawal of a general partner.

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

control of the business of the partnership. Thus limited partners are usually passive investors and general partners manage and control the business of the limited partnership. Nonetheless, Connecticut law enumerates various powers that a limited partner may exercise which do not constitute participation in the control of the business of the partnership, and therefore do not subject the partner to liability for partnership debts. These powers include serving as an agent or employee of the limited partnership, consulting with or advising the general partner on the business of the partnership, acting as surety for the limited partnership, attending a meeting of partners, or voting on matters such as: the incurrence of indebtedness of the limited partnership; the sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all of the assets of the limited partnership; a change in the nature of the business; or the dissolution and winding up of the limited partnership.

Distributions and Sharing of Profits and Losses by Partners. The partnership agreement may specify the manner in which distributions of cash or other assets of a limited partnership are allocated among partners and classes of partners. The partnership agreement may also specify the manner in which the profits and losses of a limited partnership are allocated among partners and classes of partners. If the partnership agreement fails to address distributions, profits, and losses, they are allocated on the basis of the value of each member's contributions to the extent that they have been received and have not been returned by the limited partnership.

Merger and Consolidation of Limited Partnerships. Pursuant to a plan of merger, a domestic limited partnership may merge with or into any domestic or foreign limited partnership or any other domestic or foreign entity. The plan must name the survivor. Pursuant to a plan of consolidation, a domestic limited partnership may consolidate with or into any domestic or foreign limited partnership or any other domestic or foreign entity. The effect of the merger or consolidation is that only the survivor continues to exist, and has all the rights, privileges, and powers, and is liable for all the liabilities, obligations, and penalties of each party to the merger or consolidation.

A merger of a Connecticut limited partnership with an entity other than a domestic or foreign limited partnership is governed by the Connecticut Entity Transactions Act, Connecticut General Statutes Section 34-600-34-646, instead of the RULPA.

Voting Rights of Limited Partners. The partnership agreement may allow all or a specific group of the limited partners the right to vote either on a per capita or other basis upon any matter.

Withdrawal of Limited Partner. The partnership agreement can establish the conditions upon which a limited partner may withdraw from a limited partnership. If the partnership agreement fails to specify the time or events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner can withdraw upon a minimum of six months' prior written notice to each general partner.

Dissolution. A limited partnership is dissolved and its affairs are to be wound up upon the happening of the first to occur of the following: (1) a time specified in the partnership agreement; (2) upon the happening of events specified in the partnership agreement; (3) written consent of all partners; (4) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so; or (5) a decree of judicial dissolution. However, the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal of any general partner if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired. Thus, unlike a general partnership, the death, withdrawal or expulsion of a general partner does not result automatically in the dissolution of a limited partnership.

Winding Up. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership shall wind up the partnership's affairs. If there are no such general partners, the limited partners may wind up the limited partnership's affairs.

Upon dissolution and until the filing of a certificate of cancellation, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the partnership, prosecute and defend civil, criminal, and administrative suits, settle and close the partnership's business, dispose of and convey the partnership's property, discharge the partnership's liabilities, and distribute any remaining partnership assets to the partners, without affecting the liability of the limited partners.

Out-of-State Limited Partnerships. Before transacting business in Connecticut, a limited partnership that is organized in a state other than Connecticut must register to transact business in Connecticut. To register, a general partner of an out-of-state limited partnership must execute and file an application of registration as a foreign limited partnership with the Secretary of the State of Connecticut. The application must set forth basic information about the limited partnership, such as its name, the state and date of its formation, the address of its principal office, a description of the general character of the partnership's business,

the name and address of the Connecticut agent for service and the name and business address of each general partner. An out-of-state limited partnership may register to transact business in Connecticut under the name under which it is registered in its state of organization or under any other name so long as the name is distinguishable from the name of any existing entity organized or registered in Connecticut, and so long as the name contains the words "limited partnership," without abbreviation.

Syndication. As compared to general partnerships, other advantages exist in using limited partnerships as a vehicle to raise equity from a large number of investors. A limited partnership can include a large number of limited partners without hindering decision making because limited partners may not participate in the business of the partnership if they wish to maintain their limited liability. A drawback is that, because of the passive nature of limited partnership investments, the offer and sale of limited partnership interests may be subject to the requirement of state and federal securities laws.

D. **Limited Liability Companies**

The Connecticut Limited Liability Company Act ("the Act"), Connecticut General Statutes Sections 34-100 to 34-242, provides for the formation of limited liability companies, which if properly structured, combine the limited liability characteristics of corporations with the flow-through income tax treatment of partnerships.

The Act's policy is to effectuate freedom of contract as broadly as possible by allowing members and managers great discretion in drafting the operating agreement. Thus, for example, members of a Connecticut limited liability company are free to contract among themselves concerning the type of management, the voting, and the procedures of the company. Unless displaced by a particular provision of the Act, the Act is supplemented by principles of law and equity.

Permitted Business Purpose. Except for the limitations that follow, a Connecticut limited liability company may conduct any business that is legal under Connecticut law. A Connecticut limited liability company cannot be a state bank and trust company, a savings bank, an industrial bank, a building and loan association, a telegraph company, a gas, an electric, or an electric distribution or water company, or cemetery corporation, or an affiliate of an insurance company chartered by, incorporated, organized or constituted within or under the laws of Connecticut.

A limited liability company may be formed and render professional services in Connecticut only if: each member is licensed or otherwise authorized to render such services; and those rendering such services in Connecticut are each licensed or otherwise legally authorized to do so in Connecticut.

Formation. Under the Act, a Connecticut limited liability company is formed when the executed articles of organization are filed with the Connecticut Secretary of

the State. The articles must include: (1) the company's name, which must contain the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC"; (2) if manager managed, a statement to that effect; (3) the nature of the business and the purpose to be promoted or a statement that the purpose of the limited liability company is to engage in any lawful act or activity for which limited liability companies may be formed under the Act; (4) the principal office address; (5) an appointment of statutory agent; (6) the electronic mail address, if any, of the limited liability company and (7) any other matter the organizer wishes to include. In addition, the organizer must file with the Connecticut Secretary of the State the name and address of a manager or member.

Powers. The Act states numerous powers that a Connecticut limited liability company possesses, including, but not limited to, the power to: (1) carry on business; (2) acquire, hold and sell real or personal property; (3) make contracts; (4) borrow money; (5) enter into agreements with others for the sharing of profits and losses; (6) sue and be sued; (7) invest funds not needed in business; and (8) take property by gift, devise or bequest.

Amendments and Restatements of Articles of Organization. The Act does not specify any time or event which requires an amendment or restatement of the articles of organization. Unless the articles of organization state to the contrary, the articles may be amended at any time by an affirmative vote of the majority interest of its members.

Voting. If the limited liability company is member managed, except as otherwise provided in the articles of organization or operating agreement, the affirmative vote, approval or consent of a majority in interest of the members is required to decide any matter connected with the business or affairs of the limited liability company other than a merger.

If the limited liability company is manager managed, except as otherwise provided in the articles of organization or operating agreement, the affirmative vote, approval or consent of more than one-half by number of the managers is required to decide any matter connected with the business or affairs of the limited liability company other than a merger.

To amend a written operating agreement, or authorize a person to perform any act on behalf of a limited liability company that contravenes a written operating agreement requires the affirmative vote, approval or consent of at least two-thirds in interest of the members, unless the articles of organization or operating agreement provide to the contrary.

Liability of Members and Managers to Third Parties. A member of a limited liability company formed to render professional services is only personally liable if, while providing professional services as an agent of the company, the member personally, or another under his or her direct supervision and control, is negligent or commits a wrongful act or misconduct to the person for whom such services were rendered.

In a limited liability company that is not formed to render professional services, a member or manager is not liable solely by reason of his or her member or manager status for a debt, obligation, or liability of the company. The operating agreement can limit the personal liability of a member or manager for monetary damages for breach of a management duty, and may also provide indemnification for a member or manager for judgments, settlements, penalties, fines and expenses sustained in a proceeding to which an individual is a party as a consequence of the individual's status as member or manager.

Management. A Connecticut limited liability company can be managed by members or managers. If the articles of organization do not state that the limited liability company is managed by a manager or managers, it is managed by its members.

If the company is member managed, every member is an agent of the LLC for the purpose of its business or affairs. As such, the act of any member apparently carrying on in the normal business or affairs of the company effectively binds the company, except if the member has no actual authority and the person with whom the member is dealing has knowledge of that lack of authority.

If the articles of organization so provide, the company's management can be vested in a manager or managers. If so provided, the operating agreement may specify the number of managers, their responsibilities, necessary qualifications, and the manner in which they are both elected and removed.

If management is vested in a manager or managers, then no member, solely through his, her or its status as member, is an agent of the company, and every manager is an agent of the company for the purpose of its business or affairs. As such, the act of any manager apparently carrying on in the normal business or affairs of the company effectively binds the company, except if the manager has no actual authority and the person with whom the member is dealing has knowledge of that lack of authority.

Duties of Managers. A member or manager vested with management of the limited liability company has the duty to act in good faith and in such a way that the member or manager reasonably believes is in the best interests of the company. The standard of care is that of a similarly situated ordinary prudent person.

Allocations of Profits and Losses. The Act provides that the operating agreement may define how the profits and losses of a limited liability company are allocated among the members and among classes of members. If the operating agreement does not allocate profits and losses, they are allocated on the basis of the value of each member's contributions to the extent that the company received and has not returned them.

Mergers. A limited liability company formed under the Act to render professional services may merge only with another domestic limited liability company formed to render the same professional services. A limited liability company not formed to render

professional services may merge with either a domestic or foreign limited liability company or other entity.

Unless otherwise provided in the articles or organization or the operating agreement, the merger must be approved by the affirmative vote of at least two thirds in interest of the members.

The merger's effect is that only the survivor continues to exist and it has all the rights, privileges, immunities, and powers, and is subject to all the restrictions, disabilities, and duties of what were the independent companies.

A merger of a domestic limited liability company with an entity other than a domestic or foreign limited liability company is governed by the Connecticut Entity Transactions Act instead of the Act.

Dissolution and Winding Up. The Act provides that a limited liability company is dissolved and winding up should begin upon the happening of the first of the following: (1) the occurrence of an identified time or event described in the articles of organization or operating agreement as causing dissolution; (2) upon the affirmative vote, approval, or consent of a majority in interest of the members, unless the articles of organization or operating agreement state to the contrary; or (3) a judicial decree of dissolution.

Those winding up the limited liability company may, on the company's behalf: (1) prosecute and defend law suits; (2) settle and close the company's business; (3) dispose of and transfer the company's property; (4) discharge the company's obligations; and (5) distribute to the members any remaining assets.

Foreign Limited Liability Companies. To transact business in Connecticut, a foreign limited liability company must register with the Connecticut Secretary of the State. The application for registration delivered to the Secretary of the State must include: (1) the company's name and, if different, the name under which it proposes to transact business in Connecticut; (2) the state or other jurisdiction where formed and date of organization; (3) an appointment of statutory agent; (4) the address of the office required to be maintained in the jurisdiction of its organization or, if not so required, of the principal office address; (5) a representation that the foreign limited liability company is a "foreign limited liability company"; (6) the nature of the business and the purpose to be promoted; (7) the name and respective business and residence addresses of a manager or a member of the company; and (8) the electronic mail address, if any, of the foreign limited liability company.

The Act provides a safe harbor, enumerating various activities which do not constitute transacting business in Connecticut for purposes of the Act. These activities include, but are not limited to: (1) maintaining, defending or settling any proceeding; (2) carrying on activities concerning its internal affairs; (3) maintaining bank accounts; (4) selling through independent contractors; (5) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance

outside Connecticut before they become contracts; and (6) conducting an isolated unique transaction that is completed within thirty days.

Annual Report. Each domestic limited liability company and each foreign limited liability company registered to transact business in Connecticut shall file an annual report in the office of the Secretary of the State which report shall be due upon the anniversary of its formation or registration.

Connecticut Uniform Limited Liability Company Act. On July 1, 2017, the Connecticut Uniform Limited Liability Company Act will become effective for all existing and new Connecticut limited liability companies.

E. **Sole Proprietorship**

The sole proprietorship is the simplest form of business organization -- a person engaging individually in business for himself or herself. The business may be commenced without satisfying any of the requirements for initial organization like those required of entities such as corporations, limited liability companies or limited partnerships. However, if the business is operated under a name other than that of the individual, Connecticut law requires that the name be registered as a trade name with the office of the town clerk in each town where the business is conducted.

Since a sole proprietor is not a separate entity from that of the owner, he or she is personally liable for all obligations of the business. The owner does not have the protection of limited liability as do shareholders of a corporation, limited partners of a limited partnership or members of a limited liability company. In addition, a sole proprietor is potentially personally liable for wrongful acts committed by employees within the scope of their employment.

F. **Joint Venture**

A joint venture is not considered a separate entity in Connecticut. A joint venture involves two or more parties working together to undertake a single transaction or a series of related transactions. The type of entity used to carry out the joint venture will depend on the business needs of the parties or entities involved. However, if the joint venture is not incorporated, the relations and obligations of the parties to the joint venture will be governed by the principles of common-law partnership. Thus, if the joint venture is not incorporated, the joint venturers will be taxed as partners and will owe fiduciary duties to each other concerning matters within the scope of the joint venture.

G. **Non-Profit Corporations and Cooperatives**

Non-Profit Corporations. Connecticut also has a Revised Nonstock Corporation Act which governs the formation and operation of corporations without capital stock. Such a corporation is required to be non-profit and is usually used for charitable organizations such as museums, educational institutions, hospitals and other charitable, educational, scientific or civic organizations. Although non-profit corporations are permitted to generate a profit on their businesses or activities, to pay

reasonable compensation for services rendered, and to grant benefits to members in conformity with the corporation's purposes, they are precluded from distributing any part of their income to members, officers or directors. The prohibition against distributing income must be included in the corporation's certificate of incorporation.

The certificate of incorporation of a nonstock corporation shall set forth (1) the corporate name; (2) a statement that the corporation is nonprofit and that the corporation shall not have or issue shares of stock or make distributions; (3) whether the corporation is to have members and, if it is to have members, the provisions which are required to be set forth in the certificate of incorporation; (4) the street address of the corporation's initial registered office and the name of its initial registered agent at that office; (5) the name and address of each incorporator; (6) the nature of the activities to be conducted or the purposes to be promoted or carried out, except that it shall be sufficient to state, either alone or with other activities or purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be formed under the Connecticut Revised Nonstock Corporation Act.

Connecticut nonstock corporations are required to have a minimum of three (3) directors. Nonstock corporations are required to file an annual report in the office of the Secretary of the State.

Connecticut's Revised Nonstock Corporation Act is similar in many respects to the Connecticut Business Corporation Act. It is very flexible in allowing a nonstock corporation to be structured to suit the needs of the particular organization.

Certain non-profit corporations that have been qualified for exemption from federal income tax under Internal Revenue Code Section 501(a) are eligible for an exemption from the Connecticut corporate business tax, the Connecticut sales and use tax, and local property taxes. In order to obtain these exemptions, the corporation must apply to the appropriate state and local tax authorities.

Cooperatives. A cooperative is a corporation or association organized for the purpose of rendering economic services for the benefit of shareholders or members who own or control it. The best known example of the use of a cooperative is a farmers' cooperative which markets the combined crops, produce or livestock of the farmers comprising the cooperative. By controlling the crops and produce of a number of farmers, the farmers' cooperative attempts to command the highest price for all of the crops and goods sold. Under Connecticut law, this type of cooperative, called a cooperative marketing association, may be formed to market, handle, or manufacture agricultural products or byproducts, to supply surplus materials or other machinery, equipment and supplies to its members and to obtain insurance for its members. For purposes of this law, agriculture includes such things as horticulture, viticulture, forestry, dairying and the raising of livestock and poultry.

In addition to a cooperative marketing association, Connecticut law permits formation of a number of other types of cooperative associations. A cooperative association may be formed to engage in trade or any lawful mercantile, mechanical,

manufacturing or agricultural business within the state. In addition, Connecticut law permits the formation of electrical cooperatives to supply electricity to rural areas and elsewhere as well as to generate electricity by means of co-generation technology, renewable energy technology or both. The workers cooperative association is a relatively new type of cooperative association that was made available by the Connecticut General Assembly to assist workers in buying out the business of a corporation in distress, thus avoiding the potential loss of jobs if the business were to close.

H. **Benefit Corporations.**

Effective October 1, 2014, Connecticut has authorized the formation of “benefit” corporations. A benefit corporation is a type of business corporation, incorporated under the Act, but with a broadened purpose to create societal good. Both benefit corporations and standard corporations share many of the same features, though benefit corporations differ in several important ways and are subject to additional requirements.

A benefit corporation’s Certificate of Incorporation must specify that it has, in addition to any purpose for which it is formed, a purpose to create a general public benefit. A “general public benefit” is a material positive impact on both society and the environment, taken as a whole, as assessed by a third-party standard, from the business and operations of the corporation. Additionally, a benefit corporation may identify any one or more of seven “specific public benefits” including protecting or restoring the environment, improving human health, promoting the arts, sciences or advancement of knowledge, and promoting economic opportunity for individuals and communities beyond the creation of jobs in the ordinary course of business.

