

**A GUIDE TO  
DOING BUSINESS IN PUERTO RICO**

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## A GUIDE TO DOING BUSINESS IN PUERTO RICO

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# I. GEOGRAPHY, CLIMATE, CULTURE AND POPULATION

## A. Geography

Puerto Rico forms part of the chain of islands separating the Atlantic Ocean from the Caribbean Sea which begins South of Florida and runs in an arc to the coast of Venezuela. Puerto Rico is located almost in the center of this arc, 1000 miles East-southeast of Miami, Florida and 1,800 miles Southeast of New York City in the Atlantic standard time zone, one hour ahead of the United States east coast.

The smallest of the Greater Antilles, Puerto Rico is rectangular in shape and measures 100 miles (160 km.) by 35 miles (56 km.). The mountainous interior of the island is surrounded on all sides by a wide coastal plain.

Puerto Rico also includes the islands of Vieques (51.7 sq. mi.) (135 sq. km.), and Culebra (10 sq. mi.) (26 sq. km.), approximately 17 miles (27 km.) to the east. Portions of both these islands were used by the United States Navy for training for more than 50 years, but training exercises have now ceased and Navy lands have been returned to the Puerto Rico government.



**B. Climate**

The climate is humid and tropical with mean temperatures in the summer of 80°F (26°C) and 75°F (25.5°C) in the winter. Mountain temperatures are considerably cooler. Almost constant North-Easterly trade winds contribute to a very agreeable climate. The Southern part of the island is somewhat drier and warmer than the North. Average annual rainfall is 69 inches (175 c.m.). The period from mid-January to mid-April tends to be the driest time, with plentiful rainfall possible at most other times.

**C. Population**

Puerto Rico has a population of approximately 4 million people, over 1,000 people per square mile (446 per sq. km.) making it one of the most densely populated places in the world. In addition the more than 2 million Puerto Ricans living on the United States mainland tend to maintain family and other close ties with Puerto Rico.

**D. Cultural/Ethnic Background**

Puerto Ricans are proud of their country and their cultural traditions. Although English and Spanish are both official languages, and English is taught in the schools as a second language, Spanish remains the language of choice, except in a business context.

Ethnically, Puerto Ricans are descended primarily from Spaniards and Africans with a sprinkling of Taino Indian (the original inhabitants of the island), United States and European blood.

## **II. POLITICAL STATUS**

Puerto Rico was discovered by Columbus in 1493 and colonized by Spain. In 1898 the island was ceded by Spain to the United States which continues to own Puerto Rico. In 1917, Puerto Ricans became United States citizens and in 1952, the United States Congress approved a constitution for Puerto Rico conferring a right of internal self-government. The United States retains control of foreign affairs, defense and immigration and United States laws apply in Puerto Rico unless Puerto Rico is specifically excluded.

### III. INVESTMENT CLIMATE

For more than 50 years, the Puerto Rico government has promoted investment in Puerto Rico through financial and tax incentives aimed at establishing new businesses in Puerto Rico with a primary goal of creating new jobs. Until the late 1990s, the U.S. Congress provided special tax exemptions to new businesses from the U.S. established in Puerto Rico. Federal exemptions ended in 2005, and the Puerto Rico government has redoubled its efforts to create new employment by encouraging domestic and foreign investment. Tax incentives include exemptions or partial exemptions from income, property, municipal gross receipts, construction and excise taxes for certain agricultural activities; qualifying manufacturing activities, tourism development, motion picture film production, and service industries, such as banking, financial, insurance, auditing, computer, distribution and laboratories, when services are rendered in Puerto Rico exclusively for non-residents of Puerto Rico, provided that 80% of the employees of such service industries are residents of Puerto Rico.

As a general rule, in the case of most exempt corporations, dividends paid to shareholders are tax exempt in Puerto Rico. For more detailed information on tax incentives, credits and eligible businesses, see Taxation, *infra*, subhead Tax Incentives and Exemptions.

Among financial incentives offered are rentals of government manufacturing buildings at reasonable rates, payroll incentives and financing through tax exempt industrial revenue bonds and direct loans.

The Puerto Rico Industrial Development Company (PRIDCO)\* is the government agency primarily responsible for assisting companies relocating to or expanding in Puerto Rico. PRIDCO coordinates and administers the government's incentives and other promotional programs and provides the following services to new or expanding businesses:

- (1) Serves as a liaison with government agencies offering incentives for new businesses or expansions;

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\* See Appendix *infra*, for reference information on PRIDCO and other agencies marked with an asterisk below.

- (2) Administers a streamlined process designed to speed up the permitting process for companies wishing to do business in Puerto Rico;
- (3) Offers support and participates in the negotiations with other government agencies for tax and financial incentives;
- (4) Offers orientation and support with respect to location of new enterprises;
- (5) Engages in the development of industrial parks and construction of buildings for sale or lease to new businesses, including buildings built to user specifications; and,
- (6) Manages a Foreign (Free) Trade Zone consisting of 4,400 acres (1,790 hectares) and more than 600 buildings owned by PRIDCO. (See § V B[6] below for discussion of foreign trade zones.)

#### **IV. BUSINESS ENTITIES**

##### **A. Corporations**

###### **(1) Corporation Law**

The use of a corporation permits investors to limit their liability for acts of the corporation. This limitation of liability has a price: taxes are imposed at the corporation level on the earnings of the corporation and at the investor level on the dividends paid to stockholders. Also, failure to observe the statutory formalities as to formation and operation of a corporation could expose a stockholder to personal liability for acts of the corporation.

The Puerto Rico General Corporation Law is modeled after the Delaware Corporation Law. Special laws apply to banks and insurance companies.

###### **(2) Supervision**

Corporations are supervised by the Corporate Division of the Secretary of State's Office\*.

**(3) Incorporation**

Any person or entity, whether or not resident in Puerto Rico, may form a corporation. A Puerto Rico corporation is formed by filing Articles of Incorporation with the Corporate Division. The articles must be signed by the incorporator or incorporators and must include: (a) the corporate name, (b) the street address, (c) the nature or purpose of the business, provided that it is sufficient to state that the corporation will dedicate itself “to any legitimate matter for which a corporation may be created under the General Law of Corporations of the Commonwealth of Puerto Rico”, (d) the class or classes of stock, including total number of shares for each class, par values or a declaration that stock will have no par value, and statement of the powers, preferences and rights of each class of stock, and (e) the name and address of any person acting as a director as of the date of incorporation, if the rights and the powers of incorporators end with the filing of the articles. In addition, the articles may include any other information permissible under the corporation law. The initial Board of Directors of the Corporation may be named in the articles or appointed at a later date by the incorporator. The filing must be accompanied by a fee based on the number of authorized shares of capital stock. The minimum fee is \$100. Incorporation is effective as of the date of filing with the Corporate Division.

Articles may be amended by filing a certificate of amendment with the Corporate Division and payment of a fee. An amendment is initiated by resolution of the directors, followed by a vote of shareholders.

**(4) By-laws**

By-laws may be adopted or amended by the incorporators or by the board of directors, and after stock is issued by the stockholders, or by the directors if so authorized by the articles of incorporation.

**(5) Stock**

Capital stock of a corporation may be common, preferred or special, with or without par value. Restrictions on transfer of stock are enforceable if noted conspicuously on the stock certificate or in a notice sent to the holders of uncertificated shares.

Shares of stock are personal property and may be issued only for cash, labor performed, personal property or real property.

**(6) Meetings of Shareholders**

The Corporation law provides for a required annual meeting and also for special meetings of shareholders. Meetings are not required for shareholder action if the requisite number of shareholders approves a particular action in writing.

**(7) Directors and Officers**

The regular business of a corporation is overseen by a board of directors. The board of directors may consist of one or more members. Directors must carry out their duties in good faith and without conflict of interest. Directors may be indemnified by the Corporation. Directors are protected when they rely in good faith upon the books of the Corporation or upon representations of officers or employees. Officers of a corporation shall be provided for in the by-laws or by resolution of the board of directors and may be indemnified by the corporation, provided they act reasonably and in good faith.

**(8) Principal Office and Agent**

Corporations must maintain a designated principal office in Puerto Rico (which need not be the business office of the corporation) whose location may be changed by resolution of the board of directors duly certified and filed with the corporate division. Each corporation must have an agent, which may be a corporation or an individual, domiciled in Puerto Rico, whose address is the same as that of the designated principal office of the corporation. Service of process may be made on the registered agent.