While directors and officers of standard corporations must focus primarily on maximizing financial returns to investors, the directors and officers of benefit corporations must also consider and prioritize the impacts of their corporate decision making on several additional stakeholders including the employees and clients of the corporation, the community in which the benefit corporation is located, the local and global environment, and the ability of the corporation to accomplish its general public benefit purpose and any specific public benefit purpose. In return, benefit corporations receive greater statutory protection to pursue sustainable business goals and to maintain their beneficial purpose over time and are provided with the means to differentiate their business and transparently report on their performance in pursuing a positive impact on society and the environment.

Benefit corporations must prepare an annual benefit report detailing their activities and their progress in creating a general public benefit, which must also include an assessment of the overall social and environmental performance of the benefit corporation against a third-party standard adopted by the corporation’s directors or shareholders. These annual reports must be posted to the corporation’s website as well as sent to the corporation’s shareholders no later than 120 days after the end of the corporation’s fiscal year.

The directors and shareholders of a benefit corporation have the right to bring an action called a “benefit enforcement proceeding” against the corporation, its directors or officers for failing to pursue or create a public benefit or for a violation of a duty or standard of conduct under the Act. This right is exclusive to shareholders and directors of the benefit corporation; no governmental entity or third party may initiate a benefit enforcement proceeding. Further, the Act specifically provides that directors and officers do not have a fiduciary duty to the beneficiaries, if any, of any of the public or specific benefit purposes of the corporation.

Connecticut law includes a “legacy preservation provision,” or LPP, which provides a benefit corporation’s shareholders with the opportunity to preserve their corporation’s status as a benefit corporation in perpetuity, despite changes in management or ownership. Under the Act, a benefit corporation’s shareholders may choose to revert to a standard business corporation or different legal entity with a vote of shareholders owning two-thirds of the corporation’s stock. The voluntary legacy preservation provision locks in the benefit corporation’s social mission as a fundamental part of its legal operating structure. Following a waiting period of two years and a unanimous vote by all shareholders, a benefit corporation may amend its Certificate of Incorporation to provide that its status as a benefit corporation is irrevocable.

A new business may incorporate as a benefit corporation under the Act by filing a certificate of incorporation that states it is a benefit corporation. An existing Connecticut corporation may amend its Certificate of Incorporation to include a statement that it is a benefit corporation. This amendment must be approved by a vote of two-thirds of the shares of each class or series of shareholders, regardless of any limitation stated in its certificate of incorporation or bylaws on the voting rights of any class or series.

I. **Alternative Methods of Doing Business in Connecticut**

There are several additional methods of doing business in Connecticut which are available to corporations and other entities that wish to market and sell their products or services in Connecticut but do not desire to set up a local business or utilize their own employees. Products and services can be marketed and sold in Connecticut through sales representatives, distributorships, licensing arrangements and franchises.

1. **Sales Representatives.** A sales representative contacts potential customers, demonstrates and displays the product to the potential customers and solicits orders for the product. A sales representative usually does not purchase, store, accept and deliver the orders for products himself. The sales representative transmits the orders to his principal which then accepts the order and arranges for the delivery of the goods directly to the purchaser. Sales representatives are generally compensated on a commission basis and often represent more than one principal.

Although there are no Connecticut laws specifically relating to sales representatives, companies having relationships with sales representatives in Connecticut must abide by the usual commercial laws governing the transaction of

business. These include the Uniform Commercial Code as it has been adopted in Connecticut which, among other requirements, requires good faith and fair dealing between parties to all contracts. Of special interest is the Connecticut Unfair Trade Practices Act which is applicable to virtually all acts involving a business and its customers, suppliers or competitors. This law prohibits unfair methods of competition, unfair acts or practices and deceptive acts or practices in the conduct of any trade or commerce.

2. **Distributorships.** An alternative method for companies to sell their products in Connecticut is through a local distributor. A distributor is different from a sales representative in that the distributor purchases the manufacturer's or supplier's product for its own inventory and sells the product for its own account. Although some distributors sell all or a part of their products at the retail level, most distributors sell their products at the wholesale level. The relationship between distributors and their manufacturers and suppliers is also subject to the commercial laws discussed above, as well as any specific laws pertaining to the particular business involved.

3. **Licensing.** Companies that have patents, trademarks or trade secrets that wish to have them used in Connecticut, or used to produce products or services in Connecticut, will frequently utilize a licensing arrangement. A licensing arrangement is an agreement between the owner of a patent, trademark or trade secret and another party for the other party's use of the patent, trademark or trade secret for a specified term in exchange for royalty payments or a specified fee. The license agreement will set forth other rights and obligations of the licensor and the licensee over the term of the agreement, such as whether the agreement is an exclusive license requiring that the licensor will not grant additional licenses. In addition to monetary benefits, license arrangements can benefit the licensor by its contact with companies and individuals having knowledge of the target market as well as feedback from those utilizing the licensed property.

4. **Franchises.** Another alternative available for companies desiring to establish a presence in Connecticut is through the use of franchises. The use of a franchise enables the companies to penetrate a market with limited risk. Both the franchisor and the franchisee have the opportunity to profit from the franchise relationship. The franchisor may obtain a fee for the sale of the franchise and, depending on the type of franchise and the particular circumstances, a profit from the sale of capital assets allowing the franchisee to commence the business. In certain instances, the franchisor will also receive royalties on gross sales or purchases or a fixed monthly fee. Where the franchisor is a manufacturer or distributor of the products or services sold or used, the franchisor has the opportunity for additional profit. Lastly, the franchisor profits indirectly by the increased exposure of its trademark or franchise name in a new territory. At the same time, the franchisee will obtain a trademark or name with an attractive reputation known to consumers and a proven system of management and operation. The franchisee can often obtain guidance and assistance in commencing and operating the business from the franchisor as well as credit to finance the business.

Connecticut has several statutes directly relating to franchising. See Part III, A, 3 of this Guide for a description of these laws.

J. **Connecticut Uniform Securities Act.**

1. **General.** Offers and sales of securities in Connecticut are governed by Chapter 672a of the Connecticut General Statutes, The Connecticut Uniform Securities Act (the “Securities Act”). The Securities Act generally regulates the offer and sale of securities within or from the State of Connecticut, as well as the activities of brokers, dealers, agents, investment advisers and investment adviser agents. The Securities Act also contains broad anti-fraud provisions that prohibit certain fraudulent and other practices.

2. **Offer and Sale of Securities.** Generally speaking, it is unlawful to offer or sell any security in the State of Connecticut unless (i) the transaction is registered under the Securities Act; (ii) the security or transaction is exempt from the registration requirements of the Securities Act; or (iii) the security is a “covered security” under the federal Securities Act of 1933, as amended (the “1933 Act”). The aim of securities registration is to ensure that investors receive full disclosure of all material facts necessary for them to make an informed investment decision. Registration may be effected by coordination if the offering is also being registered under the 1933 Act, or by qualification if the offering is not being registered under the 1933 Act. A registration statement may be filed by the issuer, a registered broker-dealer, or any other person on whose behalf the offering is to be made.

The Securities Act sets forth several classes of securities and transactions that are exempt from registration. Numerous policy statements and interpretive opinions provide further guidance concerning the securities and transactions that are exempt from registration. Among the securities exemptions are securities issued by banks, savings and loan associations or credit unions and government securities. Among the transactional exemptions are: (i) isolated non-issuer transactions, whether or not effected through a broker-dealer, (ii) private placements qualifying as such under Section 4(2) of the 1933 Act, and (iii) any offer or sale effected by the issuer where the total number of purchasers of all securities of the issuer does not exceed ten, as long as no advertisement is used in connection with the sale, no commission is paid and the expenses of the offering do not exceed one percent of the sales price.

3. **Registration of Broker-Dealers, Investment Advisers and Agents.** The Securities Act also prohibits any person from transacting business in Connecticut as a broker-dealer or investment adviser unless such person is registered as such with the Division of Securities of the State Department of Banking in accordance with the Act. Agents of broker-dealers and investment advisers also must be registered in accordance with the Securities Act. Each such registration is effective for a period of one year and may be renewed annually on or before December 31 of each calendar year. The Securities Act does not require the licensing of issuers as broker-dealers but does require that an “agent” of an issuer who represents the issuer in offering or selling the issuer's securities must be registered with the Division of Securities. An agent of

issuer must be a natural person (i.e. an individual) and not a corporation or other business entity.

4. **Regulation of Business Opportunity Investments.** The Division of Securities also oversees the Business Opportunity Investment Act (the "BOIA"), found under Chapter 672c of the Connecticut General Statutes. The BOIA governs the offer and sale of business opportunities in Connecticut and ensures that business opportunity purchasers receive from sellers full disclosure necessary in order to make informed investment decisions. That objective is accomplished through the registration process. Under the BOIA, a business opportunity is any arrangement where a third party (the seller) offers to sell to a natural person any products, equipment, supplies or services to enable the person to start his or her own business. Business opportunity programs can include vending machine routes, distributorships, franchises and multi-level marketing arrangements.

5. **Anti-fraud Provisions.** The Securities Act contains broad anti-fraud provisions which make it unlawful, in connection with the offer, sale or purchase of any security, to (i) employ any device, scheme or artifice to defraud, (ii) make any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading, or (iii) engage in any act, practice or course of business which operates as a fraud or deceit on any person.

6. **Administration.** Since the Securities Act's passage in 1977, the Securities Act has been administered by the Securities and Business Investments Division of the Connecticut Department of Banking. The qualification of real estate syndicate securities is also regulated by, and must be conducted in accordance with, the Connecticut Real Estate Act, which is administered by the Connecticut Real Estate Commission.

III. TRADE REGULATION

A. State Considerations

1. **Warranties.** Warranties on goods sold in Connecticut are governed by the Uniform Commercial Code, Connecticut General Statutes § 42(a) 101 et seq. Under the UCC, goods sold subject to its provisions carry an implied warranty of merchantability and an implied warranty of fitness for the particular purpose for which they were purchased unless these warranties have been specifically disclaimed in accordance with the provisions of the UCC. Goods would also be subject to whatever express warranties the manufacturer and/or seller provides.

In addition to these warranties, The Connecticut Product Liability Act, Connecticut General Statutes § 52-240a, 52-240(b), 52-572 et seq. and 52-577(a), provides that a product liability claim may be brought against the seller of a product for personal injury, death, or property damage caused by the manufacture, construction, design, formula, preparation, assembly, installation, testing, warnings, instruction, marketing, packaging, or labeling of a product, and provides the procedures and remedies for such claims. Common law liability theories, such as negligence, strict liability in tort, misrepresentation and the like would not be precluded by this Act, but must conform to its provisions. The Act provides a statute of limitations (three years from the injury or reasonable discovery of the injury, but not more than ten years from when the defendant last had the product) and damages, including punitive damages. A complex framework of judicial interpretation has developed around the Act since its adoption in 1979.

2. **Consumer Protection.** In addition to federal consumer protection laws of general applicability, Connecticut has a number of state laws intended to protect consumers, of which the following are the most prominent.

The Connecticut Truth in Lending Act, Connecticut General Statutes § 36-393 et seq., requires uniform disclosure of the terms and conditions in all credit transactions. Violation can result in actual damages, statutory damages, attorneys' fees and rescission by the consumer. The consumer's right to rescind exists for a minimum of three days from the consummation of the transaction and it may be enforced for up to three years if the creditor failed to provide the required information to the consumer.

Connecticut General Statutes § 36-224a et seq. regulates second mortgage loans. Under these provisions, no person can engage in the secondary mortgage loan business in Connecticut without either a license from the Connecticut Banking Commissioner or a statutory exemption. They impose limits on the terms of a second mortgage loan and give the Banking Commissioner broad licensing, investigative, suspension and revocation powers.

Retail installment sales financings are governed by Connecticut General Statutes § 42-83 et seq. and 36-254 et seq. Among other things, these statutes establish maximum finance charges, bar confession of judgment clauses and limit delinquency

charges, collection charges, attorneys' fees, and rights to repossess. Contracts which do not comply are voidable at the option of the consumer.

The Home Solicitation Sales Act, Connecticut General Statutes § 42-134a et seq., covers most sales, leases or rentals of consumer goods or services at a place other than the seller's place of business. It requires certain specific information to be provided to the consumer and permits rescission of the contract within three days following the date of the transaction, with or without a reason. The Act prescribes the rights of the consumer and the obligations of the seller after rescission. It makes unenforceable a contract which fails to comply with its provisions.

The Home Improvement Act, Connecticut General Statutes § 20-418 et seq., gives the Commissioner of Consumer Protection broad powers to register home contractors and salesmen, provides certain criteria for home improvement contracts, prohibits untruthful or misleading advertising and provides for refunds by the contractor if the work is not performed within certain time periods.

The Plain Language Act, Connecticut General Statutes § 42-151 et seq., requires all consumer contracts to be written in plain language and provides tests to determine compliance with the Act. Non-compliance can result in statutory damages of \$100 and up to \$100 in attorneys' fees.

The statutes outlined above are clearly intended to provide significant protection for consumers. Although legitimate businesses should not find them to be unduly burdensome, it is clear that any business which lends to consumers, solicits sales at homes, sells on an installment plan or enters into other contracts with consumers needs to be aware of these laws and take appropriate steps to comply.

3. **Regulation of Franchises.** Connecticut has two statutes which specifically regulate franchises, The Connecticut Franchise Act, Connecticut General Statutes § 42-133a et seq., and the Connecticut Petroleum Franchise Act, Connecticut General Statutes § 21; § 21; 42-133 et seq. There are also several other statutes which significantly impact certain business relationships: the Connecticut Business Opportunity Investment Act, Connecticut General Statutes § 21; § 21; 36-504 et seq., requires disclosure of information to prospective purchasers of a "business opportunity," and thus may reach certain types of franchises; Connecticut General Statutes § 21; 50-17 et seq. regulate liquor distributors; and Connecticut General Statutes § 21; § 21; 42-133r et seq. regulate automobile dealers.

The Franchise Act defines the term franchise, prescribes a minimum term, requires compensation for certain inventory and equipment on termination, sets limits on termination and non-renewal, and grants rights of action for damages, injunctive relief and attorneys' fees. The Petroleum Franchise Act is similar to the Franchise Act but aimed at a particular type of business. These acts have been the subject of a number of court cases interpreting their provisions. Anyone involved in drafting contracts between franchisor and franchisee, attempting to resolve disputes between franchisor and franchisee, setting up dealerships or offering a "business opportunity"

should be aware that these acts may help protect important rights and may also contain potential pitfalls, depending upon the particular circumstances and the parties involved.

4. **State Antitrust Law.** The Connecticut Anti-Trust Act, Connecticut General Statutes § 35-24 through 35-45, roughly parallels sections of the federal Sherman Act, Clayton Act, and Robinson-Patman Act. Like Sherman Act § 1, sections 35-26 and 35-28 forbid agreements to restrain trade by means of price-fixing, controlling production, allocating customers, and refusing to deal. Section 35-29 incorporates the prohibition contained in Clayton Act § 3 against “tying” arrangements, and extends that prohibition to cover tying in the sale of services as well as commodities. Section 35-45 tracks the Robinson-Patman Act's prohibition against price discrimination in the sale of commodities “of like grade and quality.”

In addition to the specific prohibitions set forth in the Connecticut Anti-Trust Act, the Connecticut Unfair Trade Practices Act, Connecticut General Statutes § 42-110a et seq. (“CUTPA”), proscribes all “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.” CUTPA provides for enforcement by both the state and private litigants. Courts may award injunctive relief and punitive damages in CUTPA cases, and the statute expressly authorizes awarding attorneys' fees to successful plaintiffs.

Connecticut law mandates no prior approval for mergers, although section 35-27 employs language similar to that of Sherman Act § 2 in prohibiting attempted monopolization.

IV. TAXATION

A. State Taxation

1. **Personal Income Tax.** Both resident and nonresident individuals, estates and trusts are subject to the Connecticut Personal Income Tax. Resident individuals, estates and trusts (other than certain inter vivos resident trusts) are taxed on their Connecticut taxable income, including income from both Connecticut and non-Connecticut sources. An inter vivos resident trust having nonresident non-contingent beneficiaries is taxed on income from Connecticut sources and on a portion of non-Connecticut source income based on the amount of such income attributed to non-contingent resident beneficiaries.

An individual is a resident of Connecticut if the individual is domiciled in Connecticut, except that (a) if the individual maintains no permanent place of abode in Connecticut, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty (30) days of the taxable year in Connecticut, he is not deemed to be a resident, or (b) if the individual, during any 548-day period, is in a foreign country for at least 450 days, is not in Connecticut for more than (ninety) 90 days, does not maintain a permanent place of abode in Connecticut at which the individual's spouse or minor child spent more than ninety (90) days, and during the nonresident portion of the taxable year within which the 548-day period begins and the nonresident portion of the taxable year within which the period ends, the individual is in Connecticut for a number of days that does not exceed an amount that bears the same ratio to ninety (90) as the number of days contained in the portion of the taxable year bears to 548, he is not deemed to be a resident. In addition, a person not domiciled in Connecticut is considered a resident if the person maintains a permanent place of abode in Connecticut and is in Connecticut for an aggregate of more than 183 days of the taxable year unless in the armed forces of the United States.

Resident estates are based on the domicile of the decedent at the date of death. A trust is considered generally to be a resident trust if (a) it is irrevocable and the settlor was domiciled in Connecticut at the time that the trust became irrevocable, or (b) if the trust is revocable and the settlor was domiciled in Connecticut at the time of creation of the trust, except that if after its creation the trust becomes irrevocable and the settlor has changed his domicile prior to the trust becoming irrevocable, then the trust will be considered a nonresident trust as of the date the trust became irrevocable.

For taxable years commencing on or after January 1, 2003 and before January 1, 2009, the Connecticut Personal Income Tax is imposed at the rate of 3.0% of the initial \$10,000 to \$20,000 of Connecticut taxable income based on the taxpayer's filing status as an unmarried individual or married individual filing separately, head of household, or married filing jointly or surviving spouse, and is \$300 to \$600 plus 5.0% of Connecticut taxable income in excess of a taxpayer's initial \$10,000 to \$20,000 of income.

For taxable years commencing on or after January 1, 2009 and before January 1, 2011, the 3.0% and 5.0% tax rates are still imposed, but the 5.0% tax rate is not

imposed on a taxpayer's initial income that is in excess of \$500,000 to \$1,000,000 and a third tax rate that is \$24,800 to \$49,600 plus 6.5% is imposed on Connecticut taxable income in excess of a taxpayer's initial \$500,000 to \$1,000,000 of income.

For taxable years beginning on or after January 1, 2011, but prior to January 1, 2015, depending on a taxpayer's filing status, Connecticut taxable income not over \$10,000 to \$20,000 is taxed at 3.0%; income over \$10,000 to \$20,000 but not over \$50,000 to \$100,000 is taxed at \$300 to \$600 plus 5.0% of the excess over \$10,000 to \$20,000; income over \$50,000 to \$100,000 but not over \$100,000 to \$200,000 is taxed at \$2,300 to \$4,600 plus 5.5% of the excess over \$50,000 to \$100,000; income over \$100,000 to \$200,000 but not over \$200,000 to \$400,000 is taxed at \$5,050 to \$10,100 plus 6.0% of the excess over \$100,000 to \$200,000; income over \$200,000 to \$400,000 but not over \$250,000 to \$500,000 is taxed at \$11,050 to \$22,100 plus 6.5% of the excess over \$200,000 to \$400,000; and income over \$250,000 to \$500,000 is taxed at \$14,300 to \$28,600 plus 6.7% of the excess over \$250,000 to \$500,000. However, depending on a taxpayer's filing status, for each taxpayer whose Connecticut adjusted gross income exceeds \$50,250 to \$100,500, the amount of the taxpayer's Connecticut taxable income to which the 3.0% tax rate applies is reduced by \$1,000 to \$2,000 for each \$2,500 to \$5,000, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds such amount and the 5.0% tax rate applies instead. In addition, depending on a taxpayer's filing status, each taxpayer whose Connecticut adjusted gross income exceeds \$200,000 to \$400,000 pays an additional tax equal to \$75 to \$150 for each \$5,000 to \$10,000, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds \$200,000 to \$400,000, up to a maximum payment of \$2,250 to \$4,500.

For taxable years commencing on or after January 1, 2015, the 3.0%, 5.0%, 5.5%, 6.0%, and 6.5% tax rates are still imposed as set forth in the previous paragraph. Instead of the 6.7% tax rate, 6.9% and 6.99% tax rates are imposed. Taxable income over \$250,000 to \$500,000 but not over \$500,000 to \$1,000,000 is tax at \$14,300 to \$28,600 plus 6.9% of the excess over \$250,000 to \$500,000, and income over \$500,000 to \$1,000,000 is taxed at \$31,500 to \$63,100 plus 6.99% of the excess over \$500,000 to \$1,000,000. However, depending on a taxpayer's filing status, for each taxpayer whose Connecticut adjusted gross income exceeds \$50,250 to \$100,500, the amount of the taxpayer's Connecticut taxable income to which the 3.0% tax rate applies is reduced by \$1,000 to \$2,000 for each \$2,500 to \$5,000, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds such amount and the 5.0% tax rate applies instead. Also, each taxpayer whose Connecticut adjusted gross income exceeds \$200,000 to \$400,000 pays an additional tax equal to \$90 to \$180 for each \$5,000 to \$10,000, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds \$200,000 to \$400,000, up to a maximum payment of \$2,700 to \$5,400. In addition, each taxpayer whose Connecticut adjusted gross income exceeds \$500,000 to \$1,000,000 pays an additional tax equal to \$50 to \$100 for each \$5,000 to \$10,000, or fraction thereof, by which the taxpayer's Connecticut adjusted gross income exceeds \$500,000 to \$1,000,000, up to a maximum payment of \$450 to \$900.

For taxable years commencing on or after January 1, 2003 and before January 1, 2009, the tax rate for the income tax imposed on trusts and estates is 5%; for taxable years commencing on or after January 1, 2009 and before January 1, 2011, it is 6.5%; for taxable years commencing on or after January 1, 2011 but prior to January 1, 2015 it is 6.7%; and for taxable years commencing on or after January 1, 2015 it is 6.99%.

For resident individuals, Connecticut taxable income is federal adjusted gross income with certain Connecticut modifications, reduced by a Connecticut personal exemption. The tax is computed by multiplying the applicable Connecticut taxable income by the applicable tax rate. The result is then reduced by a tax credit that is based on the taxpayer's level of Connecticut adjusted gross income. Connecticut modifications to determine Connecticut adjusted gross income include increasing income by interest on state and local tax exempt obligations (other than Connecticut obligations) and reducing income by interest from federal obligations.

The personal exemption for married taxpayers filing jointly is \$24,000 for Connecticut adjusted gross income up to \$48,000. For a married individual filing separately, the personal exemption is \$12,000 for Connecticut adjusted gross income up to \$24,000. For an unmarried individual, for taxable years commencing on or after January 1, 2004, but prior to January 1, 2007, the personal exemption is \$12,625 for Connecticut adjusted gross income up to \$25,250; for taxable years beginning on or after January 1, 2007 but prior to January 1, 2008, the personal exemption is \$12,750 for Connecticut adjusted gross income up to \$25,500; for taxable years commencing on or after January 1, 2008 but prior to January 1, 2012, the personal exemption is \$13,000 for Connecticut adjusted gross income up to \$26,000; for taxable years beginning in 2012, the personal exemption is \$13,500 for Connecticut adjusted gross income up to \$27,000; for taxable years beginning in 2013, the personal exemption is \$14,000 for Connecticut adjusted gross income up to \$28,000; for taxable years beginning in 2014 and 2015, the personal exemption is \$14,500 for Connecticut adjusted gross income up to \$29,000; and for taxable years beginning in or after 2016, the personal exemption is \$15,000 for Connecticut adjusted gross income up to \$30,000. For a head of household, the personal exemption is \$19,000 for income up to \$38,000. The personal exemption of married individuals filing jointly, a married individual filing separately, an unmarried individual and a head of household is decreased by \$1,000 for each \$1,000 of Connecticut adjusted gross income in excess of the respective aforementioned threshold of Connecticut adjusted gross income.

Nonresident individuals are taxed on their share of Connecticut source income, including their share of income from partnerships, S corporations and estates and trusts apportioned or attributed to Connecticut. A nonresident taxpayer computes the tax in the same manner as a resident taxpayer and then determines the portion of the tax to be attributed to Connecticut by multiplying the tax so computed by the proportion that Connecticut adjusted gross income derived from sources within Connecticut bears to Connecticut adjusted gross income from all sources.

A Connecticut alternative minimum tax applies to the extent it exceeds the tax computed under the regular method. The minimum tax rate is imposed at the rate of the

lesser of (a) 19% of adjusted federal tentative minimum tax, or (b) 5.5% of adjusted federal alternative minimum taxable income. The Connecticut regular tax is subtracted from such amount to compute the net Connecticut minimum tax.

Estimated taxes mirror the federal estimated tax rules with payments due on April 15, June 15, September 15, and January 15. The required payment is 100% of last year's tax or 90% of the current year's liability. Annualized income installments are also permitted. Interest on underpayment of estimated tax is 1% per month. Farmers and fishermen are subject to different requirements.

2. **Corporation Business Tax.** Except for insurance companies, the base tax for corporations other than real estate investment trusts, regulated investment companies, and financial institutions is the greater of the regular tax measured by Connecticut net income, the additional capital stock based tax, or the minimum tax of \$250. Prior to income years beginning on or after January 1, 2016, a company generally was required to file tax returns on a separate basis and report only its own income, capital and apportionment even if the company was a component part of a larger business enterprise, unless it was included in a consolidated return for federal income tax purposes and elected to file a Connecticut combined return. For income years beginning on or after January 1, 2016, groups of companies that are engaged in a unitary business, where at least one member of the group is subject to the Corporation Business Tax, are required to calculate their tax liability on a combined unitary basis. The mechanics of identifying the groups of companies that must file a combined unitary tax return and the calculation of the group's Corporation Business Tax liability are set forth in SN 2016(1) at <http://www.ct.gov/drs/cwp/view.asp?A=1514&Q=577712>.

The Connecticut Corporation Business Tax is a franchise tax computed on the basis of net income as reported for federal tax purposes with certain adjustments and as apportioned to Connecticut under a statutory apportionment formula. For income years commencing on or after January 1, 2000, net income apportioned to Connecticut is taxed at the rate of 7.5%. Modifications to determine Connecticut net income include increasing federal corporate taxable income by state and local income tax paid or accrued in the income year and decreasing income for dividends received or accrued (as defined by the Internal Revenue Code) and not otherwise deducted from gross income; except that the subtraction is limited to 70% of dividends received from a domestic corporation in which a taxpayer owns less than 20% of the shares, as measured by total voting power and value.

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

With respect to both the regular tax measured by Connecticut net income and the additional capital stock based tax, for income tax years commencing on or after January 1, 2006, and prior to January 1, 2007, there is an additional tax in an amount equal to

20% of the tax for the current year, without any reduction of the tax by the amount of any credit that may be applied against the tax. With respect to income years beginning on or after January 1, 2009 and before January 1, 2012, the surcharge is 10%; for income years beginning on or after January 1, 2012 and before January 1, 2018, the surcharge is 20%, but it applies only to corporations with \$100 million or more in annual gross income for such year, all companies filing combined or elective unitary returns for income years prior to January 1, 2016, and all companies filing unitary returns for income years commencing on or after January 1, 2016 and prior to January 1, 2019; and for income years beginning on or after January 1, 2018 and before January 1, 2019, the surcharge is 10% but it does not apply to corporations with less than \$100 million of gross income unless they are taxable members of a combined group that files a combined unitary tax return for the income year.

For taxable years beginning on or after January 1, 2010, to the extent allowed by the U.S. Constitution, a substantial economic presence may subject a corporation to the Connecticut Business Corporation tax.

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

For taxpayers engaged in business both within and without Connecticut, for income years commencing before January 1, 2016, net income is generally apportioned based on gross receipts in Connecticut as a percentage of total gross receipts; however, a three factor formula is applied to businesses engaged in the manufacture, sale, or use of tangible personal or real property, the three factors being property, payroll and receipts, with receipts double weighted, and generally, for income years commencing after 2000, manufacturers are allowed to use the single gross receipts factor formula. Specific statutory apportionment provisions apply to motor bus companies, air carriers, and domestic life insurance companies. For income years beginning on or after January 1, 2016, multistate corporations not subject to industry-specific apportionment methodologies must use a single-sales factor formula to apportion income.

For taxable years beginning in 2001, Subchapter S corporations are not taxable in Connecticut under the Connecticut Corporation Business Tax. Prior to 2001, the percentage of net income subject to tax was reduced over a four-year period beginning in 1997. However, beginning on January 1, 2004, Subchapter S corporations are required to file a composite tax return and make a composite Connecticut income tax payment on behalf of each nonresident individual, trust or estate that is a shareholder where: the shareholder's pro rata share of the income derived from or connected with Connecticut sources is \$1,000 or more, and an election to be included on a Connecticut Group Income Tax Return has not been made by such shareholder, except that beginning in 2006, a Connecticut Group Income Tax return can no longer be filed on behalf of electing nonresident shareholders.

Similar to Subchapter S corporations, beginning on January 1, 2004, partnerships, limited liability companies, and other pass-through entities (hereinafter collectively referred to as “pass-through entities”) are required to file a composite tax return and make a composite Connecticut tax payment on behalf of each nonresident individual, trust or estate that is a member where: the member’s pro rata share of the pass-through entity’s income connected with Connecticut sources is \$1,000 or more, and an election has not been made by the member to be included on a Connecticut Group Income Tax Return, except that beginning in 2006, a Connecticut Group Income Tax Return can no longer be filed on behalf of electing nonresident members.

Corporate estimated income tax payments are due on the 15th day of the third, sixth, ninth and twelfth months and must in the aggregate equal the lesser of (a) 90% of the tax determined to be due for the income year, or (b), if the preceding year was an income year of 12 months and the corporation filed a return with a liability for tax for such year, 100% of the tax shown on the return for the preceding income year without regard to any credits. Combined groups are also required to make estimated tax payments on a quarterly basis. The amount of each estimated payment is calculated based upon the group’s required annual payment. In general, the required annual payment is the lesser of:

- 90% of the tax due, after application of credits, for the current income year; and
- 100% of the tax due, before application of credits for the preceding income year.

For income year 2016 (the first year for which a combined unitary tax return is due), the second prong of the required annual payment equals the sum of the following:

- With respect to a combined group member that filed a separate tax return in the prior year, the tax due on said return, before application of credits; and
- With respect to a combined group member that filed as part of a CT-1120CR or CT-1120U in the prior year, the tax due for the entire group in the prior year, before application of credits, regardless of whether all the members from the prior year’s return are included in the combined unitary tax return.

For income years beginning in 2017 and thereafter, the second prong of the required annual payment will be based upon the total tax due from all members of the combined group that filed with the designated taxable member in the prior year.

Until tax years beginning on or after January 1, 2006, estimated composite payments must be made on behalf of each non-resident individual, trust or estate that is a shareholder whose expected pro rata share of the Subchapter S corporation’s Connecticut source income for the taxable year equals or exceeds \$1,000 and estimated composite payments must also be made on behalf of each non-resident

individual, trust or estate that is a member of a pass-through entity where the non-resident member's share of the pass-through entity's Connecticut source income for the taxable year is expected to equal or exceed \$1,000.

3. **Property Tax.** Property taxes in Connecticut are assessed and collected at the town and city level. All real and personal property located within Connecticut, unless exempt, is taxable. Personal property is assessed at 70% of its present true and actual value. Present true and actual value is the fair market value of the property, except that special provisions are made for valuing farm land, forest land, and open space.

Exemptions are accorded to certain commercial property, vessels, forest land, residential property resided in by totally disabled persons or persons sixty-five or over, real property located in enterprise zones and property owned by certain charitable organizations.

The Property Tax rates are fixed by the local taxing authorities and vary throughout the state.

All real and personal property is assessed as of October 1 of each year. Personal property is appraised annually. Commencing October 1, 2006, each town is required to implement a revaluation not later than the first day of October that follows by five years the October first assessment date on which the town's previous revaluation became effective, provided, however, that a town that statutorily opted to defer a revaluation for the 2003, 2004 or 2005 assessment year must implement a revaluation not later than the first day of October that follows by five years the October first assessment date on which the town's deferred revaluation became effective. The Property Tax is generally paid in the tax district in which the real and personal property is situated.

Town appraisers determine the property assessment values of all taxable property within their tax districts. Appeals of an assessment are taken to a local board of assessment appeals and further appeals are to the Superior Court for the town in which the property is assessed. Property taxes are paid to the local tax collector. Collection of the Property Tax is supported by a statutory lien system.

4. **Sales and Use Taxes.** The Connecticut Sales Tax is imposed on all retailers for the privilege of selling tangible personal property at retail, the rendering of certain enumerated services for consideration, the leasing or rental of tangible personal property, and upon operators of hotels and lodging houses for the occupancy of rooms for periods not exceeding thirty consecutive days. The Connecticut Use Tax is applied with respect to the storage, acceptance, consumption or other use in Connecticut of tangible personal property or services not subject to the Sales Tax. As of July 1, 2011, the Sales and Use Tax rate is increased from 6% to 6.35%. As of July 1, 2011, the tax on rent received for the occupancy of any hotel or lodging house room is increased from 12% to 15%. As of July 1, 2011, the tax on the rental or leasing of a passenger motor vehicle for a period of thirty consecutive days or less increases from 6% to 9.35%. On

or after July 1, 2011 and prior to July 1, 2015, a tax rate of 7%, and on or after July 1, 2015, a tax rate of 7.75%, applies to the following: the sale for more than \$50,000 of most motor vehicles; the sale for more than \$100,000 of a vessel; the sale for more than \$5,000 of jewelry; and the sale for more than \$1,000 of an article of clothing or footwear, a handbag, luggage, umbrella, wallet or watch. Computer and data processing services are taxed at the rate of 1%. Effective October 1, 2015, the definition of computer and data processing services is expanded to include services rendered in connection with the creation, development, hosting and maintenance of an Internet website.