**(9) Annual Reports**

Corporations must file an annual report on or before April 15. Annual reports must be signed by the Corporation's president and treasurer and in the case of a Puerto Rico corporation whose annual volume of business exceeds \$1,000,000, must be accompanied by the Corporation's balance sheet at the close of the preceding fiscal year, certified by a certified public accountant

licensed in Puerto Rico who cannot be a stockholder or employee of the Corporation. Corporations incorporated outside Puerto Rico must accompany their annual report with an audited balance sheet regardless of annual volume of business. Each annual report must be accompanied by a fee of \$100.

**(10) Merger and Consolidation**

Two or more corporations may merge or consolidate. In a merger, one of the corporations survives. In a consolidation, a new corporation is formed to operate the businesses of those consolidating. In either event, the stockholders and creditors of the non-survivor corporations become stockholders and creditors of the survivor and the survivor succeeds to all of the rights and liabilities of the merged or consolidated corporations. Mergers and consolidations generally qualify for tax-free treatment.

A Puerto Rico corporation may also merge with a non-Puerto Rico corporation if the law of the place of incorporation of the latter permits. If the laws of the place where the non-Puerto Rico corporation is incorporated govern the survivor, an agent for service of process in Puerto Rico must be named and the survivor corporation must consent to service in Puerto Rico as to claims arising from business of the Puerto Rico corporation.

**(11) Close Corporations**

The Corporation Law permits the incorporation of “close corporations” where management is retained by the stockholders without need of a board of directors. These corporations must be identified as close corporations in the Articles of Incorporation. The stockholders are limited to a maximum of 35 natural persons, they cannot sell stock in a public offering, and may establish types or classes of persons eligible to be stockholders. Otherwise, the provisions of the corporation law apply as they do to other corporations, including the concept of limited liability for stockholders. A close corporation may convert to a regular corporation and vice-versa, by appropriate amendments to their articles.

**(12) Non-Profit Corporations**

Although they are organized under the General Corporation Law, non-profit corporations may not issue stock or make distributions to members, directors or officers, except as reasonable compensation for services.

Articles of Incorporation must:

(i) disclose the nature of the services to be rendered and identify the type of organization, such as professional, civic, religious, community-based, philanthropic or institutional service organization, or social club or foundation; and

(ii) state whether the corporation will have members in addition to directors and officers.

Management structure is flexible but may follow that of a for profit corporation; quorum, however, for transaction of business must be not less than one-third of the members of the governing body.

The Puerto Rico Secretary of Justice has standing to file derivative actions against directors and members of a non-profit corporation.

### **(13) Subchapter N Corporations**

Certain corporations and partnerships qualify as Subchapter N Corporation, which are the Puerto Rico equivalent of U.S.S. Corporations. Subchapter N Corporations are limited to 35 shareholders or members, must be organized under Puerto Rico law, or be organized under U.S. state or District of Columbia law and be engaged exclusively in trade of business in Puerto Rico. Tax exempt companies and capital investment funds are not eligible. See Chapter VI (2)(iv), *infra*, as to special tax treatment of N Corporation shareholders.

### **(14) Foreign Corporations**

In order to do business in Puerto Rico, a corporation not organized under the laws of Puerto Rico must pay a fee of \$100 and file a certified copy of its articles of incorporation, together with a certificate stating the name and address of its registered agent in Puerto Rico, the amount of its assets and the proposed business it plans to conduct in Puerto Rico. Any changes in the articles of incorporation, including mergers or consolidations, must be filed with the Corporate Division within 30 days of the amendment or merger.

A foreign corporation is not considered to be doing business in Puerto Rico if (a) it files, defends against or settles a judicial proceeding in Puerto Rico; (b) it conducts directors or shareholders meetings, or activities related to internal corporate matters in Puerto Rico; (c) it maintains bank accounts in Puerto Rico; (d) it maintains offices for the transfer, cancellation or recording of securities owned by the corporation, or maintains fiduciaries or depositories with respect to such securities in Puerto Rico; (e) it sells merchandise through independent contractors; (f) it obtains business orders by mail or through agents or employees or in any other manner if these orders are accepted outside of Puerto Rico and the products are shipped from outside of Puerto Rico; (g) it creates or acquires debts, mortgages or guarantees it creates, as a borrower or lender, or acquires evidences of debt, mortgages or other liens on real or personal property located in Puerto Rico; (h) it secures or collects debts or forecloses on mortgages or guarantees; (i) it holds title to real and personal property in Puerto Rico; or (j) it conducts an isolated business act in Puerto Rico which is completed within a term of 30 days and is not one of a series of acts of similar nature.

A foreign corporation conducting business in Puerto Rico without having qualified, may not file a judicial action or other proceeding in Puerto Rico.

## **B. Limited Liability Companies**

### **(1) Introduction**

Limited liability companies (“LLCs”) are authorized by a 2004 Statute. As an alternative, corporations engaged in certain specified activities may qualify as “special partnerships” and be entitled to certain tax benefits and avoid tax at the corporate level. See Special Partnerships below under “Partnerships”.

### **(2) Organization**

One or more persons must execute the LLC’s Certificate of Formation and file it with the Puerto Rico Secretary of State. The Certificate must state the LLC’s name, address of its registered office and name and address of its resident agent for service of process, as well as other desired provisions. The Certificate of Formation may be amended by filing a Certificate of Amendment with the Secretary. The LLC’s name must include the words “Limited Liability Company”, “Compañía de Responsabilidad Limitada”, or “C.R.L.” or the designation “LLC” or

“CRL”. The name cannot duplicate or imitate any other LLC, corporate or other entity’s name on file or reserved with the Secretary of State unless written consent is obtained from the other registrant.

If the LLC is to avoid taxation at the LLC level, it must meet certain rules including number of shareholders; residence of shareholders in Puerto Rico; organization in Puerto Rico (or in the U.S. if business is exclusively in Puerto Rico); shareholders limited to individuals, estates or certain trusts; shareholders cannot be foreign non-residents; may have only one class of stock or membership; financial institutions and investment companies are excluded as are certain other companies. All shareholders must consent to election to be treated as a “corporation of individuals” and an election form must be filed with the Secretary of the Treasury with the fee prescribed by Treasury regulations. Special rules apply to companies with fiscal years not ending on December 31.

**(3) Purpose**

An LLC may engage in any lawful business.

**(4) Principal Office and Agent**

Each LLC must maintain a registered office and a resident agent for service of process in Puerto Rico.

**(5) LLC Agreement**

The LLC Agreement (“Agreement”) is separate from the Certificate of Formation, would normally be prepared by or at the request of the persons organizing the LLC and need not be filed with the Secretary of State. The Agreement sets out the duties of the LLC to its managers and members, and duties of these to the LLC and to each other, as well as the management structure of the LLC, the rights of the managers and members, and their respective shares of interest in the LLC profits and losses. The Agreement may be interpreted or enforced in the Court of First Instance.

**(6) Limited Liability**

Unless otherwise provided in the Agreement, no manager or member is personally liable for the LLC's obligations solely by reason of being a manager or member of the LLC. Managers and members are protected by good faith reliance on the LLC's records, and upon information presented to the LLC by any of its managers, members, officers, committees or employees, or by other person as to matters the manager or member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the LLC.

**(7) Merger and Consolidation**

An LLC may merge or consolidate with one or more domestic or foreign LLCs or other business entity following the procedures set forth for corporate mergers or consolidations in the General Corporation Law.

**(8) Dissolution and Winding-Up**

Dissolution and winding up of an LLC is accomplished following procedures established in General Corporation Law. The Court of First Instance may order the dissolution and winding up of an LLC upon petition by a manager or member of the LLC should the court determine that it is not reasonably possible to continue the affairs of the LLC.

**(9) Foreign LLC Qualifications**

A foreign LLC may register in Puerto Rico by petition signed by an authorized person following the procedures specified in General Corporation Law and when registered shall have same powers as a domestic LLC, provided that a foreign LLC's internal affairs and the liability of its managers and members shall continue to be governed by laws of the jurisdiction where the LLC is organized.

## **C. Partnerships**

### **(1) In General**

With certain exceptions, partnerships in Puerto Rico are governed by civil law rather than common law principles. A Puerto Rico partnership is a juridical entity separate from its partners. With the exception of limited liability partnerships and special partnerships, both discussed below, partnerships and their partners are subject to tax at the partnership level and again at the partner level to the extent of distributions made.

### **(2) Formal Requirements**

Partnership agreements (except those for limited liability partnerships and special partnerships) need not comply with any statutory formalities and need not be recorded in the Department of State. However, a partnership owning real property must have its partnership agreement incorporated into a public deed which is a formal document prepared by a notary public and in which the notary participates. Also, mercantile partnerships and limited partners are required to record their partnership agreements in the Mercantile Registry. Failure to record eliminates the protection of the partnership contract as to third-party claims. The recording fee in the Mercantile Registry is \$1.00 per \$1,000 of capital, up to \$10,000 and 50¢ per \$1,000 above \$10,000.