Sales and Use Tax reports are due monthly except that a retailer whose total tax liability for the twelve month period ended on the preceding September 30 was less than \$4,000 may file on a quarterly basis and the retailer whose total tax liability for the twelve month period ended on the preceding June 30 was less than \$1,000 may file on an annual basis. Consumers subject to the Use Tax are required to file on or before April 15 of the year following a taxable purchase.

Exemptions from the Sales and Use Tax exist for purchases by government and certain types of tax-exempt organizations, purchases for resale, sales of manufacturing production machinery, property used exclusively in agricultural production, transfers between affiliated entities, and many other transfers. A credit is given for taxes paid to other states or political subdivisions.

5. **The Business Entity Tax.** For taxable years beginning on or after January 1, 2002 but prior to January 1, 2013, there is an annual tax of \$250 on each S corporation, limited liability company, limited liability partnership and limited partnership that is required to file an annual report with the Connecticut Secretary of the State. For taxable years beginning on or after January 1, 2013, the \$250 tax is paid every other year. For tax year 2003, such entities were required to pay an additional surcharge equal to 20% of the business entity tax for a total 2003 business entity tax of \$300.

V. LABOR AND EMPLOYMENT LAWS

Companies outside of the United States should be aware that there are a panoply of federal (national) labor and employment laws that apply in each US State and that each state (and sometimes local jurisdictions as well) has its own labor and employment laws. The state laws are both on the same subject as federal laws, but with some differences, as with discrimination laws, and sometimes they are on subjects not covered by federal laws (paid sick time, for example).

Companies must comply with both federal and state laws, and local ordinances where applicable. This section does not address federal laws but we are well-versed in all federal labor and employment laws and regularly advise business clients on both federal and state laws.

Particular Connecticut labor and employment laws that anyone doing business in Connecticut must comply with are discussed below:

A. Discrimination

Connecticut Fair Employment Practices Act. The Connecticut Fair Employment Practices Act (“CFEPA”) covers all employers with **three or more** employees. Conn. Gen. Stat. § 46a-51 et seq.

Under CFEPA, employers may not discriminate on the basis of:

1. Race
2. Color
3. Religious creed
4. Age
5. Sex
6. Gender Identity or Expression
7. Marital status
8. National origin
9. Ancestry
10. Present or past history of mental disorder
11. Mental retardation
12. Learning disability
13. Physical disability, including, but not limited to, blindness, or
14. Sexual Orientation

Neither “Gender Identity or Expression” nor “Sexual Orientation” are currently specifically protected under federal law, and federal law prohibits, generally, discrimination on the basis of “disability” but does not further specify in the same particulars as the Connecticut statute (e.g., “learning disability”).

The statute provides an exception for cases of “bona fide occupational qualification or need.” However, this exception has been interpreted extremely narrowly. See Conn. Gen. Stat. § 46a-60(a)(7).

Sexual Harassment Prevention Training. Supervisory employees working for employers with **more than fifty** employees must receive 2 hours of sexual harassment prevention training within 6 months of their entry into a supervisory role.

Pregnancy. Connecticut provides special protection to pregnant employees. It is a discriminatory practice for an employer to:

1. Terminate a woman's employment because of pregnancy;
2. Refuse to grant a reasonable leave of absence for disability resulting from pregnancy;
3. Deny an employee, who is disabled as a result of pregnancy, any compensation entitled to as a result of the accumulation of disability or leave benefits accrued;
4. Fail or refuse to reinstate the employee to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits upon her signifying her intent to return unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so;
5. Fail or refuse to make a reasonable effort to transfer a pregnant employee to any suitable temporary position, which may be available, in any case where an employee gives written notice of her pregnancy to her employer, and the employer or pregnant employee reasonably believes that continued employment in the position held by the pregnant employee may cause injury to the employee or fetus;
6. Fail or refuse to inform the pregnant employee that a decision regarding such a transfer may be appealed; or
7. Fail or refuse to inform all employees, by any reasonable means, that they must give written notice of pregnancy in order to be eligible for transfer to a temporary position.

Conn. Gen. Stat. § 46a-60(a)(7).

Connecticut recognizes marriage between same sex couples. The law requires that same sex couples receive the same benefits as different sex couples. For instance, non self-insured health plans must cover spouses in a same sex marriage if they cover other spouses.

Family Abuse Victims. An employer shall not terminate, penalize, threaten, or otherwise coerce an employee with respect to his or her employment because the employee (1) is a family violence victim or (2) attends or participates in a civil court proceeding related to a case in which he or she is a family violence victim. The law

already prohibits employers from taking such action in a number of other situations, including when the employee (1) has been subpoenaed in a criminal case, (2) is a crime victim participating in a criminal case, or (3) has a protective or restraining order issued on his or her behalf. An employee who wishes to take action against an employer has to file suit within 180 days. Conn. Gen. Stat. § 54-85(b).

B. Leaves of Absence.

Family and Medical Leave Act (“FMLA”). Employers must comply with the federal FMLA if they have **fifty or more** employees. Federal law provides for twelve weeks of unpaid leave in any twelve-month period.

The Family and Medical Leave Act (FMLA) applies if the employee is unable to work because of her own serious health condition, or because the employee needs to care for a parent, spouse, or child with a serious health condition. The FMLA provides unpaid, job-protected leave. Leave may be taken all at once, or may be taken intermittently as the medical condition requires.

In addition, Connecticut has its own Family and Medical Leave Act. Conn. Gen. Stat. § 31-51kk et seq. The Connecticut FMLA is more expansive than the federal statute. However, where in particular instances the federal law provides greater benefits, it must be followed over state law.

Covered Employers. Connecticut’s Family and Medical Leave Act applies to all employers in Connecticut who employ **seventy-five or more** employees. Like the federal statute, unpaid leave is required if the employee is unable to work because of the employee’s “serious health condition” or to care for a parent, spouse or child. Additional protections provided under the CT FMLA are set forth below.

Eligible Employees. Employees are eligible for protection under the act if they were engaged in service to the employer for at least 12 months prior to the first day of leave, **and** if they worked 1,000 or more hours in the one-year period preceding the first day of the leave.

Leave Amount. An eligible employee is entitled to 16 workweeks of leave within any 2-year period. That 2-year period can be determined by any of the following methods: (1) consecutive calendar years; (2) any fixed twenty-four month period; (3) a twenty-four month period measured forward from an employee’s first day of leave taken under CTFMLA; or (4) a rolling twenty-four month period measured backward from an employee’s first day of leave taken under the CTFMLA.

Paid vs. Unpaid Leave. Generally, leave taken under CTFMLA is unpaid. However, an employee may elect to substitute accrued paid personal leave, paid vacation time or paid sick/medical leave time for FMLA such that any paid time runs concurrent with FMLA. If an employee

chooses not to substitute accrued paid leave, an employer may require that employee to substitute paid leave for FMLA.

Spouse's Parent. Unlike the federal FMLA, Connecticut's FMLA covers a leave for the care of a spouse's parent(s), including the parent of a same sex spouse.

Employee's Partner. Federal law now recognizes leave for same-sex spouses in states that recognize same-sex marriage. Connecticut's FMLA has covered leave to care for an employee's same-sex spouse. With the change in federal law, employers can now run federal and Connecticut FMLA leave concurrently if a same-sex spouse takes leave for spousal care.

Reinstatement Rights. Unlike the federal FMLA, which does not require restoration if the employee is unable to perform an essential function of the job, Connecticut's FMLA provides that an employee, upon return from leave, is entitled:

1. To be restored by the employer to the position of employment held by the employee when the leave commenced;
2. To be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, if the original position of employment is not available; or
3. In the case of a medical leave, to be transferred to work suitable to the employee's physical condition if the employee is medically unable to perform the employee's original job, and if such work is available.

Conn. Gen. Stat. § 31-51kk et seq.

Paid Sick Leave. In 2012, Connecticut become the first state in the nation to have a law requiring employers to provide paid sick days, but its scope is limited. It does not apply to manufacturing companies, and only applies to "service workers." See Conn. Gen. Stat. Sec. 31-57r.

Employers not classified as manufacturers with **fifty or more** employees must provide paid sick leave to service workers for use for the employee's sickness, the employee's child's, parent's or spouse's sickness, or to deal with sexual assault or family violence issues. The term "service worker" includes specific categories of job classifications in the food, health care, hospitality and other industries and includes certain general classifications, such as receptionists, counter clerks, couriers and security guards. See Conn. Gen. Stat. Sec. 31-57r(7).

Paid sick leave shall accrue at a rate of one hour of paid sick leave for each forty hours worked by a service worker, up to a maximum of forty hours per calendar year. A service worker will be able to obtain paid sick leave when s/he has worked 680 hours.

Each employer shall pay each service worker for paid sick leave at a pay rate equal to the greater of either the normal hourly wage for that service worker or the minimum fair wage rate. *Id.*

An employer shall permit a service worker to use the paid sick for:

1. A service worker's illness, injury or health condition; the medical diagnosis, care or treatment of a service worker's mental illness or physical illness, injury or health condition; or preventative medical care for a service worker;
2. A service worker's child's or spouse's illness, injury or health condition; the medical diagnosis, care or treatment of a service worker's child's or spouse's mental or physical illness, injury or health condition; or preventative medical care for a child or spouse of a service worker; and
3. Where a service worker is a victim of family violence or sexual assault for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to such family violence or sexual assault; or to participate in any civil or criminal proceedings related to or resulting from such family violence or sexual assault.

No employer shall take retaliatory personnel action or discriminate against an employee because the employee requests or uses paid sick leave or files a complaint with the Labor Commissioner alleging the employer's misconduct.

Domestic Violence Leave. In Connecticut, employers with **three or more** employees must allow an employee that is a victim of family violence to take paid or unpaid leave to seek medical care or counseling, obtain victim services, relocate, or participate in any associated civil or criminal proceeding. An employer may limit unpaid leave to twelve days a year.

If an employee's need to take domestic violence leave is foreseeable, an employer may require advance notice, not to exceed seven days. If an employee's need to take domestic violence need is not foreseeable, an employer may require an employee to give notice as soon as practicable. Employees must provide the employer with a signed written statement certifying the leave upon an employer's request. The employer may also request that the employee provide a police or court record related to the family violence. However, the employer shall maintain any written statement, police, or court record as confidential.

If an employer discharges, penalizes, or threatens an employee for taking domestic violence leave, the employee may bring a civil action for damages or an order

requiring the employee's reinstatement. If the employee prevails, the employee may recover attorney's fees.

C. **Access to Records.**

Personnel Files. Under Connecticut General Statutes § 31-128a, a “personnel file” is broadly defined as any and all papers, documents and reports pertaining to a particular employee that are used or have been used by an employer to determine an employee’s eligibility for employment, promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel actions including employee evaluations or reports relating to such employee’s character, credit and work habits. This definition has been recently expanded to include electronic mail and facsimiles. Documents do not have to be included in the central personnel records to be considered part of the personnel file.

Personnel files do not include stock option or management bonus plan records, medical records (defined as all papers, documents and reports prepared by a physician, psychiatrist or psychologist that are in the possession of an employer and are work related or upon which such employer relies to make any employment-related decisions), letters of reference or recommendations from third parties (including former employers), materials that are used by the employer to plan for future operations, information contained in separately maintained security files, test information (if disclosure would invalidate the test), or documents that are being developed or prepared for use in civil, criminal, or grievance procedures.

Employee Access to Personnel Files & Medical Records. Employers are required, within seven days after receipt of a written request from an employee or within ten (10) business days for former employees, to permit an employee to inspect his or her personnel file or medical records during normal business hours and at a location reasonably close to the employee’s place of employment or to receive a copy of the file. Conn. Gen. Stat. § 31-128b-c, g. Medical records must be kept separately and not as part of any personnel file. An employer is not required to permit an inspection of any employee’s personnel file or medical records on more than two occasions in any calendar year.

An employer is required to keep the personnel file for at least one year after the termination of an employee’s employment. Medical records pertaining to a particular employee must be kept for at least three years following termination.

Removal or Correction of Information. If an employee disagrees with any of the information contained in his or her personnel file or medical records, removal or correction of such information may be agreed upon by the employee and the employer. Conn. Gen. Stat. § 31-128e. If the employee and employer cannot agree upon removal or correction, the employee may submit a written statement explaining the employee’s position. Such statement must be maintained as part of the employee’s personnel file or medical records and must accompany any transmittal or disclosure from such file or records made to a third party.

Employee's Consent Required for Disclosure. Individually identifiable information contained in the personnel file or medical records of any employee may not be disclosed by an employer to any person or entity not employed by, or affiliated with, the employer without the written authorization of such employee except:

1. Information is limited to the verification of dates of employment, the employee's title or position, and wage or salary; or
2. Disclosure is made:
 - a. To a third party that maintains or prepares employment records or performs other employment related services for the employer;
 - b. Pursuant to a lawfully issued administrative summons or judicial order, including a search warrant or subpoena, or in response to a government audit or the investigation or defense of personnel-related complaints against the employer;
 - c. Pursuant to a request by a law enforcement agency for the employee's home address and dates of attendance at work;
 - d. In response to an apparent medical emergency or to apprise the employee's physician of a medical condition of which the employee may not be aware;
 - e. To comply with federal, state, or local laws or regulations; or
 - f. Where the information is disseminated pursuant to the terms of a collective bargaining agreement.

Conn. Gen. Stat. § 31-128f.

Where the authorization involves medical records, the employer must inform the concerned employee of his or her physician's right of inspection and correction, the employee's right to withhold authorization, and the effect of any withholding of such authorization upon such employee.

D. **Drug Testing.**

Connecticut's drug testing statute applies to any private employer, regardless of the number of employees. Conn. Gen. Stat. § 31-51t et seq.

The results of a drug test are confidential and must not be disclosed by the employer, or its employees, to any person other than any such employee to whom such disclosure is necessary. Conn. Gen. Stat. § 31-51u.

Current Employees. An employer may not determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary or other

adverse personnel action solely on the basis of a positive urinalysis drug test result unless:

1. The employer has given the employee a urinalysis drug test, using a reliable methodology, which produced a positive result; and
2. The positive test result was confirmed by a second urinalysis drug test, separate and independent from the initial test, utilizing a gas chromatography and mass spectrometry methodology or a methodology that has been determined by the Commissioner of Public Health to be as reliable as, or more reliable than, the gas chromatography and mass spectrometry methodology.
3. Persons performing urinalysis drug testing may only disclose a positive test result if the test has been confirmed by a second test. *Id.*

Prospective Employees. An employer may not require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment unless:

1. The prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test;
2. Such test is conducted in accordance with the requirements of § 31-51u; and
3. The prospective employee is given a copy of any positive urinalysis drug test result.

*Any person who worked for the employer within 12 months of his or her application is not considered a prospective employee.

Conn. Gen. Stat. § 31-51t and § 31-51v.

Reasonable Suspicion. An employer may not require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol that adversely affects or could adversely affect such employee's job performance.

Random Testing. Random basis urinalysis testing is permitted provided that:

1. Such test is authorized under federal law;
2. The employee serves in an occupation that has been designated as a high-risk or safety-sensitive occupation (e.g., "Service Technician (Television Cable)") pursuant to regulations adopted by the Labor Commissioner; or

3. The urinalysis is conducted as part of an employee assistance program sponsored or authorized by the employer in which the employee voluntarily participates.

Conn. Gen. Stat. § 31-51x.

Medical Screenings. Regardless of the drug testing statute, an employer may conduct medical screenings, with the express written consent of the employees, to monitor exposure to toxic or other unhealthy substances in the workplace or in the performance of their job responsibilities. Conn. Gen. Stat. § 31-51y. Screenings are limited to the specific substances expressly identified in the consent form.

Restricting Substance Use During Work Hours. The drug testing statute does not restrict an employer's ability to prohibit the use of intoxicating substances during work hours or an employer's ability to discipline an employee for being under the influence of intoxicating substances during work hours. Conn. Gen. Stat. § 31-51y.

E. **Medical Marijuana.**

Impermissible Employment Actions Premised Upon An Employee's Status as a "Qualifying Patient" or "Primary Caregiver." Although Connecticut law prohibits employers from refusing to hire, discharging, penalizing or threatening a job applicant or employee solely on the basis of his or her medical marijuana use as a "qualifying patient" or "primary caregiver," Connecticut law still permits employers from restricting an employee's use of intoxicating substances during work hours. Conn. Gen. Stat. § 21a-408p(b)(3). The law further allows an employer to discipline an employee for being under the influence of an intoxicating substance during work hours. Conn. Gen. Stat. § 21a-408p(b)(3).

A person is a "qualifying patient" under Connecticut law if he or she is: over 18 years of age, a Connecticut resident, and "has been diagnosed by a physician as having a debilitating medical condition." A qualifying patient must obtain a written certification from his/her physician authorizing the use of marijuana for medical reasons. Conn. Gen. Stat. § 21a-408(10).

A person is a "primary caregiver" under Connecticut law if he or she is over 18 years of age and has agreed to undertake responsibility for managing the well-being of a qualified patient with respect to the palliative use of marijuana, provided that (A) in the case of a qualifying patient lacking legal capacity, such person is the parent, guardian, or person having legal custody of such qualifying patient, and (B) the need for such person is evaluated by the qualifying patient's physician and documented in the written certification. Conn. Gen. Stat. § 21a-408(9).

The law also creates an exception to permissible marijuana use if required under federal law or to obtain federal funding. Conn. Gen. Stat. § 21a-408p(b)(3). Federal law still makes medical marijuana use illegal.

F. Workers' Compensation

Discharge or Discrimination Prohibited. An employer must not discharge or discriminate against any employee because the employee has filed a claim for Workers' Compensation benefits or otherwise exercised the rights afforded under the Workers' Compensation Act. Conn. Gen. Stat. § 31-290a.

An employee who is successful in bringing a civil action may be awarded punitive damages and reasonable attorney's fees in addition to reinstatement of his previous job, payment of back wages, and reestablishment of employee benefits had the employee not been discriminated against or discharged.

Employment of Injured Employees. Injured workers who have received or are receiving Workers' Compensation benefits are entitled to transfer or assignment to other suitable work, if available, by the employer for whom they worked at the time of the injury. Conn. Gen. Stat. § 31-313(a).

G. Wage and Hour

Minimum Wage. Federal law establishes a minimum hourly wage of \$7.25. However, the minimum is significantly higher in Connecticut. The current minimum wage for Connecticut employees is \$9.60 per hour. Effective January 1, 2017, it will rise to \$10.10.

Meal Periods & Rest Periods. Employees may not be required to work for seven and one-half hours or more of consecutive labor without a meal break of at least thirty consecutive minutes. Conn. Gen. Stat. § 31 51ii (a). The meal period must be given after the first two hours of work and before the last two hours.

Breastfeeding in the Workplace. Any employee may, at her discretion, express breast milk or breastfeed on site at her workplace during her meal or break period. An employer must make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall, where the employee can express her milk in private. Conn. Gen. Stat. § 31-40w. The law also prohibits discrimination or disciplinary action against an employee who exercised her rights under this section.

Payment of Wages. An employer must pay all moneys due each employee on a regular pay day, designated in advance by the employer, in cash, by negotiable checks or, upon an employee's written request, by direct deposit to an employee's bank account. Conn. Gen. Stat. § 31-71b.

Current law requires that employers pay their employees weekly, and employers must seek and obtain a waiver from the Department of Labor ("DOL") in order to pay their employees biweekly or semimonthly. Conn. Gen. Stat. Sec.31-71i now allows employers to pay employees on a biweekly basis without obtaining a waiver.

Employers are required to advise employees in writing, at the time of hiring, the rate of remuneration hours of employment and wage payment schedules and make available to his employees either in writing or through a posted notice, any employment practices and policies or change therein with regard to wages, vacation pay, sick leave, health and welfare benefits and comparable matters.

Discussion of Wages. An employer cannot prohibit or retaliate against an employee from disclosing, discussing, or inquiring about the amount of his or her wages or the wages of another employee; See Conn. Gen. Stat. § 31-40z.

Payment of Wages on Termination of Employment. When an employee voluntarily terminates employment, the employer must pay the employee's wages in full not later than the next regular pay day either through the regular payment channels or by mail.

When an employer discharges an employee, the employer must pay the employee's wages in full by the next business day following the discharge.

When work of any employee is suspended as a result of a labor dispute, or when an employee for any reason is laid off, the employer must pay in full the wages earned by the employee not later than the next regular pay day.

Conn. Gen. Stat. § 31-71c.

H. **Employment Applications/Inquiries About Criminal Records.** "Ban the Box" legislation prohibits employers from asking about prior criminal history or have employees check "the box" if they have a criminal record — thus, banning the "box." Conn. Gen. Stat. Section 31-71i introduces that concept in Connecticut. It prohibits employers from asking about a job candidate's prior arrests, criminal charges, or convictions on an initial job application. Two exceptions are provided by the bill: an employer can ask about these issues if it is required to ask about such information by state or federal law; and it can ask when a security or fidelity bond is required for the position at issue. This law will go into effect on January 1, 2017.

Nothing in the law prevents an employer from requesting information about a candidate's prior arrests, charges, or convictions after the "initial employment action," such as at an interview. To comply with the law, employers should simply remove any inquiry about these issues from initial job applications and online applications as well.

I. **Other**

Electronic Surveillance. Employers may not electronically monitor employees in areas designed for the employee's health or personal comfort or for safeguarding their possessions such as restrooms, locker rooms or lounges. Conn. Gen. Stat. § 31-48b.

Employers may otherwise electronically monitor employees if prior written notice is given to employees. Conn. Gen. Stat. § 31-48d. In limited circumstances involving

reasonable grounds to believe the employees are (1) violating the law; (2) violating the legal rights of the employer or its employees or (3) creating a hostile work environment, an employer may electronically monitor employees without providing notice.

Employers' Access to Employees' Personal Accounts. Connecticut law prohibits an employer from requesting or requiring access to an employee or job applicant's personal online accounts or from requiring an employee or applicant to join, or invite the employer to join, a group affiliated with the employee's personal online account. This means that Employers cannot demand access to an employee's Facebook, GMail or Twitter passwords, and the like.

Employers can be penalized if they discharge, discipline, discriminate or retaliate against an employee who refuses to provide such access or who files a complaint regarding such a request. Employers cannot deny applicants employment because of failure to provide access to a personal online account.

Employers can obtain access (including a password) to a service or device for which it paid, or which the employee uses for business purposes. If the employer conducts an investigation to ensure compliance with federal or state laws or regulations or work-related prohibited misconduct, and the employer receives specific information that the employee's personal account is involved, the employer can require that the employee provide access to the account. It cannot require that login information or passwords be turned over. Similar rules apply to situations where an employee allegedly steals proprietary or confidential information. The law also allows employers to monitor, review, access, or block electronic data that is stored on or traveling through the employer's network or employer-paid device.

An employer found to have violated an employee's rights under the Act will be charged a civil penalty of \$500 for the first violation, \$1,000 for each subsequent violation, and the employee will be awarded relief including rehiring, back pay, reestablishing employee benefits, or any other remedies deemed appropriate. An employer's violation against an applicant will result in a civil penalty of \$25 for the first violation and \$500 for each subsequent violation.

Smoking. Employers may not discriminate against employees who smoke outside of the workplace. They may not require cessation of smoking as a condition of employment. Conn. Gen. Stat. § 31-40s.

Credit Checks. Effective October 1, 2011, Connecticut has limited Employers' rights to use credit information on job applicants and current employees. Employers who routinely use such reports must review their policies to make sure that they are not overbroad.

Employers may not require applicants and employees to consent to credit reports which disclose personal financial information such as credit card balances, credit scores or account balances.

The law contains significant exceptions. Generally the law exempts financial institutions. The law also allows the employer to obtain reports required by law. If the employer believes an employee has engaged in activity which violates the law relating to the employee's employment, it can demand a credit report.

Most significantly, where the report is substantially related to the current or potential job, the employer may require the employee's or applicant's consent to the report. That means that an employer can demand credit information if the employee or applicant holds or applies for a position that:

- involves access to customers', employees', or the employer's personal or financial information (except for usual retail transactions)
- involves a fiduciary responsibility to the employer, including authority to make payments, collect debts, transfer money, or enter into contracts
- provides an expense account or corporate debit or credit card
- provides access to confidential or proprietary business information
- provides access to information that are trade secrets
- involves access to the employer's non-financial assets of at least \$2,005 in value, including museum and library collections and prescription drugs and pharmaceuticals.

If the employer relies on this last exception, it must disclose the job-related purpose of the credit check in writing.

Safety and Health Committees. Employers with 25 or more employees in Connecticut and employers whose rate of work-related injury/illness exceeds state average shall administer a safety and health committee. Conn. Gen. Stat. §31-40v.

Strikes. Employers may not recruit or hire "professional strike breakers." Conn. Gen. Stat. §31-48a. Employers may not hire members of local municipal police department for duties related to a labor dispute. Conn. Gen. Stat. §31-48c. Employers who solicit replacement employees to fill vacancies caused by a strike, lockout, or labor dispute must state so plainly. If the solicitation is in print, boldface, uppercase letters and at least 10 points or larger must be used. Conn. Gen. Stat. §31-121.

Safe Work Environment. Employers are required to exercise reasonable care to provide employees with a reasonable safe work environment.

Non-Compete Agreements. Generally, the validity of non-compete restrictions are decided on a case-by-case basis, applying the "rule of reasonableness" as to geographic scope and time period. Non-compete agreements must be supported by legal consideration and must support a legitimate business interest rather than simply stifling competition. However, Connecticut has specific restrictions on the use of non-

compete agreements for security guards and broadcast employees. Conn. Gen. Stat. § 31-50a and § 31-50b. Public Act No. 16-95, effective July 1, 2016, places limitations on physician non-compete agreements in Connecticut including: a one-year limit on the restriction; a fifteen-mile distance restriction from the primary site of a physician's practice; and restrictions on employer termination clause in the employment contract or agreement.

Polygraphs. Use of polygraphs by employers is prohibited. Conn. Gen. Stat. § 31-51y.

Constitutional Rights. Employers may not discipline employees because of their exercise of their constitutional rights, unless the exercise of such right substantially or materially interferes with the employee's ability to perform their job. Conn. Gen. Stat. § 31-51q.

Promissory Notes. Employers with 26 or more employees may not require employees or prospective employees to execute an employment promissory note, which is defined as any agreement that requires an employee to pay the employer a sum of money if he/she leaves employment before a certain date. "Promissory Note" also includes an agreement for reimbursement for training previously provided to an employee. Conn. Gen. Stat. § 31-51r.

Handbooks. A handbook should contain a disclaimer, in clear and conspicuous language that employment is at will, that the handbook does not create an employment contract, that the employer has the authority to change a policy without notice, and that any changes to policy are only effective if authorized by a specific individual.

VI. ENVIRONMENTAL LAW

A. Federal Considerations

The Connecticut Department of Energy and Environmental Protection (“DEEP”) has primary authority for enforcing the federal Clean Air Act, Clean Water Act and Resource Conservation and Recovery Act (“RCRA”) in Connecticut. Significantly, although the basic framework of these federal laws remains the same, Connecticut law and regulation frequently go further than the federal requirements. As in every other part of the country, anyone seeking to conduct business or acquire property in Connecticut must also take into account the Comprehensive Environmental Response, Compensation, and Liability Act “CERCLA” or “Superfund.” As discussed in further detail below, although Connecticut does not have a liability scheme identical to that of CERCLA, it does have laws that perform a similar function.

With respect to federal environmental law, Connecticut falls within the jurisdiction of the U.S. Environmental Protection Agency Region 1 located in Boston, Massachusetts.

B. State Considerations

Introduction. Following the federal initiative in 1970 which created the United State Environmental Protection Agency, the Connecticut General Assembly reorganized the state's existing laws and created a new “super-agency,” the Connecticut Department of Environmental Protection, now known as DEEP. Environmental regulation presently falls into three major categories. The first is the regulation of discharges and emissions, exemplified by the state clean water and clean air laws. The second addresses chemicals and substances which may cause particular harm to people and the environment, illustrated by the state analog to RCRA. The third regulates transactions involving contaminated property and is set forth in the law generally referred to as the Connecticut Transfer Act. There are also other, important environmental programs that could influence business decisions in Connecticut. These miscellaneous provisions are discussed below.

Water Pollution Control. Connecticut water pollution control statutes and regulations supplement the permit program created by the federal Clean Water Act. In general, the state water pollution control program requires permits for a broad range of discharges. Under the authority of Section 402 of the Clean Water Act and state statutes, the DEEP administers a National Pollutant Discharge Elimination System (“NPDES”) permit program for discharges to surface waters. The DEEP also issues permits for discharges to groundwaters and to publicly-owned treatment works. There are also a number of general permits, one or more of which a business may have to register for, and which regulate discrete types of wastewater discharges.

The water pollution control programs give the Commissioner of DEEP broad authority to issue an order to any person found to be maintaining a facility reasonably expected to create a source of pollution to state waters, including groundwater. The

statutes also include provisions for establishing liability and enabling cost recovery for the cleanup of contaminated state waters, including ground water (this also includes cleanup of contaminated soil). Moreover, under Connecticut's "Superlien" statute, the Commissioner is authorized to file a lien against real estate to recover any costs incurred in removing or mitigating the effects of pollution. This state lien has priority over most transfers and encumbrances recorded on or after June 3, 1985 which affect the contaminated real estate.

Air Pollution Control. As in the area of water pollution control, the DEEP administers both the state and federal air pollution control programs. The DEEP is also responsible for implementing the federal Title V program. The range of sources falling under Connecticut's permit requirements is far broader than the list of "major" sources subject to the federal laws. New or modified sources with as little as fifteen tons of potential emissions a year of a regulated air pollutant (ten tons per year in the case of a hazardous air pollutant) must obtain construction and operating permits. Certain smaller sources, such as emergency engines, external combustion units, automotive refinishing operations, and surface coating operations, may be operated in accordance with the "permit-by-rule" regulations that Connecticut has adopted. The "permit-by-rule" regulations allow a source to operate without obtaining an individual permit so long as the source operates in compliance with the regulations. A business seeking to avoid major source permitting requirements may also opt to register for the DEEP's General Permit to Limit the Potential to Emit. Major sources of nitrogen oxides (NO_x) and volatile organic compounds (VOC) are subject to stringent non-attainment requirements since Connecticut does not comply with the ambient ozone standard. Electric generation units and certain large boilers are also required to obtain NO_x allowances to comply with the NO_x Budget Rule.

Connecticut goes much further than the federal National Emissions Standards for Hazardous Air Pollutants program requirements in regulating hazardous air pollutants. Connecticut's hazardous air pollutant regulations apply to both existing and new sources (that emit approximately 750 specified hazardous air pollutants).

In addition, Connecticut is also one of ten northeast states participating in the Regional Greenhouse Gas Initiative ("RGGI"). In Connecticut, the DEEP limits emissions of carbon dioxide ("CO₂") for electric power plants and creates CO₂ allowances and auctions for such allowances.

Regulation of Hazardous Waste. The DEEP has the authority to enforce RCRA in Connecticut and has adopted, with modifications, the federal cradle-to-grave regulatory program intended to cover the life of a waste, from the moment it is generated until it is securely disposed of in an appropriate manner. Connecticut's definition of hazardous waste includes the listed and characteristic wastes defined by the EPA, hazardous wastes defined by the DEEP through regulation, and polychlorinated biphenyls (PCB) in certain concentrations.

A generator of hazardous waste is responsible for making the initial determination as to whether waste being generated is hazardous. If it is, then, among

other things, the generator must: notify the DEEP and the EPA and obtain an identification number; handle the waste in accordance with specified procedures; maintain records; and meet reporting requirements. Transporters and persons engaged in the treatment, storage, and disposal of hazardous waste are subject to similar, comprehensive regulations. In addition, before certain hazardous waste facilities can be constructed or modified in the state, it must obtain Connecticut Siting Council approval in addition to DEEP permits. Connecticut has adopted regulations that impose less stringent requirements on the management of used oil, and has adopted the Universal Waste Rule. Under the Universal Waste Rule, batteries, pesticides, certain lamps, mercury switches and used consumer electronics do not have to be managed as hazardous wastes provided other requirements are satisfied.

The Connecticut Transfer Act. The scope of Connecticut environmental regulation was broadened significantly in 1985 through the enactment of the “Transfer Act.” The Act applies to transfers of “establishments.” Establishments are defined as real property or business operations that generated greater than 100 kilograms of hazardous waste in any one month since November 19, 1980, or which recycled, stored, transported or disposed of hazardous wastes generated by another entity. It also applies to properties and businesses which were used for dry cleaning, furniture stripping, or vehicle body repair since May 1, 1967, even if not currently in operation. A change in ownership of an establishment triggers a requirement to file forms and a fee with the DEEP.

There are four different forms, depending on the environmental conditions of the establishment. A Form I is a certification by the transferor that no hazardous waste or hazardous substances (which include petroleum products) were released at the property. In order to be accepted by DEEP, a Form I filing must be supported by an environmental investigation performed in accordance with prevailing standards and guidelines (usually a Phase I or Phase II environmental site assessment).

A Form II certifies that hazardous wastes or hazardous substances were released at a property, but the property was remediated and DEEP approved in writing that the remediation was satisfactorily completed.