The Mercantile Registry only acts as a registry. It has no supervisory duties with respect to partnerships. There is a Mercantile Registry in each registry of Property and recording must be effected in the Registry located in the municipality where the principal office of the business is located.

### **(3) Liabilities of Partnerships and Partners**

Except for limited liability partnerships, second tier partners of limited partnerships and special partnerships, the liability of the individual partners is unlimited and joint with respect to losses, damages, disbursements and obligations. Management of the partnership is governed by the partnership agreement. A partner acting within the apparent scope of his authority under the partnership agreement can bind the partnership. Thus, the partnership is liable to a third party for the authorized acts of its partners.

**(4) Limited Liability Partnerships**

These partnerships are supervised by the Secretary of State, Corporate Division. They may be formed by two or more natural persons for any lawful purpose, including professional services, pursuant to a deed of constitution of partnership (if a Puerto Rico partnership) which must be filed with the Secretary. The name must contain the words “limited liability partnership” (sociedad de responsabilidad limitada) or “LLP”, “L.L.P.”, “SRL” or “S.R.L.”.

A partner is not liable for obligations of the partnership or for negligent or unlawful acts of another partner or employee not supervised by him, provided he had no prior knowledge of such acts.

A foreign limited partnership must qualify with the Secretary to do business in Puerto Rico.

**(5) Limited Partnerships (“Sociedades en Comandita”)**

Limited partnerships have two classes of partners. The first class is subject to unlimited and joint liability for partnership debts and the second class has no responsibility for debts and losses, except as to the amount of capital they have subscribed. Limited partnerships must include in their name the names of one or more of the first class of partners, and also the words “and company” (“y Cía.”) unless all of the first class of partners are named. The firm name must also conclude with the words “Sociedad en Comandita” (abbreviated as “S. en C.”) or “Limited Partnership.” Management of a limited partnership rests in the hands of the first class of partners and the rights of the second class of partners are limited as provided in the partnership agreement.

**(6) Special Partnerships**

Special Partnerships are not subject to tax at the partnership level and, in addition, its partners enjoy limited liability. However, the partners are taxed annually on their distributive shares of the net income of the partnership. To be eligible for special partnership status, a business must derive at least 70% of its gross income from Puerto Rico sources, except when the business conducted is the production of feature films. Also, special partnerships must derive at least 70% of their income from one or more of the following activities: tourism, agriculture, construction, land development, rehabilitation of buildings and structures, sale or rental of buildings or structures, film production, manufacturing which generates substantial employment and exporting of goods or

services to foreign countries. If they meet the above conditions, a corporation and its shareholders may also qualify for special partnership treatment. Special partnership status is not automatic, it must be elected by the entity.

**D. Sole Proprietorship**

The term “sole proprietorship” refers to individuals who do not elect to do business as corporations, limited liability companies or partnerships. The business income of these persons is taxed at individual tax rates and their liability for debts and obligations of the business is unlimited. Businesses of this type are required to register in the Compulsory Business Registry which is discussed below.

**E. Joint Ventures**

Puerto Rico has no special statute governing joint ventures. Unless they are incorporated, these entities are treated as partnerships.

**F. Compulsory Business Registry**

Any business, including a sole proprietorship, doing business in Puerto Rico must register in the Compulsory Business Registry by July 15 of each year. Registration consists of filing certain statistical information required by the Puerto Rico Trade and Export Company\*, including type of business, gross sales for the preceding year and an NAIC classification. Registration can be on the internet. Failure to register can result in a fine not exceeding \$5,000. Forms and information are available from the Puerto Rico Trade and Export Company.

**G. Alternatives**

**(1) Independent Distributors and Sales Representatives**

A company may choose to sell its products and services in Puerto Rico using an independent distributor. The distributor will normally maintain a stock of inventory, establish terms of sale and sign sales contracts, deliver goods sold, assume any credit risk and be responsible for establishing a market for the principal’s products in Puerto Rico. This will not require that the principal register to do business in Puerto Rico and product sales will be made to the distributor

outside of Puerto Rico thus avoiding Puerto Rico income tax. This course of action could, however, have serious consequences and should be fully explored before entering into such a relationship. The Puerto Rico Dealers Act prohibits termination, impairment or refusal to renew a distributor's contract except for just cause and establishes damages for unjust termination.

Similar statutory provisions as to unjust termination, impairment or refusal to renew apply to a relationship with an independent sales representative. A sales representative works on commission and does not assume any inventory obligation or credit risk or sign sales contracts or deliver goods, but only markets the product and puts the buyer in touch with the principal. Once again the principal need not register to do business in Puerto Rico and is not subject to Puerto Rico taxes, so long as the only activities in Puerto Rico are conducted by the sales representative and are limited to arranging sales and submitting purchase orders for approval outside of Puerto Rico.

**(2) Employment of Salespersons**

A third alternative would be to employ salespersons in Puerto Rico. This alternative avoids registration in Puerto Rico and Puerto Rico taxes on sales, but subjects the principal to Puerto Rico employment laws and taxes.

**(3) Branch Office**

Establishment of a branch office in Puerto Rico requires registration to do business, subjects the company to Puerto Rico taxes on all Puerto Rico source income and requires compliance with all Puerto Rico laws pertaining to employees.

**(4) Licensing and Franchising**

There is no specific statutory regulation of franchising or licensing. Companies are free to enter into license or franchise agreements subject only to Federal Trade Commission Franchising Regulations (16 C.F.R. 4361, et seq.) and to tort provisions of the Puerto Rico Civil Code.

## V. TRADE REGULATIONS

### A. **Federal Antitrust Law**

The antitrust laws of the U.S., which apply in Puerto Rico, are primarily reflected in five federal statutes: the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, and the Hart-Scott-Rodino Act.

#### (1) **The Sherman Antitrust Act of 1890**

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

#### (2) **The Clayton Act of 1914**

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

#### (3) **The Robinson-Patman Act of 1936**

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

**(4) The Federal Trade Commission Act**

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

**(5) The Hart-Scott-Rodino Antitrust Improvements Act of 1976**

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

**(6) Enforcement**

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

**B. Regulation of International Trade and Investment**

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

**(1) Restrictions on Foreign Investment**

Under a statutory provision commonly referred to as the Exon-Florio Amendment (Section 721 of Title VII of the Defense Production Act of 1950, as added by Section 5021 of the Omnibus Trade and Competitiveness Act of 1988), the President has broad authority to investigate and prohibit any merger, acquisition or takeover by or with foreign persons which could result in

foreign control of persons engaged in interstate commerce if the President determines that such merger, acquisition or takeover constitutes a threat to the national security of the U.S. Congress has indicated that the term “national security” is to be interpreted broadly and that the application of the Exon-Florio Amendment should not be limited to any particular industry.

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

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

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

security agreement” approved by the Department of Defense and designed to preclude the disclosure of classified information to the foreign owner or other foreign interests.

**(2) Reporting Requirements for Foreign Direct Investment**

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

**(3) The International Investment and Trade in Services Survey Act**

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

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

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

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

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

#### **(4) The Agricultural Foreign Investment Disclosure Act of 1978**

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

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

## **(5) Export Controls**

In general, U.S. export controls are more stringent and restrict a wider array of items than the export controls of most other countries. (See the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401-2420 and the regulations promulgated thereunder, 15 C.F.R. 730-799). Except for exports to U.S. territories and possessions, and in most cases, Canada, all exports from the U.S. are subject to an export “license”. A export license is an authorization which allows the export of particular goods or technical information. Two basic types of licenses exist, general licenses and individual validated licenses.

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

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

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

## **(6) Foreign Trade Zones**

Foreign trade zones are areas in or adjacent to ports of entry which are treated as outside the customs territory of the U.S. In order to expedite and encourage trade, goods admitted into a foreign trade zone are generally not subject to the customs laws of the U.S. until the goods are ready to be imported into the U.S. or exported.

These foreign trade zones are isolated, enclosed and policed areas which contain facilities for the handling, storing, manufacturing, exhibiting and reshipment of merchandise. Foreign trade zones are created pursuant to the Foreign Trade Zones Act (19 U.S.C. 81a-u) and are operated as public utilities under the supervision of the Foreign Trade Zones Board. Under the Foreign Trade Zones Act, the Board is authorized to grant to public or private corporations the privilege of establishing a zone. Regulations covering the establishment and operation of foreign trade zones are issued by the Foreign Trade Zones Board, while U.S. Customs Service regulations cover the customs requirements applicable to the entry of goods into and the removal of goods from these zones.