A Form III is filed when a release has occurred but no remediation has taken place, or when the environmental status of a property is uncertain. When filing a Form III, one party to the transaction must certify that it will be responsible for investigating the subject parcel in accordance with prevailing standards and guidelines and remediate any releases from the establishment in accordance with the Remediation Standard Regulations (“RSRs”). The RSRs establish clean-up standards and criteria for soil and groundwater based, in part, on the current use of the property. The applicable statutes and regulations allow the use of institutional controls, such as environmental land use restrictions, as an alternative to strict compliance with the numerical criteria in the RSRs.

Finally, it is appropriate to file a Form IV when a release has been remediated to the applicable forms, but that groundwater monitoring or the recording of an

Environmental Land Use Restriction is necessary to fully comply with the RSRs. In addition, an Environmental Condition Assessment Form, or ECAF, which describes the available information on the site, must accompany each of the foregoing forms.

Failure to comply with the Transfer Act or falsification of a form can subject a party to strict liability for cleanup and removal costs incurred by a transferee. The transfer of an establishment in accordance with the law creates a benefit for any party holding a security interest on the real estate by insulating the property from the filing of a “Superlien” by the Commissioner of DEEP.

Any remediation of contaminated property in Connecticut under the Transfer Act may be supervised by the DEEP or the DEEP may delegate the oversight of the remediation to a “Licensed Environmental Professional” or LEP. LEPs are required to meet and maintain certain licensing standards. The purpose of the LEP program is to establish a group of professionals who can be relied upon to independently verify (i.e., self-certify) the remediation of contaminated property.

Miscellaneous Environmental Programs. As previously described, the DEEP has broad regulatory powers relating to certain activities that may require special permitting because of effects on the environment; e.g., activities within harbors, coastal management areas and inland wetlands or involving or affecting hazardous wastes, solid wastes, potential water or air pollution, soil conservation, dams, reservoirs or other water resources. While a complete summary of these environmental statutes and regulations is beyond the scope of this guide, certain provisions deserve to be highlighted.

Covenants Not to Sue. Prospective purchasers of property in Connecticut can obtain a covenant not to sue from the DEEP provided the prospective purchaser satisfies certain requirements or the DEEP has approved a final remediation of the property in question. Similarly, prospective purchasers of properties accepted into certain of the State’s “Brownfields” programs are statutorily exempt from liability upon completion of an approved remediation plan. In each case, the prospective purchaser will have to demonstrate that it was not responsible for the contamination and was not associated with the person or entity that contaminated the property.

Voluntary Remediation. Connecticut has established a voluntary remediation program that allows the remediation of contaminated property without direct supervision by the DEEP. The work must be performed by LEP, and the LEP must still submit a remediation plan to DEEP for comment and obtain DEEP review of remediation when complete. Because the DEEP is not required to review a remediation plan or to approve such a plan, any remediation performed without the DEEP’s prior approval would be performed on an at-risk basis.

Wetlands and Watercourses. Any activity in a wetland or watercourse, or which affects a wetland or watercourse, requires a permit. Permits for activities in or affecting tidal wetlands and watercourses are issued by the DEEP. The authority to

issue permits for activities in or affecting inland wetlands and watercourses is delegated to each of Connecticut's 169 municipalities.

1. **Water Diversions.** Connecticut requires any person seeking to divert (or alter/modify the flow of) waters of the State in excess of 50,000 gallons per day to obtain a permit for such a diversion.
2. **Permit Transfers.** Connecticut law requires a buyer of an existing facility with environmental permits to file an application for the transfer of any environmental permits and/or registrations associated with the facility. Such an application must be filed between 30 and 90 days in advance of the closing, depending on the nature of the permits and registrations. Some types of registrations or permits cannot be transferred. In that case, a new registration or permit application must be filed prior to the closing.
3. **Underground Tanks.** The DEEP administers an underground storage tank program which imposes management and registration requirements on owners of certain kinds of underground storage tanks. Owners of tanks subject to regulation must disclose to a prospective purchaser the existence of such tanks at least 15 days prior to the transfer of the property. The disclosure must include a copy of the registration form which is required to be on file with the DEEP. New owners of such tanks should report the transfer within 30 days of the transfer.

VII. **INTELLECTUAL PROPERTY**

A. **IP Strategy and Management Counseling**

1. At Murtha Cullina, we recognize that one size does not fit all with respect to IP strategy. That is why our attorneys first strive to fully understand a client's business objectives and how they relate to IP. Our experienced attorneys then work as a team to devise, carry out, and manage an IP strategy that helps the client achieve those objectives. For example, as every strategy is unique to a particular client, some strategies may include preparing and filing for IP protection and other strategies may include a recommendation that a company instead use its resources for non-legal expenditures.

Our experienced IP attorneys counsel clients on the management of their IP portfolios and advise them on the pros and cons of maintaining various IP so they can maximize the value of their portfolios. Using state of the art IP management software, our experienced IP attorneys and staff will assist clients in the day-to-day management of their IP portfolios to ensure that both response and maintenance fee deadlines are brought to the attention of clients well in advance of those deadlines.

B. **Patent Prosecution**

1. Patent prosecution, i.e., the process of filing and negotiating with the United States Patent and Trademark Office (USPTO) to obtain a patent, has never been more challenging or important. A global emphasis on innovation has driven the number of patent applications filed higher year after year, which increases the difficulty level to gain allowance of commercially meaningful patent claims. Murtha's experienced registered patent professionals have technical degrees covering a variety of areas as well as experience drafting and prosecuting patent applications in many different areas. Murtha's professionals include attorneys with real-world engineering experience, advanced technical degrees, and an agent who was formerly a USPTO Examiner.

Murtha understands the importance of clients' IP assets and has talented professionals covering virtually every technical area to craft our strategies to meet your individual needs. We counsel individuals, start-ups, investors, universities and Fortune 100 companies. We help our clients build value by procuring patents via patent filings and/or acquisitions, and we manage large portfolios of patents across a wide array of scientific and technological disciplines. At the core, Murtha prepare and prosecutes patent applications in the U.S. and assists in domestic and foreign portfolio management. We also direct foreign patent counsel in the prosecution of foreign patent applications.

C. **Patent Strategies and Opinions**

1. Murtha's attorneys are experienced in analyzing existing IP to determine the likelihood that a client's patent or trademark application will gain allowance before preparing an application. That information is used by Murtha attorneys to develop better IP and to provide further business intelligence to clients. If necessary, Murtha's experienced attorneys will draft written freedom to practice, patentability, and infringement opinions.

D. **Trademark, Copyright, and Advertising**

1. Trademarks, copyrights and advertising are important in crafting a company's commercial identity or brand. Brands help businesses build and maintain awareness and demand for their products and services. To help build and manage their brands, our clients, ranging from individuals to Fortune 100 companies, count on our international Trademark, Copyright, and Advertising team for a wide array of services, including:
 - a. Researching, registering, enforcing, maintaining, and licensing trademarks and copyrights
 - b. Registering, transferring and enforcing domain names
 - c. Counseling on unfair competition and false advertising matters
 - d. Intellectual property due diligence in M&A, financing, and other transactions
 - e. Negotiating and crafting a variety of agreements including distributorship, publishing, sponsorship, endorsement and similar types of agreements
 - f. Counseling on contests and other types of promotions
 - g. Counseling on issues unique to online retail sales and social media marketing

E. **IP Transactions (Licensing/Purchase/Sale/Transfer)**

1. Murtha's corporate transactional IP team complements the firm's litigation and prosecution teams and helps clients leverage IP through corporate structuring, investment, financing, and strategic and commercial transactions.
2. Murtha attorneys understand that IP plays an important role in business, and in the transactional matters that are often drivers for growth. Murtha's IP transactional attorneys are focused on assisting clients with

establishing various corporate structures, and completing strategic and commercial transactions.

3. Murtha attorneys assist clients at all stages of the business cycle with the sale and acquisition of companies or assets, products, and services, the formation and financing of new ventures, and the restructuring, financing, and commercial operation of established businesses. Our attorneys are experienced in handling structures, transactions, and operations where proprietary brand, media, technology, data, content, “know how” and other proprietary intangible assets are important.
4. In many cases, our attorneys have experience with particular nuances of a certain industry and are able to add additional value to our clients. Our industry fluencies come from experiences working with: tech transfer office at large academic institutions, medical device companies, start ups in a variety of technical areas, VC and private equity investors making investment and acquisitions, and a variety of well-established public and private companies.

F. Patent, Trademark, Copyright, and Trade Secret Litigation

1. Businesses work hard to develop and protect the knowledge that sets them apart. After all, that intellectual property is the lifeblood of the company. It follows that intellectual property is frequently the center of litigation. We have the skills and tenacity to fight these battles with you and the experience to develop strategies to conduct litigation efficiently in light of how that litigation impacts your business objectives.
2. Representative Cases
 - a. We represent a Connecticut company in federal district court in Kentucky in a patent infringement and breach of contract lawsuit that has been on-going for almost five years. During that time, we have successfully fought off motions for summary judgment and received a favorable claim construction ruling.
 - b. We tried the seminal case in Connecticut on theft of business methods, which resulted in substantial damages being awarded to our client. In addition, the former employee who had misappropriated the secrets was barred from competing with our client for three years. The decision was upheld on appeal.
 - c. We represented British companies in a cross-border dispute involving competing trademark and copyright claims over a proposed business relationship that was never fully implemented. This litigation involved the question of whether a pre-deal term sheet constituted a licensing agreement. Our lawyers were able to utilize the Digital Millenium Copyright Act (“DMCA”) to take down

the opposing party's website pending resolution of the case, which subsequently settled favorably for our clients.

- d. We obtained a preliminary injunction in Massachusetts against a key technical employee of a company that sells sophisticated financial software products used in the control and management of corporate treasury operations worldwide. After obtaining the preliminary injunction, our lawyers were able to negotiate a permanent injunction as to the former employee.
- e. We defended a company against claims that its toys infringe a competitor's copyright. In addition to the allegations of copyright infringement, the plaintiff has also asserted claims of defamation and violations of the Connecticut Unfair Trade Practices Act. In response, our client has asserted invalidity, non-infringement and fraud on the Copyright Office. This case is ongoing.
- f. We negotiated and effectuated the sale of intellectual property in the context of Chapter 11 and Chapter 7 Bankruptcy Proceedings.

G. **Patent Post Grant Proceedings**

1. The America Invents Act (AIA) has created new avenues for challenging patents before the US Patent and Trademark Office (USPTO):
 - a. Inter Partes Review;
 - b. Post-Grant Review; and
 - c. Covered Business Methods Review.

As a result, companies need assistance in warding off these challenges, which often threaten to undermine the IP foundations of these companies. As these matters are serious in that they can have serious consequences, they require representation from attorneys with strategic intelligence and experience in patent law and the new procedures set forth by the AIA. Murtha Cullina approaches patent post-grant proceedings by creating a team that includes both seasoned litigators and experienced IP professionals.

H. **State Considerations**

1. **Trademarks and Service Marks.** A trademark or service mark is used to identify the source of goods or services distributed or offered. Such a mark may be registered with the office of the Secretary of the State by filing an application, provided it is based on actual use of the mark in Connecticut. Registration is effective for five years and may be renewed for successive five-year periods of time. The most common reasons for refusing to register a mark are if it is (a) deceptive or scandalous, (b) misdescriptive, (c) merely descriptive, (d) primarily merely a surname or (e)

geographically descriptive or geographically deceptively misdescriptive. However, a merely descriptive mark or a mark which is primarily a surname may be registrable if it has become distinctive of the applicant's goods or services. Proof of substantially exclusive and continuous use of a mark in Connecticut for five years preceding the date of application for registration may be accepted as evidence that the mark has become distinctive. A mark also may be refused registration if it so resembles a mark registered in Connecticut or a mark or trade name used in Connecticut prior to use by the applicant as to likely cause confusion or mistake or to deceive purchasers when used on the goods or services of the applicant.

2. **Registration Procedure.** Application to the Secretary of State must set forth:

- a. the applicant's name and business address;
- b. the goods or services with which the mark is used;
- c. the manner in which the mark is used;
- d. the date on which the mark was first used anywhere and was first used in Connecticut;
- e. a statement that to the knowledge of the verifying party no other person has the right to use an identical mark or a substantially similar mark in Connecticut and that the mark is not the subject of an existing federal registration to another;
- f. a statement whether an application to register the mark has been filed by the applicant to the United States Patent and Trademark Office, giving the particulars of any such application; and
- g. the applicant's signature, verification, and three specimens or photographs showing the mark as actually used in Connecticut.

3. **Effects of Registration.** Registration serves as constructive notice of the registrant's claim of ownership of the mark. In addition, a certificate of registration provides prima facie evidence of the validity of the registration and registrant's exclusive right to use the mark in commerce in Connecticut.

Any person who uses without the consent of the registrant, a copy or imitation of any registered mark in connection with the sale, distribution or advertising of any goods or services likely to cause confusion or mistake or to deceive as to the source of the goods or services may be liable for profits or damages, or both, and subject to injunctive relief. If such wrongful acts are found to have been committed with knowledge or in bad faith, attorney's fees may be awarded and judgment may be entered for an amount not to exceed three times such profits and damages.

4. **Assignment.** Any mark and its registration shall be assignable with the goodwill of the business with which the mark is used. Assignment of any registration is void against any subsequent purchaser for valuable consideration without notice unless it is recorded with the Secretary of the State within three months after the date of such assignment or before such subsequent purchase.

5. **Abandonment.** Nonuse of a registered mark for two consecutive years is prima facie evidence of abandonment. A mark is deemed abandoned when its use has been found to be discontinued with intent not to resume.

6. **Common Law Rights.** Nothing in Connecticut statutory law adversely affects the rights or enforcement of rights in marks or trade names acquired in good faith at any time at common law.

7. **Collective and Certification Marks.** Connecticut law also provides for registration of a collective mark used by members of a cooperative, an association, union or other collective group to indicate membership in the group. In addition, a certification mark is registrable in Connecticut. A certification mark is used with products or services of one other than the owner of the mark to certify compliance of origin, quality standards or other characteristics of such products or services.

8. **Trade Names.** Any person, corporation or limited liability company conducting or transacting business in Connecticut under any assumed name or under any designation other than the real name or names of the person or persons conducting such business must file a certificate with the town clerk in the town in which such business is conducted. The certificate must be executed by all persons doing such business, stating the name under which the business is conducted and the full name and address of each person, corporation or limited liability company conducting the business and acknowledged before an authority qualified to administer oaths. This provision does not apply to the use of a partnership name as long as the name includes the true surname of at least one of the partners nor to a limited partnership if it has filed a certificate of limited partnership with the Secretary of the State. Failure to comply with this fictitious name provision shall be deemed to be an unfair trade practice and may result in fine or imprisonment.

9. **Trade Secrets.** Connecticut has adopted the Uniform Trade Secrets Act. This Act defines a trade secret to be a formula, pattern, compilation, program, device, method, technique, process, drawing, cost data or customer list that:

- a. derives independent actual or potential economic value by not being generally known by, or readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
- b. is the subject of reasonable efforts to maintain its secrecy.

Trade secrets also are protected from disclosure under the Connecticut Freedom of Information Act. This Act adopts the trade secret definition in the Uniform Trade

Secrets Act and additionally recognizes commercial or financial information given in confidence, not required by statute, as trade secrets.

10. **Injunctive Relief.** An owner of a trade secret may enjoin actual or threatened misappropriation of a trade secret by applying for an injunction to any court of competent jurisdiction. An injunction will terminate when the trade secret has ceased to exist, but may be continued for an additional reasonable period of time to eliminate any commercial advantage resulting from the misappropriation.

11. **Damages.** In addition to or in place of injunctive relief, a complainant may recover damages for actual loss caused by the misappropriation. A complainant may also recover for unjust enrichment where not taken into account when computing damages for actual loss. If the misappropriation is willful and malicious, a court may award punitive damages, limited to twice any actual damage award made, and attorney's fees.

12. **Protection of Trade Secrets During Court Proceedings.** In any action brought under the Connecticut Uniform Trade Secrets Act, the court is required to preserve the secrecy of any alleged trade secrets by all reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing court records and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

13. **Misappropriation of Trade Secrets as Unfair Competition.** The Connecticut law relating to unfair competitive practices and its interpretation by the courts and the Connecticut Attorney General parallel the Federal Trade Commission interpretation. A practice is unfair if it:

- a. falls within the "penumbra" of some statutory or common law or other established concept of unfairness, or
- b. is immoral, unethical, oppressive or unscrupulous, or
- c. causes substantial injury to competitors or other businessmen, or
- d. is oppressive or otherwise "unconscionable" in any respect.

Depending upon the facts of a particular case, misappropriation of a trade secret may constitute unfair competition and consequently also would be covered by Connecticut's unfair competition statute. In addition to injunctive relief, a complainant may recover damages for actual loss, unjust enrichment and punitive damages. The court can also award attorney's fees to the prevailing party.

VIII. DISPUTE RESOLUTION

A. Federal Court System

As in all US states, Connecticut has both a federal and a state court system. Jurisdiction in federal courts is limited to disputes 1) involving federal laws and/or 2) between "citizens" of different states, where the amount in controversy is \$75,000 or greater. Connecticut state courts are courts of general, not limited, jurisdiction. Private dispute resolution mechanisms, including arbitration, are favored in Connecticut, and there are a wide variety of options for private dispute resolution.