**(7) Anti-dumping Law**

The U.S. anti-dumping law (19 U.S.C. 1671-1677) provides that if a foreign manufacturer sells goods in the U.S. at less than fair value and such sales cause or threaten material injury to a U.S. industry, or materially retard the establishment of a U.S. industry, an additional duty in an amount equal to the “dumping margin” is to be imposed upon the imports of that product from the foreign country where such goods originated. Under the statute, sales are deemed to be made at less than fair value if they are sold at a price which is less than their “foreign market value” (which generally is equivalent to the amount charged for the goods in the home market). The dumping margin is equal to the amount by which the foreign market value exceeds the U.S. price.

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

**(8) Trade Promotion Authority**

The Trade Act of 2002 granted the president Trade Promotion Authority, which makes it easier for the U.S. to enter into free trade agreements. As such, Congress must now vote to accept or reject any trade agreements negotiated by the president in their entirety without the power to amend them. Trade Promotion Authority also requires the President to consult Congress regularly on matters of trade policy, and to review submissions from the public while negotiating trade agreements. This "fast-track" authority had been in place for twenty years after it was first

granted in 1974, but for the eight years leading up to passage of the Act the authority had expired. Since passage of the Act, the U.S. has signed free trade agreements with Chile and Singapore.

**(9) Omnibus Trade and Competitiveness Act of 1988**

The Act seeks to increase market access for U.S. exports by reducing barriers to trade and by taking actions against anti-competitive and trade-distorting practices. Title IA, Part 1 extends the "fast-track" negotiating authority of the President and gives him the power to alter existing import duties or to impose new ones. Title IB provides for U.S. ascension to the International Convention on the Harmonized Commodity Description and Coding System. The USTR is required, under Title IC, Part 1, to "take appropriate action to eliminate any foreign act, policy, or practice ...that is unreasonable or discriminatory and burdens or restricts U.S. commerce." Title IC, Part 2 allows downstream producers to petition for antidumping measures and creates new standards that can be considered when assessing the threat of material injury for antidumping cases. Under Title ID, Part 1, the President is required to take "appropriate action" to help an affected domestic industry to adjust to increased imports that cause serious injury (or the threat thereof).

**(10) 2002 Bioterrorism Act**

Under 21 U.S.C. § 350d(a), any facility engaged in "manufacturing, processing, packing, or holding food for consumption in the United States" must be registered with the Secretary of Health and Human Services. Registration requirements apply to both foreign and domestic facilities, and must be complied with as of December 12, 2003. For purposes of the Act, the term "facility" does not include "farms; restaurants; other retail food establishments; nonprofit food establishments in which food is prepared for or served directly to the consumer; or fishing vessels." See 21 U.S.C. § 350d(b)(1). Further, under 21 U.S.C. § 350d(b)(3) the term "foreign facility" applies only if food from such facility is exported to the United States without further processing or packaging outside the United States. Such further processing or packaging does not include labeling or similar activities of a *de minimis* nature.

Hence, a facility abroad that engages in manufacturing, processing, packing, or holding food for direct consumption in the United States must be registered. This entails submitting a registration to the Secretary of Health and Human Services that contains the name and address of each facility at which, and all trade names under which, the registrant conducts business. Upon receipt of a completed registration, under 21 U.S.C. § 350d(a)(3), the Secretary of Health and Human Services shall notify the registrant of the receipt of such registration and assign a registration number to each registered facility.

**C. Local Law Considerations**

**(1) Puerto Rico Anti-trust Law**

Federal anti-trust laws and other statutes regulating trade apply in Puerto Rico. In addition, Puerto Rico has its own anti-trust laws which closely track the federal statutes. Local courts are often guided by federal judicial precedents in this area, but are not bound by them.

**(2) Franchises**

No specific statutory provisions. Federal Trade Commission Franchise Regulations apply in Puerto Rico. (15 C.F.R. 4361 et seq.)

**(3) Consumer Protection**

**(a)** Puerto Rico Department of Consumer Affairs\* has its primary purpose to defend and implement the rights of the consumer, restrain inflation and oversee prices on consumer goods and services. The Department has the power to impose administrative fines, issue subpoenas, and represent the public consumer.

There are statutes and regulations covering false advertising, warranties on household goods (manufacturer's warranty must apply to products sold in Puerto Rico), service contracts for household goods and consumer leases of personal property and imposing duties on credit reporting agencies and financial institutions. There is also a statute protecting buyers of motor vehicles with respect to warranties, warranty service and availability of spare parts. The law also

requires vehicle manufacturers, authorized dealers and all sellers to arrange for adequate vehicle servicing.

(b) A secured creditor repossessing consumer goods must give prior notice of repossession and must hold repossessed property for 30 days within which the buyer can pay the total amount due and reclaim the property.

(c) Although Puerto Rico has no “plain language” statute, certain contracts, including insurance policies and retail installment sales, must be available for signature in Spanish.

(d) In order to protect citizens from actions taken by government agencies or employees, Puerto Rico has a “Citizens’ Investigation Official” (Ombudsman)\* with broad powers to investigate citizen complaints as to acts of government agencies or employees that include those which are contrary to the law, unreasonable, unjust, arbitrary, offensive or discriminatory. The Ombudsman has subpoena power and the power to impose fines.

## **VI. TAXATION**

### **A. Federal Taxation**

Puerto Rico is considered a foreign country for U.S. tax purposes; thus, the U.S. Internal Revenue Code (“IRC”) generally does not apply to Puerto Rico operations. However, U.S. citizens residing in Puerto Rico, including those born in Puerto Rico, although generally exempted by the IRC from income taxes on Puerto Rico source income, are subject to U.S. tax on most U.S. and foreign source income.

### **B. Puerto Rico Tax Laws**

#### **(1) Income Tax**

The Puerto Rico Income Tax Act is based on the IRC.

All natural and juridical persons having Puerto Rico source income are subject to Puerto Rico income tax on that income, unless expressly exempted. Resident individuals (those domiciled in Puerto Rico) are taxed on their worldwide income. Non-residents are taxed only on Puerto Rico source income and income effectively connected with the conduct of a trade or business

in Puerto Rico (“ECI”). Normally non Puerto Rico source income is not ECI. However, such income is considered ECI if the non-resident corporation or partnership has an office or branch in Puerto Rico and the foreign source income is attributable to the Puerto Rico office and consists of (1) royalties on intangibles derived from the active conduct of such Puerto Rico business, (2) dividends, interest or gain or loss from sale of securities in a banking or finance business or income received by the business from trading securities for its own account, and (3) income received from the sale of goods outside of Puerto Rico through the Puerto Rico office (unless the goods are sold for use, consumption or disposition outside of Puerto Rico). Resident foreign corporations or partnerships, that is, those not organized in Puerto Rico but engaged in trade or business here, are taxed on all ECI.

**(2) Income Tax Rates**

**(a) Individuals, Trust and Estates**

<b>Taxable Income:</b>	<b>Tax Rate:</b>
\$17,000 or less	7%
Portion over \$17,000 but not over \$30,000	14%
Portion over \$30,000 but not over \$50,000	25%
Portion over \$50,000	33%

Taxable income brackets are reduced by 50% in the case of married taxpayers filing separately. A 5% add-on tax applies to income in excess of \$75,000 (\$37,500 in the case of married taxpayers filing separate returns). The tax is limited to an amount that will result in a flat tax, at the maximum rate in effect, on the taxpayer’s entire taxable income increased by his personal and dependent exemptions. Tax on individuals is the higher of regular tax or alternate base tax (“ABT”). ABT applies only to adjusted gross incomes (“AGI”) over \$75,000. ABT rates are as follows:

<b>Tax Bracket</b>	<b>Rate</b>
\$75,000 - \$125,000	10%
\$125,000 - \$175,000	15%

over \$175,000	20%
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AGI levels are reduced by 50% in the case of married taxpayers filing separately.

**Net long term capital gains** are subject to a tax rate of 12.5%, but the taxpayer may elect the regular rate if lower.

**Alternate special taxes:**

Dividend and profit distributions by Puerto Rico corporations and partnerships and by foreign corporations and partnerships whose Puerto Rico source income or ECI is at least 80% of the gross income of such foreign corporation or partnership for the prior three taxable years, are taxed at a 10% tax rate.

An alternate tax of 17% applies to non-exempt interest credited on interest bearing deposits (or those registered with a brokerage house as nominee) in certain local financial institutions or that is paid or distributed by an individual retirement account.