Connecticut has one federal district, with three seats of court: New Haven, Bridgeport and Hartford. That court has its own Local Rules which supplement the Federal Rules of Civil Procedure.

1. Bankruptcy Cases.

Bankruptcy cases are decided in federal court. Article I, Section 8, of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies." Under this grant of authority, Congress enacted the "Bankruptcy Code" in 1978. The Bankruptcy Code, which is codified as title 11 of the United States Code, has been amended several times since its enactment. It is the uniform federal law that governs all bankruptcy cases. There is one Bankruptcy Court within each United States District Court district, and as with the regular federal trial court, there are three seats of the Bankruptcy court: New Haven, Bridgeport and Hartford.

B. State Court System

Connecticut's judicial system has a trial court and two levels of appeals courts. The Superior Court, where most criminal and civil matters are initiated and tried, is divided geographically into 13 judicial districts. The Superior Court for each district is further separated administratively, and sometimes physically, into divisions to handle general civil matters, major and minor criminal cases, and family, juvenile, housing and small claims. The larger judicial districts have courthouses in several towns. Judges on each of the three judicial courts are appointed for fixed terms by the governor, subject to legislative approval. Probate judges, on the other hand, are elected for two-year terms. In Connecticut, the Probate Court is not a branch of the state judicial system but is a municipal court serving one or more towns. Probate matters are initially decided in the town probate courts, with appeals taken first to the Superior Court and thereafter to the Appellate Court or Supreme Court.

Typically, civil cases in the Superior Court are not individually assigned to a single judge until trial. However, Connecticut also has a Complex Litigation Docket that assigns larger, more complicated matters to a single judge who issues scheduling orders and presides over all matters through trial. In 2011, there are 7 judges sitting on the Complex Litigation Docket, and they are located in Hartford, Stamford, and Waterbury.

Residents and businesses licensed to do business in Connecticut may initiate legal actions in the Superior Court, as may out-of-state individuals and businesses with claims against Connecticut residents. In addition, the state “long-arm” statutes provide jurisdiction over out-of-state individuals and businesses that have significant contacts with the state. Thus, out-of-state businesses may be susceptible to suit in Connecticut for contracts made in or to be performed in Connecticut, for business solicited in Connecticut, for the use and consumption of their goods in Connecticut and for tortious activity in Connecticut. The exercise of jurisdiction over out-of-state businesses is subject to United States constitutional limitations and must be in accord with “contemporary views of fair play and substantial justice.”

There are several methods of initiating a lawsuit in the Superior Court. Connecticut rules permit a Connecticut state marshal or certain other disinterested persons to serve notice of a lawsuit on an out-of-state business either through its registered agent for service or its corporate secretary if there is no registered agent. See Connecticut General Statutes § 33-929 for corporations, Connecticut General Statutes § 52-59b(c) for general partnerships, Connecticut General Statutes § 34-38p for limited partnerships and Connecticut General Statutes § 34-225 for limited liability companies. Out-of-state service may be made in accordance with the laws of the state where service is being effected. Significantly, an out-of-state business does not submit to the jurisdiction of the Connecticut court merely by appearing for the purpose of contesting jurisdiction. The statutes that provide jurisdiction over out-of-state businesses also guarantee the right to reasonable notice and opportunity for a hearing as to, among other things, whether jurisdiction can be exercised in a particular case.

Connecticut affords creditors the opportunity to obtain a prejudgment remedy. After notice and a hearing (or in a few special circumstances, *ex parte*), a creditor can garnish or attach assets in Connecticut prior to obtaining a final judgment on a showing of probable cause. Increasingly, courts are allowing the garnishment of out-of-state assets that can be brought to Connecticut. Only real property must be in Connecticut to be attached. See generally Connecticut General Statutes § 52-278a et seq.

Another unique feature of Connecticut state court litigation is the State Constitution’s provision for individual *voir dire* during jury selection. This makes picking a jury a lengthy process, as counsel sometimes question each potential juror for as long as an hour.

Connecticut statutes provide for appeal from most final decisions of the Superior Court to the Connecticut Appellate Court, which is located in Hartford. In most cases, further appeal to the Connecticut Supreme Court is not by right but by certification. In cases presenting important issues of first impression, the Supreme Court may accept jurisdiction directly from the Superior Court, skipping the mid-level Appellate Court altogether. Typically, Appellate Court appeals are heard by panels of three judges and Supreme Court appeals by panels of five.

C. **Arbitration and Mediation**

Connecticut statutes and policy favor arbitration. The Superior Court routinely enforces agreements to arbitrate and entertains actions to confirm awards. Arbitration awards may be vacated only on a showing of arbitrator fraud, evident partiality, misconduct in the hearing process or exceeding statutory authority.

There are a number of local mediation services available in Connecticut. In addition, wide use of the national services, the American Arbitration Association and JAMS Endispute, is made by Connecticut parties. Because of our proximity to Boston and New York, it is not unusual to agree to arbitrate Connecticut cases at the AAA or JAMS Endispute offices in those cities.

There are several outstanding organizations administering arbitrations and mediations in Connecticut, including the American Dispute Resolution Center located in the Connecticut Bar Association Law Center in New Britain. Several retired Judges and experienced, senior litigators offer excellent arbitration and mediation services.

IX. FINANCING INVESTMENTS

A. Tax-Exempt Financing

The State of Connecticut has developed various programs and established semi-autonomous authorities to promote the State's economic and other public policy objectives. Some of these programs are funded through bonds issued directly by the State and are administered directly by the State's departments. Others are programs funded directly by semi-autonomous quasi-public authorities or agencies which have been granted wide-ranging powers to further the State's public policy goals, including, in some cases, the power to issue both tax-exempt and taxable bonds. The proceeds from the authorities' bond financings are principally lent to private sector developers to fund private projects rather than to support public sector owned projects. The revenues derived from the specific projects are pledged to pay debt service on the bonds. Under certain limited circumstances and for certain of the authorities, the State itself can agree to provide credit support for such bonds in the form of an automatic appropriation from the State's general fund. The following is a summary of some of the State's authorities and their missions:

Connecticut Innovations, Incorporated. In 1989, Connecticut created Connecticut Innovations, Incorporated which merged with the former Connecticut Development Authority in 2012. The purpose of Connecticut Innovations, Incorporated is to stimulate and encourage the research and development of new technologies and products, to encourage the creation and transfer of new technologies and to assist existing businesses in adopting current and innovative technological processes. It is empowered by its enabling legislation to provide financial aid, including grants, loans, risk capital investments and other types of financial assistance to corporations or persons that will further its statutory purposes. Connecticut Innovations' Public and Specialty Finance Group provides tax-exempt financing and other tools to fund projects that benefit the public including industrial revenue bonds, sales tax incremental financing, and tax incremental financing for brownfields redevelopment to create temporary and permanent jobs, return blighted properties to productive use and improve the overall quality of life.

Connecticut Housing Finance Authority. To meet the needs of low and moderate income families and persons for decent housing and to encourage and assist the development and construction of such housing by reducing the cost of mortgage financing therefor, the State established the Connecticut Housing Finance Authority. The enabling act authorizes the CHFA to make or purchase construction and permanent mortgage loans which are guaranteed or insured by the United States of America or any agency or instrumentality thereof, by the Federal Home Loan Mortgage Corporation, by a private mortgage insurance company or by the State or the CHFA itself, without limitation as to amount, and to make or purchase mortgage loans not so insured or guaranteed.

Connecticut Health and Educational Facilities Authority. The purpose of the Connecticut Health and Educational Facilities Authority is to assist certain health care

institutions, nursing homes, institutions of higher learning and qualified nonprofit organizations in the construction and financing of eligible projects.

Connecticut Resources Recovery Authority. To meet the need for assisting municipalities in developing and financing new technology in the field of resource recovery of solid waste, including potential new sources of fuel for the State, the General Assembly created the Connecticut Resources Recovery Authority. The enabling act authorizes the issuance of bonds of CRRA to finance facilities such as waste-to-energy plants, recycling centers and landfills.

Other quasi-public agencies involved in the issuance of tax exempt bonds include:

- Capital Region Development Authority**
- Clean Energy Finance and Investment Authority**
- Connecticut Airport Authority**

In addition to the foregoing State entities, Connecticut has also granted the power to issue bonds for economic development to its municipalities under the City and Town Development Act. The purpose of this Act is to provide the necessary funding to ameliorate conditions of blight and deterioration within a municipality and to stimulate employment and safe and sanitary housing. The municipalities have the power to lend money to “sponsors” that have been approved by the municipalities as financially qualified to own, construct, rehabilitate, operate, manage or maintain development property in furtherance of the purposes of the act.

B. Commercial Banking

Commercial banking in Connecticut is carried on by state bank and trust companies as well as other types of financial institutions such as out-of-state banks, foreign banks and credit unions. Connecticut state bank and trust companies are highly regulated and fall under the regulatory authority of the Connecticut banking commissioner and may also be subject to various federal statutes and regulations. State bank and trust companies can perform the usual banking functions of taking deposits, paying interest and making both secured and unsecured loans. The state has imposed limits upon the amounts that a state bank and trust company can lend to any one borrower. The amount of their reserves and the investments into which such reserves may be invested are set by both federal and state laws and regulations.

C. Foreign Banks in the State

As a general rule, non-Connecticut U.S. banking corporations and foreign banking corporations cannot transact business in Connecticut unless specifically empowered by a general or special act of the state to do so. The general rule, however, has two broad categories of exceptions that allow non-Connecticut banking corporations to conduct activities within the state. The first category is the broad interstate banking provisions in Connecticut law, and the second category is the statutory exceptions and

case law interpretation covering the type of activities that constitute “transacting business” within the state. If a non-Connecticut banking corporation does not fall within these two categories and transacts business in the state, the consequences can be severe — fines and taxes may be imposed and the State's Attorney General and any other person can act to restrain the banking corporation's activities within the state (such activities might include the ability to sue in Connecticut courts or to foreclose on collateral).

Connecticut has enacted a comprehensive interstate banking law. Subject to certain conditions, the law permits out-of-state (including foreign) banks, bank holding companies and savings and loan holding companies to acquire an existing Connecticut bank, savings bank, savings and loan association, bank holding company or savings and loan holding company or to establish any of the foregoing in the state. In addition, again subject to conditions, out-of-state banks, savings banks and savings and loan associations can acquire control over existing Connecticut banks, savings banks and savings and loan associations. All of the foregoing actions are subject to a reciprocity condition that the home state of the out-of-state financial institution permit Connecticut financial institutions to acquire or establish financial institutions within such home state under conditions that are no more restrictive than those in effect in Connecticut. The interstate activities outlined above are all subject to the approval of the Connecticut banking commissioner. Such approval is conditioned upon the commissioner's making certain findings concerning community reinvestment, the effect on low and moderate income residents and competition.

In addition to the interstate banking laws, Connecticut has various statutory exceptions and case law interpretations covering what constitutes “transacting business.” For example, by statute, an out-of-state bank is not considered to be transacting business within the State of Connecticut if the out-of-state bank is participating in a loan with a Connecticut financial institution. The Connecticut case law has developed a factual analysis to determine if an activity of an out-of-state financial institution constitutes transacting business within the state. The courts look at the overall activity of the out-of-state institution as well as the specific circumstances surrounding the particular activities in making their determination. Generally speaking, the more isolated the transaction and the more limited the overall activities of the out-of-state financial institution within Connecticut, the less likely it is that the out-of-state financial institution will be found to be “transacting business” in the state.

Trust activities by an out-of-state financial institution have a few peculiar wrinkles all their own. An out-of-state financial institution cannot exercise trust powers in Connecticut unless it is licensed or it is exempt from the licensing requirement. There is an exemption for an out-of-state corporation that can exercise trust powers in the state where it is chartered, if such state allows Connecticut corporations that can exercise trust powers in Connecticut to perform trust functions in that state.

X. REAL ESTATE

A. Introduction

Connecticut real estate practices are governed by state statute, by local regulation, and by custom. The following discussion is a summary of certain important areas of Connecticut real estate practice, but it is not intended to be comprehensive and it does not cover federal laws affecting real estate.

B. Ownership

Real estate interests may be held in a variety of ways, including ownership in the name of individuals, general partnerships, limited partnerships, Connecticut and out-of-state corporations, limited liability partnerships, limited liability companies and business trusts organized under the laws of other states. Certain registration or qualification requirements may apply to corporations and other entities organized outside Connecticut, depending on the nature and extent of the entity's real estate and other business activity in Connecticut. Title may also be held by agents, trustees or other fiduciaries, although there are certain constraints on the parties eligible to act as trustees or other fiduciaries under Connecticut law. Aliens, whether or not resident in the United States, may hold, acquire, lease, inherit and transfer real estate in Connecticut in as full a manner as a native-born citizen.

C. Real Estate Acquisitions

Brokers. Frequently, brokers are employed in connection with real estate acquisitions or leases. Brokers are licensed and regulated under Connecticut law and are prohibited from seeking redress to the courts for collection of commissions without a written agreement. Fees are negotiable.

Purchase Agreements. Standard brokers forms of purchase agreements for residential properties are, generally speaking, accepted in the industry with minor revision to reflect particular circumstances. Purchase agreements in commercial transactions and residential transactions in Fairfield County are generally negotiated by counsel for the buyer and the seller.

Title. Title examinations are usually performed by attorneys or through title insurers after the parties have reached agreement on the transfer of real estate. Connecticut has 169 towns, each of which maintains separate land records.

Buyers and mortgagees of real estate typically obtain title insurance through the buyer's attorneys, many of whom act as agents for the title insurer in examining title and issuing the title insurance policies. Unlike other states, it is not the custom for the title insurer to act as escrow agent in many closings in Connecticut. Some title insurance endorsements, such as zoning endorsements, that are customary in other states are not customary, but are available, in Connecticut (extra premiums or legal fees for due diligence may be involved).

Zoning and other Land Use Regulations. Zoning, subdivision and inland wetlands are generally regulated by the individual municipality. The State of Connecticut, through the State Traffic Commission, regulates access to public highways and signalization. Land use involving environmentally sensitive matters is generally regulated by the Connecticut Department of Energy and Environmental Protection and, in some cases, by municipal “conservation” or similar regulatory agents.

Conveyance Taxes and Recording Fees. Two conveyance taxes are payable on every transfer of real estate, both of which are payable by the seller and both of which are computed based on the purchase price or value received, directly or indirectly, by the seller. One tax is payable to the state's Department of Revenue Services. This tax ranges from 0.75% to 1.25%, depending on the nature of the property. The second tax is payable to the town where the property is located and is calculated at the rate of .25% of the purchase price or other value received. Approximately eighteen towns (generally the larger cities or towns) have been legislated the prerogative to raise that tax to .50%. Special rates can be applicable as to certain classified farm land, forest land or open space land. There are several statutory exemptions from these conveyance taxes, and the Department of Revenue Services has regulations explaining some of the exemptions. Interpretation of these statutes and regulations requires experience in this area of the law, and care must be taken before assuming an exemption applies. Failure to pay conveyance taxes when due will not negate the transfer of an interest in real estate, but the seller will be subject to interest and penalties.

Recording fees are calculated at a statutory rate of \$53.00 per document, \$53.00 for the first page, plus \$5 for every additional page plus an additional \$2 for each deed for which consideration is paid (other than mortgage deeds). These fees are payable to the local town clerk.

Real Estate Taxes. Real estate taxes are payable to the town in which the property is located. The calculation of taxes depends on assessments (based on a percentage of assessed value) and mill rates. Each town sets its own valuations, mill rate and schedule of payments. State statutes require revaluation of real estate at least every 5 years and establish mechanisms for appeal of tax assessments, but otherwise these taxes are governed largely by each town's local ordinances and can vary significantly from town to town.

D. **Financing**

Financing of real estate transactions can be done in many different ways through institutional lenders or private parties. As is true in other states, lenders in Connecticut typically require title insurance policies, surveys, assurances as to compliance with relevant laws, environmental assessments, evidence of authority of the borrower, customary opinions of counsel and other standard documentation. In most commercial real estate transactions, lenders require not just a note and mortgage, but collateral assignments of leases, construction and architectural contracts and plans (if relevant), and security interests in the personal property used in connection with the real estate.

Mortgages. Connecticut's mortgage laws are somewhat unusual, but generally accommodate sophisticated financing arrangements. Connecticut laws governing mortgages securing construction loans and loans pursuant to some financing arrangements, such as letters of credit or commercial revolving loan agreements, allow protection as to advances made after the date of the loan closing. The statutes governing these "future advances" are complex, and if documents are not properly drafted to follow the relevant statutes, a lender may lose priority as to such advances vis-à-vis other creditors. There may be certain restrictions on the ability of banks located outside Connecticut to make or enforce mortgage loans in Connecticut, and this is an issue that requires case-by-case analysis to determine whether the bank's activities in Connecticut violate Connecticut's "doing business" laws which specifically relate to mortgage loans and other banking activities.