An alternate tax of 10% is imposed on non-exempt interest on obligations issued by Puerto Rico corporations or partnerships or by foreign corporations or partnerships whose Puerto Rico source income or ECI is at least 80% of the gross income of such foreign corporation or partnership for the prior three taxable years. This 10% alternate tax also applies to non-exempt interest on certain residential Puerto Rico mortgages.

The individual may elect to have normal tax rates apply if such tax rates turn out to be more beneficial than the alternate tax rates.

**Non-resident U.S. citizens** are taxed at the same rates as residents on their Puerto Rico source income. However, certain items of Puerto Rico source income are subject to a 20% withholding tax, except that on sales of Puerto Rico property the withholding rate is 12.5%.

See Tax Incentives, *infra*, for further exemptions and benefits.

**(b) Corporations and Partnerships**

For tax purposes, Puerto Rico treats partnerships the same as corporations and partners are not taxed on undistributed partnership profits. For tax treatment of special partnerships

see Special Partnership heading under Business Entities above. Corporations and partnerships are subject to tax rate of 20% on net income. For foreign corporations, the tax applies to net ECI. Also, to the extent the corporation's net income exceeds \$25,000, it will be subject to additional income taxes at the following rates:

Income Subject to Additional Taxes	Additional Tax Rate
\$ 25,001 - \$ 75,000	5%
75,001 - 125,000	\$ 3,750 plus 15% of the excess over \$ 75,000
125,001 - 175,000	\$11,250 plus 16% of the excess over \$125,000
175,001 - 225,000	\$19,250 plus 17% of the excess over \$175,000
225,001 - 275,000	\$27,750 plus 18% of the excess over \$225,000
Over 275,000	\$36,750 plus 19% of the excess over \$275,000

An additional 5% tax applies to net ECI-PR in excess of \$500,000, until the total taxable income is taxed at the maximum rate of 39%, which is at \$905,000.

Unless otherwise exempt all corporations and partnerships are also subject to an alternate minimum tax ("AMT") equal to 22% of Alternative Minimum Taxable Income ("AMTI"). The tax liability is the greater of AMT or the regular tax liability. AMTI is calculated by making various adjustments to the regular taxable income, which have the effect of accelerating recognition of income.

Net long term capital gains are taxed at 20%. See Section (2)(i) above, heading Alternate special taxes, with respect to 10% alternate tax on corporations and partnerships.

(c) **Foreign corporations and partnerships** engaged in trade of business in Puerto Rico are taxed on net ECI at the same rates as domestic corporations. If these companies derive less than 80% of their gross income from Puerto Rico sources for the three-year period ending with the taxable year, they are also subject to a 10% branch profits tax. This tax is imposed on after-tax earnings which are not reinvested (the dividend-equivalent amount) of the company's Puerto Rico branch. Grantees of Puerto Rico tax exemption grants as well as dividends received from exempt companies and from Puerto Rico corporations or foreign corporations engaged in trade or

business in Puerto Rico, to the extent they constitute Puerto Rico source income, are exempt from the branch profits tax.

(d) **Subchapter N Corporations** are not taxed at the corporation level, however, their shareholders are taxed on their distributive share of the corporate net income..

(3) **Municipal Taxes; Property Taxes**

(a) **A Municipal License Tax** (“patente”) is imposed on the gross receipts of the business conducted in a municipality. The tax rate cannot exceed 1.5% for a financial business and .05% in the case of all other types of businesses. A foreign tax credit is available in the case of financial businesses. Other credits and exemptions are available. A 5% discount is granted if the tax is paid with the timely filing of the Volume of Business Declaration.

(b) **Construction Tax** on new construction and demolition is imposed by some municipalities based on the cost of the work. Tax rates vary depending on the municipal ordinance pursuant to which the construction tax is imposed.

(c) **Property Tax** on real and personal property is payable to the Municipal Revenue Collection Center (“CRIM”).\* There are 78 municipalities and municipal property tax rates vary, so that total combined rate ranges from \$5.80 to \$8.23 per \$100 of reported value of personal property and \$7.80 to \$10.23 per \$100 of assessed value of real property for fiscal year 2006-2007. Personal property is self-assessed by taxpayer. Real property is assessed by CRIM based on 1957/58 fiscal year values, well below present market values.

(d) **Municipal Sales and Use Tax**

A municipal sales and use tax of 1.5% is imposed by most municipalities on the retail sale, use, consumption or storage of a taxable item in a particular municipality. The

municipal sales tax on taxable items must be paid by the consumer at the time of sale. Taxable items include tangible personal property, taxable services, admission fees, and bundled transactions.

**(4) Franchise, Sales, Use and Excise Taxes**

**(a) Franchise Tax**

Puerto Rico does not have a franchise tax.

**(b) Sales and Use Tax**

A general sales and use tax of 5.5% is imposed on the retail sale, use, consumption or storage of a taxable item in Puerto Rico. The general sales tax on taxable items must be paid by the consumer at the time of sale. Taxable items include tangible personal property, taxable services, admission fees, and bundled transactions.

**(c) Excise Tax**

Special excise taxes apply upon the introduction, sale, consumption, use, transfer or acquisition of cement, cigarettes, petroleum products, vehicles, alcoholic beverages and on plastic products manufactured outside Puerto Rico that do not comply with certain specifications. Licenses are required for the sale of cigarettes, vehicles and parts, gasoline, jewelry, cement, and guns and ammunition.

**(5) Tax Incentives and Exemptions**

**(a) Agriculture**

Qualifying agricultural activities are granted 90% income tax exemption, 100% municipal and Puerto Rico property tax and license tax exemption, and excise tax exemption. An investor in an agricultural business is entitled to cash incentives from the government. Qualifying agricultural businesses include cultivation of products for human and animal consumption, certain animal breeding, commercial fishing, ornamental plant and flower cultivation and agro-industrial businesses for cattle and livestock, including milk products.

**(b) Capital Investment Funds**

A tax credit is available to the fund of up to 25% of cash received for private proprietary interests; gain on sale of these interests is taxed at a 10% rate. Operations qualifying for investment may include, among others, manufacturing, services, tourism, agriculture, fishing industries and research and development. Total aggregate authorized investment is limited to \$50,000,000 per calendar year, with each fund generally limited to \$10,000,000 per calendar year.

**(c) Feature Films**

Income derived from a licensed film company as eligible filming activities or infrastructure projects is subject to a 7% income tax. Dividend and benefits distributed by such companies are tax exempt. Also available are: 90% municipal tax exemption, 100% excise tax exemption on certain articles, 40% tax investor tax credit for payments made to Puerto Rico residents for film projects up to 50% of the cash investment in the project, and the investor is entitled to a 40% tax credit on any cash contribution to the business or 20% of the budget amount, whichever is less.

**(d) International Banking**

Qualifying banking entities may be eligible for exemption from income, personal and real property and municipal license taxes. In addition, if they qualify, dividends and profits distributed to non-residents would also be tax exempt..

**(e) International Insurers** and qualified holding companies thereof are entitled to 100% income tax exemption as well as exemption from property and municipal license taxes. Their dividend and profit distributions are also exempt.

**(f) Solid Waste Disposal Facilities**

An income tax credit is available for investments made in solid waste disposal or treatment facilities equal to 50% of the capital invested. Favorable treatment is also available for any loss upon sale of the facilities..

**(g) Tax Incentives Act**

Manufacturing and service industries that meet certain requirements are entitled to a 10 to 25 year partial exemption from property and municipal license taxes and may qualify for a reduced flat income tax rate of 2% to 7% (0% in the case of “Core Pioneer Products”). “Service Units” may include investment banking and other financial services, insurance companies, advertising agencies, auditing firms, computer services, distribution operations and laboratories. Services must be rendered or sales made in Puerto Rico exclusively to persons located outside of Puerto Rico and at least 80% of their employees must be residents of Puerto Rico. Dividend and profit distributions by these exempt industries are currently 100% exempt from taxation. Certain purchasers of an exempt business scheduled to close who agree to continue its operations are also entitled to certain tax credits or special tax deductions. A qualified company may also receive a special deduction for certain research and development expenses.

**(h) Tourism Development Incentives**

A 90% to 100% ten year income tax exemption is available to businesses investing in tourism development activities in Puerto Rico. These businesses also qualify for certain other tax exemptions, including property taxes, municipal taxes and excise taxes, and a tourism investment credit of up to 50% of their eligible investments as well as certain credits against income tax when the sale or disposition of the business results in a loss.