Foreclosure. If a mortgage loan is in default, Connecticut allows for foreclosure in its courts. Connecticut does not allow for nonjudicial foreclosure under a so-called "power of sale."

Foreclosures in Connecticut may proceed as a "strict foreclosure," meaning that the lender assumes title to the property subject to any senior liens but free of any junior liens, without having to hold an auction or public sale of the property. Any party to a foreclosure action may request, or the court on its own may order, a "foreclosure by sale," in which event the property is sold at auction.

A foreclosure in Connecticut can take considerable time. Not only are there certain built-in waiting periods for the filing and determination of various motions that are necessary for the foreclosure to proceed, but, in addition, the court has significant discretion in setting the date for the transfer of title by strict foreclosure or for the auction in the case of a foreclosure by sale. In both cases, the court will make its determination so as to give the parties appropriate opportunity to redeem any equity in the property and to maximize the amount that may be realized from the sale of the property by auction.

In Connecticut, a lender who chooses foreclosure retains its right to collect from the borrower or guarantors the amount of the indebtedness that is not satisfied by the foreclosure, so long as care is taken to include such parties at the commencement of the foreclosure action.

E. **Leases**

Although Connecticut has fairly extensive statutes governing landlord/tenant relationships in the residential context, commercial leases are largely a matter of contract law and the practices in Connecticut do not differ significantly from those in other states. There is not a standard form, as has been developed in some other states, which is typically used in Connecticut commercial leases. Commercial leases range from the relatively simple agreements for smaller matters to long and complex leases for larger tenants or unusual projects. In most situations, counsel for the landlord will prepare the lease for review by the tenant's counsel.

F. **Environmental Matters**

Refer to Section VI for a discussion of the potentially applicable environmental laws.

XI. MISCELLANEOUS

A. Requirements for Qualification

Foreign corporations that are transacting business in Connecticut are required to obtain a certificate of authority from the Connecticut Secretary of the State. Certain activities by themselves do not constitute transacting business, such as maintaining, defending or settling any proceeding; holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs; maintaining bank accounts; maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities; selling through independent contractors; soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts; creating or acquiring indebtedness, mortgages and security interests in real or personal property; securing or collecting debts or enforcing mortgages and security interests in property securing the debts; owning, without more, real or personal property; conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; and transacting business in interstate commerce.

If the corporation's activities go beyond those listed above, it may be transacting business in Connecticut and thus be required to obtain a certificate of authority. This is a simple process. The foreign corporation must file an application for certificate of authority providing certain basic information and an appointment of a registered agent, together with a good standing certificate dated not more than ninety (90) days from the date of issuance from the state of incorporation and a filing fee of \$385.00. The corporation will then have to file annual tax returns with the Connecticut Department of Revenue Services and file annual reports online with the Connecticut Secretary of the State by the last day of the month in which the corporation was authorized to transact business. Failure to be qualified when it should have been will bar a foreign corporation from bringing a lawsuit in Connecticut until it has qualified and paid any delinquent fees and taxes.

A foreign corporation is liable to the State of Connecticut for the years, or parts thereof, during which it transacted business in the State without a certificate of authority, in an amount equal to (1) all fees and taxes which would have been imposed by law upon such corporation had it duly applied for and received such certificate of authority to transact business in the State, and (2) all interest and penalties imposed by law for failure to pay such fees and taxes. A foreign corporation is further liable to the State, for each month or part thereof during which it transacted business without a certificate of authority, in an amount equal to three hundred dollars, except that a foreign corporation which has obtained a certificate of authority not later than ninety days after it has commenced transacting business in the State shall not be liable for such monthly penalty. Such fees and penalties may be levied by the Secretary of the State. The Attorney General shall bring such action as he or she may deem necessary to recover any amounts due the State including an action to restrain a foreign corporation against

which fees and penalties have been imposed from transacting business in the State until such time as such fees and penalties have been paid.

B. Requirements for Registration

Foreign corporations engaging in business in Connecticut as sellers of products or services are required to obtain a sales tax permit for each place of business prior to commencement of business operations. To obtain a Connecticut Sales and Use Tax Permit, foreign corporations must apply online using the Taxpayer Service Center (TSC) or in person by visiting any of the local offices of the Connecticut Department of Revenue Services by submitting a business taxes registration application with the \$100.00 fee payable to the Connecticut Department of Revenue Services.

The permit is renewed every five years automatically on its anniversary date without an additional fee if the corporation is up to date on all of its required tax filings. The permit may not be assigned and is valid only for the person in whose name it is issued and for the transaction of business at the place designated on it. Thus, a new permit is required if the ownership or structure of the business changes. Connecticut law provides for a fine of up to \$500.00, imprisonment for up to three months, or both, for each violation of the sales tax permit requirements.

For purposes of the registration requirement, a “seller” includes every person engaged in the business of selling tangible personal property or rendering any service taxable in Connecticut and every operator of a lodging house, hotel or campground in Connecticut. “Engaging in business” includes, but is not limited to, the following activities:

- a. Selling tangible personal property in Connecticut for use, storage or consumption in the state.
- b. Renting out a room or rooms in a hotel or lodging house or space in a campground for a period of 30 consecutive days or less.
- c. Rendering any taxable service in Connecticut.
- d. Maintaining any office, place of distribution, sales or sample room, warehouse, or other place of business.
- e. Having any representative, agent, sales person, canvasser or solicitor operating in Connecticut for the purpose of selling, delivering, or taking orders.
- f. Engaging in regular or systematic solicitation of sales of tangible personal property in Connecticut by means of advertising (billboards, catalogues, flyers, print, radio, TV, etc.) or by communications systems (mail, telegraphy, telephone, computer data base, cable, etc.); provided 100 or more retail sales from

outside Connecticut to destinations within Connecticut are made during a statutorily prescribed 12-month period.

- g. Being owned or controlled, directly or indirectly, by a retailer engaged in a similar line of business in Connecticut or by interests that own or control, directly or indirectly, such a retailer.

C. Applicability of Usury Laws

Generally speaking, under Connecticut law, the maximum interest rate legally permitted on loans is 12% per annum. However, the exceptions to this law nearly eclipse the law. The major exceptions are:

- a. Loans by any national bank or any bank or trust company or state or federal savings bank incorporated in Connecticut.
- b. Loans by a wholly-owned subsidiary of those entities, except a loan for consumer purposes.
- c. Loans by a federal or state savings and loan association.
- d. Loans by a federal or state credit union.
- e. A bona fide mortgage in excess of \$5,000.
- f. A loan to a foreign or domestic corporation, general partnership or association organized for profit or an individual provided it is engaged primarily in commercial, manufacturing, industrial or non-consumer pursuits, and provided that the loan proceeds are used for business or investment activities and not consumer purposes and provided also that the original loan is in excess of \$10,000 but not more than \$250,000 (or, in the case of a revolving credit facility with advances of less than \$10,000, the total of all loans at the time of any advance exceeds \$10,000 but not more than \$250,000).
- g. Obligations issued by the state or a municipality or one of their agencies.
- h. Loans by the state or a municipality or one of their agencies.
- i. A loan to finance the purchase of a motor vehicle, recreational vehicle or boat (provided the rate on the loans made between 10/1/85 through 9/30/93 does not exceed 16% on new and 18% on used vehicles or boats, the loan is payable in four or more monthly, quarterly or yearly installments, and the loan is either unsecured or secured by the purchased vehicle or boat; the statute does not specify the applicable rates after 10/1/93).

- j. Loans by an institution of higher education to enable attendance (provided the rate is not more than the greater of the current legal rate or 5% in excess of the discount rate), including surcharge, on 90-day commercial paper at the federal reserve bank in the institution's district.
- k. Loans to a plan participant or beneficiary from an employee pension benefit plan as defined in ERISA. Thus, some consumer loans and some commercial loans under \$10,000, depending on the nature of the loan and the lender, are subject to the usury limit.

In the rare instances in which the usury laws do apply, the penalties for violation are draconian. A person who individually or as a member of a firm, officer of a corporation or agent of a firm or corporation violates the usury laws is subject to a fine of not more than \$1,000 and/or imprisonment of up to six months. Moreover, action on usurious loans may not be brought to recover principal or interest, or any part thereof.

There are separate statutes regulating (a) parties in the business of making small loans (generally the legal rate is 12%, but it can range from 11% for portions of certain loans under \$5,000, to 19.8% for certain "open-end" loans under \$10,000), (b) pawn brokers (2-5% per month), and (c) loan points, fees and finance charges on second mortgages.

D. **Notice of Business Activities and Restrictions on Specific Professions**

A wide variety of business activities and professions are subject to varying degrees of regulation or licensing. For example, businesses such as banks, insurance companies and utilities are regulated; professions and occupations from engineers to electricians to stock brokers to hypertrichologists are subject to licensing; health care facilities of various types are subject to regulation and licensing; there are restrictions on foreign banks and/or corporations offering trust services; and there are notice requirements for certain types of business sales, business closings and employee layoffs. It would not be possible to point out all of the regulations or all of the activities which are regulated or which require licenses in a summary of this type. However, these aspects of Connecticut law are in general no more or no less burdensome than the laws of most other states, and businesses and business people usually deal with them in the ordinary course. An ordinary amount of common business sense is required to recognize when it is appropriate to check with an attorney on the possible legal implications of a proposed new activity, transaction or course of conduct.

E. **Business Name Registration Requirements**

As noted in the section on corporations, a new corporation must pick a name which is not deceptively similar to the name of an existing Connecticut corporation or a foreign entity that is authorized to transact business in Connecticut. A foreign corporation qualifying in Connecticut faces a similar constraint, but a foreign corporation

may keep its own name even though similar to the name of an existing corporation if it agrees to add a distinguishing element to the name and use it in Connecticut. The same type of restriction applies to foreign limited partnerships doing business in Connecticut. In addition to the types of situations referred to in Section D above, which may require some type of registration or licensing of particular business activities, professions or occupations, it is necessary to file a trade name certificate with the town clerk of the town in which a corporation, sole proprietorship or general partnership principal office is located if the name such entity is using is not the actual name of the corporation, or the actual name of the sole proprietor, or the actual names of the partners of the partnership.

XII. STATE AGENCIES

In addition to those state agencies listed under Section IX, Connecticut has established the usual state agencies. Those of interest to businesses are discussed in this section. More information about these and other state agencies can be found at www.ct.gov.

1. **Governor's Office**. The Governor's office is located at the State Capitol, 210 Capitol Avenue, Hartford, Connecticut 06106. Telephone No.: 860-566-4840. Website: www.ct.gov/malloy
2. **Secretary of the State**. Responsible for administering and enforcing many the State's laws governing corporations and other entities, commercial recordings, election services, and maintaining public documents and records. The main office is located at 30 Trinity Street, P.O. Box 150470, Hartford, Connecticut 06106. Telephone No.: 860-509-6212; Fax No.: 860-509-6131. Website: www.sots.ct.gov
3. **Attorney General**. Responsible for representing state agencies in all civil matters, with broad statutory authority to represent the interests of the state and its citizens. The main office is located at 55 Elm Street, P.O. Box 120, Hartford, Connecticut 06141-0120. Telephone No.: 860-808-5318; Fax No.: 860-808-5387. Website: www.ct.gov/ag
4. **Department of Agriculture**. This agency is charged with the responsibility of implementing and regulating agriculture throughout the state of Connecticut. Location: 165 Capitol Avenue, Hartford, Connecticut 06106. Telephone No.: 860-713-2500; Fax No.: 860-713-2514. Website: www.ct.gov/DOAG
5. **Department of Banking**. Responsible for regulation of state depository institutions and securities laws. Location: 260 Constitution Plaza, Hartford, Connecticut 06103-1800. Telephone No.: 1-800-831-7225 or 860-240-8100; Fax No.: 860-240-8178. Website: www.ct.gov/dob
6. **Department of Consumer Protection**. Primarily responsible for the licensing and regulation of various trades, such as plumbers and electricians, throughout the state. It also implements various consumer laws, including those addressed to fraudulent business organizations. Location: 165 Capitol Avenue, Hartford, Connecticut 06106. Telephone No.: 860-713-6100. Fax No.: 860-713-7239. Website: www.ct.gov/DCP
7. **Department of Economic and Community Development**. Responsible for the economic development of Connecticut and for encouraging a friendly business climate. Location: 505 Hudson Street, Hartford, Connecticut 06106-7107. Telephone No.: 860-270-8000. For further information on this department see Section IX A. Website: www.ct.gov/ecd

8. **Department of Energy and Environmental Protection.** Responsible for the implementation of Connecticut's energy and environmental laws and regulates public utilities within the state, such as electric, gas, and water utilities, and telephone companies. Effective July 1, 2011, DEEP brings together the former Departments of Environmental Protection (DEP) and Public Utility Control (DPUC) along with the energy policy group from the Office of Policy and Management (OPM). It is located at 79 Elm Street, Hartford, Connecticut 06106-5127. Telephone No.: 860-424-3000; Fax No.: 860-424-4051. In addition, this department is charged with the responsibility of overseeing the state's forests, parks, and hatcheries. The department issues permits for water discharges, underground fuel tank storage, air emissions, and other environmental permits. Website: www.ct.gov/deep.
9. **Department of Public Health.** Responsible for the licensing and regulation of members of the medical profession, the quality of drinking water, vital statistics, control and treatment of diseases, certain types of group care homes, and a number of other health related matters. It is located at 410 Capitol Avenue, P.O. Box 340308, Hartford, Connecticut 061134-0308. Telephone No.: 860-509-7101. Fax No.: 860-509-7111. Website: www.ct.gov/dph
10. **Department of Insurance.** Responsible for regulation and licensing of insurance companies, administering and enforcing Connecticut's insurance laws, and for monitoring the reliability and responsibility of regulated entities. Its office is located at 153 Market Street, P.O. Box 816, Hartford, Connecticut 06142-0816. Telephone No.: 860-297-3800; Fax No.: 860-566-7410. Website: www.ct.gov/cid
11. **Department of Labor.** Responsible for the state laws relating to job training, occupational safety, regulation of wages, and the implementation of the mediation and arbitration laws. Also within the department are the Unemployment Compensation Commission and the Workers' Compensation Commission. It is located at 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109. Telephone No.: 860-263-6000; Fax No.: 860-263-6529. Website: www.ctdol.state.ct.us
12. **Department of Motor Vehicles.** Charged with the responsibility of implementing the motor vehicle licensing and registration laws. Its main office is at 60 State Street, Wethersfield, Connecticut 06161. Telephone No.: 860-263-5700. Website: www.ct.gov/dmv
13. **Department of Public Safety.** Has within it divisions of state police, the state military, the air national guard, and related entities. Its main office is at 1111 Country Club Road, Middletown, Connecticut 06457. Telephone No.: 860-685-8190. Website: www.ct.gov/DPS

14. **Department of Revenue Services**. Charged with the implementation of the Connecticut system of taxation. Its main office is at 25 Sigourney Street, Suite 2, Hartford, Connecticut 06106-5032. Telephone No.: 860-297-5962; Fax No.: 860-297-5714. Website: www.ct.gov/drs
15. **Department of Transportation**. Charged with the responsibility for overseeing state highways, harbors, and airports. Its main office is located at 2800 Berlin Turnpike, Newington, Connecticut 06131-7546. Telephone No.: 860-594-2000. Website: www.ct.gov/DOT
16. **Connecticut Development Authority**. Responsible for administering and providing funds from a variety of programs designed to promote business investment, including business relocation and expansion, and brownfields redevelopment. Its main office is located at 999 West Street, Rocky Hill, Connecticut 06067. Telephone No.: 860-258-7800; Fax No.: 860-257-7582. Website: www.ctcda.com
17. **Connecticut Siting Council**. Responsible for siting of electric generation facilities (and substations), electric and fuel transmission lines, telecommunication (cell tower) facilities, and hazardous waste facilities. Its office is located at Ten Franklin Square, New Britain, Connecticut 06051. Telephone No.: 860-827-2935; Fax No.: 860-827-2950. Website: www.ct.gov/csc

XIII. ABOUT MURTHA CULLINA LLP

With more than 100 attorneys in six offices throughout Connecticut, Massachusetts and New York, Murtha Cullina LLP offers a full range of legal services to meet the local, regional and national needs of our clients. Our practice encompasses litigation, regulatory and transactional representation of businesses, governmental units, non-profit organizations and individuals. Core practice areas include litigation, insurance recovery, labor and employment, bankruptcy and creditors' rights, construction, energy, health care, trusts and estates, affordable housing, real estate, land use and retail and hospitality.

When our clients need help anywhere else in the United States or around the world, we supplement our representation with access to the worldwide law firm network of Lex Mundi. Our lawyers are leaders in their fields and are recognized repeatedly for their legal work. Our greatest reward, however, is the repeat business of our many loyal clients.

Because our lawyers know these industries and take the time to understand our clients' businesses, we bring more insight to bear on our clients' problems and more vision to achieve our clients' goals. Murtha attorneys provide more commitment from the start of a relationship when we learn your business until we achieve the results you need. We also provide cost-effective service and will entertain alternative fees when those are in the best interests of our clients and the firm.

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