## VII. LABOR AND EMPLOYMENT

### A. Federal Considerations

#### (1) **Immigration**

With the globalization of world markets, employers located in the U.S. (including Puerto Rico) often seek to employ foreign nationals. A variety of permanent and temporary work visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the U.S. (Puerto Rico) employer and the foreign employee. U.S. permanent residents are authorized to stay and work for indefinite terms in the U.S. where and for whom they wish. Temporary visa holders have authorization to remain in the U.S. for a temporary time and often the employment authorization is limited to a specific employer, job, and even specific work sites.

#### (a) **Permanent Residency (the “green card”)**

Permanent residency is most commonly based on family relationships, such as marriage to a U.S. citizen, or offer of employment. Permanent residence gained through employment may involve a multi phase, time-consuming process that can take several years. Therefore, employers considering the permanent residence avenue for an alien employee should ascertain the requirements for that immigration filing prior to bringing the employee to the U.S. and/or extending an indefinite term employment offer.

#### (b) **Temporary Visas**

The following are the most commonly used temporary visas:

#### (i) **E-1 Treaty Trader and E-2 Treaty Investor Visas**

These are temporary visas for persons in managerial, executive or essential skills capacities who individually qualify for or are employed by companies that engage in substantial trade with or investment in the U.S. E visas are commonly used to transfer managers, executives or technicians with specialized knowledge

about the proprietary processes or practices of a foreign company to assist the company at its U.S. location. Generally, E visa holders receive a five-year visa stamp but only one-year entries at any time. To qualify for this visa, a treaty of commerce or investment must exist between the U.S. and the country of nationality of the foreign company or investor.

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

H-B visas are for persons in professional and specialty occupations that require at least a U.S. bachelor's degree or its equivalent. Examples of such professionals are engineers, computer professionals, architects, accountants, and, on occasion, business persons. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer and job specific. H-1A visas are for registered nurses only. H-1B visas are subject to annual numerical caps that may be reached well before the fiscal year ends. Therefore, before an employer considers this option, it should ascertain the availability of these visas.

**(iii) L-1 Intra company Transferee Visas**

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

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

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

**(v) TN Professionals**

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify and fill specific defined professional positions can qualify for TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN holders may work in the U.S. indefinitely although they are granted one-year increments of stay for specific employers and other employment is not allowed without prior Citizenship and Immigration Services (CIS) approval. Particularly with regard to Canadians, paperwork required for filing these requests is minimal. TN professionals, however, must follow processes very similar to those required of H-1B professionals.

**(vi) F-1 Academic Student Visas Including Practical Training**

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

**(vii) J Exchange Visitor Visas**

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

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

O-1 and O-2 visas are for persons who have extraordinary abilities in the sciences, arts, education, business or athletics and sustained national or international acclaim. Also included in this category are those persons who assist in such O-1 artistic or athletic performances.

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

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

**(x) There are a number of other non-immigrant visas categories that may apply to specific desired entries.**

When planning to bring foreign personnel to the U.S., U.S. employers should allow several months for processing by the CIS, as well as the Department of State and Department of Labor. Furthermore, employers should be aware that

certain corporate changes, including stock or asset sales, job position restructuring, and changes in job duties and worksites, may dramatically affect (if not invalidate) the employment authorization of foreign employees. Also, employees who continue working in the U.S. beyond the dated authorized stay under the applicable visa category may be subject to subsequent bars to U.S. admission. Employers also become liable for employment of unauthorized alien workers.

**(2) Labor and Employment Statutes**

**(a) Age Discrimination in Employment Act (“ADEA”)**

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

**(b) Americans with Disabilities Act (“ADA”)**

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

**(c) Employee Polygraph Protection Act (“EPPA”)**

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

**(d) Equal Pay Act (“EPA”)**

The EPA was an amendment to the Fair Labor Standards Act and is designed to promote equal pay for men and women who do the same jobs. Therefore, if the minimum wage provision of the FLSA is applicable to one’s business, then the EPA is applicable as well.

**(e) Fair Labor Standards Act (“FLSA”)**

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

**(f) Family and Medical Leave Act (“FMLA”)**

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

**(g) Federal Contractors**

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

**(h) Other Federal Regulations**

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

**(i) National Labor Relations Act and Labor Management Reporting and Disclosure Act**

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

**(j) Occupational Safety and Health Act (“OSHA”)**

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

**(k) Title VII**

Title VII is the broad civil rights statute that forbids discrimination based on race, color, religion, sex or national origin. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

**(l) Worker Adjustment Retraining and Notification Act (“WARN”)**

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

**(m) Immigration Reform and Control Act (“IRCA”)**

IRCA requires that employers verify employment authorization for all employees hired on or after November 6, 1991. Employers are subject to significant fines and

penalties for failure to comply with documentation requirements under IRCA, as well as for hiring unauthorized workers or discriminating against persons who appear or sound foreign.

**(3) Employee Benefits**

**(a) Employee Retirement Income Security Act of 1974 (“ERISA”)**

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

**(b) Consolidated Omnibus Budget Reconciliation Act (“COBRA”)**

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

**(c) Health Insurance Portability and Accountability Act (“HIPAA”)**

HIPAA provides standards for electronic health transactions, national identifiers for health care providers and standards for the privacy and security of health data. HIPAA also provides portability rights to employees that change jobs. This is meant to make it easier for new or existing employees to continue health coverage. HIPAA regulations also contain specific provisions protecting employees against exclusions in health plans, for example, allowing

employees who previously declined coverage by a health plan to join it due to changed circumstances and allowing retirees covered by a health plan to add dependents to the plan.

**B. Local Considerations**

In addition to being subject to the federal labor and employment legislation described above, Puerto Rico has its own statutory and regulatory labor rules whose implementation falls primarily to the Puerto Rico Department of Labor\*, supplemented by agencies or bureaus charged with administering arbitration and mediation, chauffeurs' social security, unemployment and disability benefits, occupational safety and health, employment standards, anti-discrimination, accident compensation and labor relations.

**(1) Working Hours**

Regular hours are 8 per day and 40 per week. Overtime for federally covered employees is normally paid at time and one half. Flexible schedules are available in certain cases. Employees are entitled to a one hour meal period with certain reductions permitted. Special rules, including pay at double time, apply to Sundays and certain holidays. Mandatory holidays do not apply to manufacturing businesses. Persons age 14 to 18 may be employed but subject to certain restrictive rules.

**(2) Wages**

Hourly wages may be paid by check, direct deposit or electronic transfer, and must be paid at least every 15 days. U.S. minimum wage applies.

**(3) Employee Benefits**

**(a) Hourly employees** are entitled to paid vacation and sick leave generally 1.25 days and one day per month, respectively.

**(b) Annual Bonus**

Employers are required to pay a mandatory bonus during the period from December 1 to December 15 each year to each employee who works at least 700 hours during the 12 month period commencing October 1 of each calendar year. The bonus payment ranges from 2.75% to 4.5% (increasing to 3% to 6% in December 2008) of total wages up to a maximum wage of \$10,000. The higher rates are applicable to employers with more than 15 employees. Employers who fail to make timely payment are subject to fines up to the full amount of the bonus payable. Certain credits may be available and each employer's aggregate annual bonus need not exceed 15% of his net profit for each year.

**(c) Maternity Leave**

Female employees are generally entitled to an eight-week maternity (including adoption) leave with full pay. Upon return to work, time is allotted during each full time working day for breast feeding.

**(d) Jury Duty and Witness Leaves**

Jury Duty and Witness Leaves with pay are mandatory, up to 15 days for jury duty and, for criminal cases only witnesses are entitled to pay for actual time spent in court. In both cases reinstatement is protected.

**(e) Workers' Accident Compensation**

All employers must obtain workmen compensation insurance from the State Insurance Fund.\* This insurance provides compensation to employees (with certain minor exceptions) for work related accidents or conditions, including occupational diseases. A covered employer is not subject to suits for employment related accidents. The Act protects the employee's right to reinstatement for 12 months after an accident.

**(f) Severance Pay**

An employee hired for an indefinite term who is discharged without just cause is entitled to severance pay. The basis rate of severance pay is two month's salary plus one week's pay for each year of service. Employees who worked for 5 years or more are entitled to additional severance pay up to a maximum of 6 month's pay plus 3 weeks of salary for each year worked. Employees hired for a probationary period are not covered, provided their contract is in writing and probation does not exceed 3 months.

(g) **Federal Statutes** discussed above all apply in Puerto Rico.

## **VIII. ENVIRONMENTAL LAW**

### **A. Federal Considerations (References to "state" include Puerto Rico)**

#### **(1) Resource Conservation and Recovery Act ("RCRA")**

42 U.S.C. 6901, et seq. RCRA's primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. The administration of RCRA has been delegated to a number of states by statute and, therefore, the states regulate most aspects of hazardous waste management within their borders.

By statute, the disposal of hazardous waste is prohibited except in accordance with a permit. Section 7003 of RCRA authorizes the Federal Environmental Protection Agency (the "EPA") to bring suit against any person or entity contributing to the handling, storage, treatment or disposal of a hazardous waste in a manner presenting an imminent and substantial endangerment to health or the environment.

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

(2) **The Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”)**

42 U.S.C. “9601, et. seq. CERCLA, or Superfund as it is commonly called, was enacted in 1980 to provide for the clean-up of abandoned disposal sites. It also provides a vehicle for the EPA to recover for damage to natural resources caused by hazardous substance releases.

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

(a) **“Owners or Operators” of the Contaminated Facility**

A “facility” is virtually any place in which a hazardous substance is found. The current owner or operator is liable, regardless of when the hazardous substance was disposed of at the facility and whether the present owner or operator did anything to contribute to the release.

(b) **“Owners or operators” of the Facility at the Time of Release of the Hazardous Substance**

Any person who contracted or arranged to have hazardous substances taken to, disposed of, or treated at a facility. This category general applies to generators and manufacturers.

(c) **Transporters of Hazardous Substances**

There are limited defenses under Superfund that are narrowly construed. A PRP can escape liability if it can establish that the hazardous substance release was caused solely by an act of war, an act of God, or an act of unrelated third parties. This latter “third party” defense does not apply if the damage from hazardous substances was caused by an employee or agent of the PRP, or a third party acting in connection with a contract with the PRP.

An owner may also escape liability by establishing that he or she had “no reason to know” the facility was contaminated by, among other things, conducting “all appropriate inquiries” into prior uses of the facility before the purchase or operation of the facility. This is also known as the “Innocent Landowner Defense”. When the “no reason to know” exclusion is shown, a contractual relationship does not disqualify the owner or operator from relying on the “third party” defense. The statute also excludes a qualified contiguous property owner from being a “covered person” if he or she did not cause the contamination, is not affiliated with a PRP and cooperates during a cleanup action. In addition, “bona fide” prospective purchasers of contaminated property are protected if they can demonstrate that they made “all appropriate inquiries” and cooperate fully during a cleanup action.

### **(3) The Clean Air Act (“CAA”)**

42 U.S.C. “7401, et seq. The CAA regulates air pollutants under federal standards implemented and enforced by the states. The Act includes programs for acid rain control, stratospheric ozone protection, attaining the national ambient air quality standards (“NAAQS”) and reducing emissions of hazardous air pollutants.

Under the Act, air emissions are regulated through various controls. The EPA has issued NAAQS for six criteria pollutants: sulphur dioxide, particulate matter, nitrogen oxide, carbon monoxide, ozone and lead. The NAAQS are implemented through enforceable source-specific emission limitations and other air quality rules established by the states in implementation plans (“SIP”s), which are designed to “attain” or “maintain” NAAQS.

The CAA distinguishes between “clean” air areas (attainment) and “dirty” air areas (non-attainment) throughout the U.S. New source Review (“NSR”) analysis is required before a new major stationary source is constructed or before an existing major stationary source undertakes a major modification in an attainment or non-attainment area.

The CAA has established New Source Performance Standards (“NSPS”) which are technology-based emission standards for specific industry source categories. These standards are not dependent on the ambient air quality of an area and require new or modified stationary sources subject to a NSPS to employ the best available control technology.

All major and industrial sources that emit Hazardous Air Pollutants (“HAPs”) are required to develop technology based standards known as “maximum achievable control technology” (“MACT”). The definition of major sources for HAPs purposes is one that emits or has the potential to emit, considering controls, 10 tons per year (“tpy”) or more of a Hap or 25 tpy or more of any combination of HAPs. Many MACT standards for specific industries exist, although some are not yet final. Pollutants may be regulated under one or more of these standards.

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

#### **(4) The Clean Water Act (“CWA”)**

33 U.S.C. “1251, et seq. The CWA regulates the discharge of pollutants into all navigable waters. The CWA prohibits the discharge of any pollutant into the water of the U.S. except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit. Permits are issued by either the state under an approved state program or by the EPA if the state program has not been approved. Puerto Rico does not have an approved program. The permit limits are based upon EPA’s effluent limitation regulations.

The CWA effluent limitations for industrial discharges also specify standards for pre-treatment for those who discharge to a publicly owned treatment facility. EPA rules also cover permits for storm water discharges under the NPDES permit program.

### **B. Puerto Rico Law**

#### **(1) Environmental Supervision**

Although, the EPA is charged with enforcement of federal programs in Puerto Rico, it has delegated certain responsibilities to the Environmental Quality Board\* (EQB) which has the power under Puerto Rico Law to develop, enforce and regulate the environmental policy of Puerto Rico. The Puerto Rico Department of Natural and Environmental Resources\* (DNER) is charged

with supervising coastal, mineral and water resources and solid waste and hazardous solid waste reduction. Other Puerto Rico government agencies are charged with regulating the transport of hazardous materials, land use planning, construction and bill boards.

## **IX. INTELLECTUAL PROPERTY**

**A. Copyright and Moral Rights** – This area is governed by both U.S. federal and Puerto Rico law. Title 17 U.S.C.; Title 31 P.R. Laws.

### **(1) In General**

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

### **(2) Copyrightable Works**

Works of authorship that qualify for copyright protection include literary works, musical works (including lyrics), dramatic works, choreographic works, audiovisual works, pictorial, graphic and sculptural works, sound recordings and architectural works. The Copyright Act, as amended, expressly protects computer software as "literary works." All works eligible for copyright protection must meet two specific requirements. First, the work must be fixed in some tangible form; there must be a physical embodiment of the work so that the work can be reproduced or otherwise communicated. Second, the work must be the result of original and independent authorship. The concept of originality does not require that the work entail novelty or ingenuity, concepts of importance to patentability.

### **(3) The Visual Artists Rights Act (“VARA”)**

VARA protects only authors of “visual art” – a class of art narrower than the “pictorial, graphic and sculptural works” that also qualify for copyright protection. “Visual Art” includes paintings, drawings, prints, sculptures, or photographs reproduced for exhibition purposes, existing in a single copy or limited edition of two hundred or fewer copies. The U.S. Congress meant to distinguish works of “visual art” from other media, such as motion pictures or other audio visual works. VARA expressly creates “rights of attribution and integrity.” It grants authors of works of visual art the right to claim authorship of the work, to prevent others from describing an artist as the author of a work of visual art which he or she did not create, and to prevent use of his or her name in association with work he created which has been destroyed, mutilated, or modified by others when that would prejudice the artist's reputation. VARA’s protections do not apply to art reproductions or “works made for hire”.

VARA protection generally applies for the life of the author or, in the case of joint works, for the life of the last surviving author. However, VARA protection can last longer for certain preexisting works. Works created before VARA’s effective date (that is, before June 1, 1991) are protected by VARA for the same length of time as other rights created in the copyright law. Such rights can last many years longer than the life of the artist.

### **(4) Advantages of Copyright Registration**

Copyright protection automatically attaches to a work the moment that the work is created. However, registration of the work with the U.S. Copyright Office provides advantages. A certificate of registration is prima facie evidence of the validity of the copyright, provided registration occurs not later than five (5) years after first publication. With respect to works whose country of origin is the U.S., registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, statutory damages and attorneys’ fees relating to the period prior to registration cannot be recovered in an infringement action. Registration also is a useful means of providing actual notice of copyright ownership to those who search the copyright records.

### **(5) Copyright Registration Application Process**

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

**(6) Copyright Notice**

Until 1989, all publicly distributed copies of works protected by copyright and published by the authority of the copyright owner were required to bear a notice of copyright. Although no longer mandatory, placing a copyright notice on the work remains advantageous. For example, the defense of “innocent infringement” is generally unavailable to an alleged infringer if a copyright notice was placed on the work.

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

**(7) Works Made for Hire**

In a “work made for hire” the employer is presumed to be the author. Authorship is significant because a copyright initially vests in the author. The parties can rebut the presumption of employer authorship by an express written agreement to the contrary. The term “work made for hire” applies to any work created by an employee in the course and scope of employment. To avoid disputes as to whether a work created by an employee was “made for hire,” employers often require execution of a formal employment agreement under which employees expressly agree that the copyright in and to all works created during the term of employment belong to the employer. A similar agreement is also advisable in connection with the engagement of independent contractors to create copyrightable works for a business, but the business owner should be aware that only

certain types of works may be considered “works made for hire” when created by an independent contractor. If the particular matter cannot be a “work made for hire”, the employer should negotiate an agreement for the assignment of the copyright by the independent contractor.

#### **(8) Copyright Protection of Foreign Authors**

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

#### **(9) The Puerto Rico Intellectual Property Act**

Under Puerto Rico law, an author of a literary, scientific, artistic or musical work has the right to benefit from it and exclusive prerogatives to attribute to himself (or retract) its authorship, dispose of the work, authorize its publication and protect its integrity. A creator of a work of art is also entitled to 5% of the increase in value of the work upon resale. Protection of these moral rights is independent from protection of proprietary rights. Moral rights extend for 50 years after the author’s death and protection passes to the author’s successors or heirs. Violation of moral rights entitles the author or successor to request injunctive relief and damages. Actions must be brought within one (1) year of knowledge of the violation, or within three (3) years for resale compensation actions.

**B. Patents** – This area is governed exclusively by federal laws. Title 35, U.S.C.

**(1) In General**

Applications for and issuance of patents are governed exclusively by federal law. Title 35, U.S.C. Ownership of a patent is governed by state law and, as mentioned above a claim of patent infringement raised as a counterclaim in a suit under state law may be decided under state law. One who invents new machine or device or a new manufacturing process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right for a specified time to make, use, import, offer to sell, or sell in the U.S. the patented invention. A valid patent forecloses use of the patented invention by any other party, even if another party independently conceives the identical invention.

A utility patent, which generally governs the functional aspects of a machine, manufacturing process, or composition of matter is enforceable beginning at the issuance of the patent and ending 20 years after the earliest effective U.S. filing date. The patent term is subject to adjustments for certain delays. A design patent, which covers the design or appearance of an article of manufacture, is enforceable for 14 years from the granting date of the patent. A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to 12 months to further develop the invention without filing a regular patent application. Anyone without authority from the patent holder who makes, uses, imports, or sells in the U.S. the patented invention during the life of the patent is considered to “infringe” the patent and may be liable for damages.

**(2) Effect of Foreign Patents**

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

### **(3) Patentability Under Federal Patent Statutes**

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

In addition to being within one of the four classes and being fully disclosed, a utility invention must also be:

- (i) “novel,” in that it was not previously known to or used by others in the U.S. or printed or described in a printed publication anywhere;
- (ii) “non-obvious” to a person having ordinary skill in the relevant art; and,
- (iii) useful,” in that it has utility and actually works.

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

A plant patent may be obtained by anyone developing a new variety of asexually reproduced plant, such as a tree or flower. Some plants may also be protectable with a utility patent or under the Plant Variety Protection Act, administered by the U.S. Department of Agriculture. In order to determine novelty and, hence, patentability of an invention, it is often useful to search the records of the U.S. Patent and Trademark Office. There one may examine all U.S. patents, many foreign patents, and a large number of technical publications. A patent search is customarily performed by a patent attorney or by an individual with similar technical training, sometimes referred to as a patent agent. A patent attorney or patent agent may be asked to render an opinion regarding the patentability of a particular invention. An inventor can then make an informed decision as to whether to proceed with the cost of an actual patent application.

### **(4) Patent Application Process**

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

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

#### **(5) Markings**

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

#### **(6) Rights to Patented Inventions**

Disputes sometimes arise between employers and employees over the rights to inventions made by employees during the course of employment. Because of this, employers often

require employees to execute formal agreements under which each signing employee agrees that all rights to any invention made by the employee during the term of employment will belong to the employer.

**C. Trademarks** – This area is governed by both U.S. federal and Puerto Rico law. Title 15 U.S.C.; Title 10 P.R. Laws.

**(1) In General**

A trademark or service mark is a designation used by a business to identify its goods and services offered and to distinguish them from its goods or services of others. A mark can be a work, a name, a number, a slogan, a symbol, a device, or a combination of any of those. A trade mark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade name refers to a business title or the name of a business; a trademark is used to identify the goods or services offered by the business. Generally, service marks and trademarks receive the same legal treatment.

**(2) Selection of Trademark**

A business should carefully consider the trademark to be used on its goods or services. The level of protection of a trademark against infringement varies with the “strength” of the trademark. “Descriptive” marks are the weakest. A descriptive trademark is a name that describes some characteristic, function, or quality of the goods or services. A “fanciful” mark, the strongest type of mark, is a coined name that has no dictionary definition.

Evaluation should also include consideration of the likelihood of success in obtaining federal and state registrations of the trademark. For example, a trademark that is “merely descriptive” cannot be registered under either federal or Puerto Rico law. Selection of a trademark should be accompanied by a trademark search to determine whether another business is using or intends to use a mark that is the same as or similar to the one desired. The website of the U.S. Patent and Trademark Office ([www.uspto.gov](http://www.uspto.gov)) offers access to federal registration records. The Puerto Rico State Department’s website ([www.estado.gobierno.pr](http://www.estado.gobierno.pr)) also contains some registration

information. Counsel can assist with the search and evaluation process, as well as render an opinion as to registrability of a mark.

Actual and potential trademark conflicts should be avoided, lest the business become involved in an expensive infringement lawsuit. Of even greater concern is the potential loss of the right to use a mark after considerable expenditure in advertising goods or services bearing the mark.

### **(3) Advantages of Trademark Registration**

Under the trademark laws of the U.S. and Puerto Rico, the principal method of establishing rights in a trademark is actual use of the trademark. “Registration” of a trademark is not legally required but can provide certain advantages.

Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant’s exclusive right to use the mark in interstate commerce (which includes Puerto Rico), strengthening the registrant’s position.

After five (5) years of continued use of the mark following federal registration and upon submission of a particular affidavit, the registrant’s exclusive right to use the trademark becomes virtually conclusive. Federal registration may assist in preventing the importation into the U.S. of foreign goods that bear an infringing trademark. There are also other less tangible advantages of registration, such as the goodwill arising out of the implication of government approval of the trademark.

### **(4) Federal Registration Application Process**

Federal trademark registration requires that a trademark application be filed with the U.S. Patent and Trademark Office. The application must identify the mark and the goods or services with which the mark is used or is proposed to be used, the date of first use, and the manner in which it is used or to be used. The application must be accompanied by payment of the requisite fee, a drawing page depicting the mark, and a specimen of the mark as it is actually used or will be used. After the application is filed, it is reviewed by an examiner who evaluates, among other matters, the substantive ability of the mark to serve as a valid mark and the likelihood of confusion with other

registered marks. If the examiner rejects the application, the examiner's decision can be appealed to the Trademark Trial and Appeals Board. An adverse decision by that body can be appealed to the U.S. Court of Appeals for the Federal Circuit.

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

An applicant whose trademark is not yet in use receives, upon approval of the application, a "notice of allowance". An applicant who receives a notice of allowance must, within six months of the receipt of the notice, furnish evidence of the actual use of the trademark. The applicant then is entitled to a certificate of registration. Failure to furnish evidence of the actual use of the mark within the time allowed results in rejection of the application.

A certificate of trademark registration issued by the U.S. Patent and Trademark Office remains in effect for ten (10) years. However, registration expires at the end of the sixth year, unless the registrant furnishes evidence of continued use of the trademark. The ten-year term of a certificate of registration can be renewed within the term's last six months for an additional ten-year term by furnishing evidence of continued use of the mark and paying a fee.

After at least five (5) years of continuous use of a trademark following the receipt of a certificate of registration, a registrant can seek to have the status of the registration elevated from "presumptive" evidence of the registrant's exclusive right to conclusive evidence. To do so, the registrant must furnish the U.S. Patent and Trademark Office with evidence of continuous use of the trademark for at least five (5) years. Additionally, there must not be any outstanding lawsuit or claim that challenges the registrant's rights to the mark.

**(5) Puerto Rico Law**

**(a) Trademarks**

The following marks may not be registered: (1) if contrary to law; (2) contain the flag, coat of arms or other insignia of Puerto Rico, of the U.S. or of any state, municipality or nation, or an imitation thereof; (3) a person's name, nickname, picture or signature unless consent is obtained; (4) words descriptive of products or services with which the mark is used; (5) words indicating the type, nature or physical appearance of the product or service; (6) geographic names or terms indicating the origin of the product or services; (7) a mark that is identical to another registered or known mark used for the same type of product or service; (8) a mark so similar to another that its use will cause confusion or deception in the public mind; (9) a mark that is identical or similar to a registered or pending registration mark, that is likely to cause confusion or error in the public's mind. As an exception to clauses 4, 5 and 6 above, such marks may be registered if they have acquired a distinctive character through the use they have been given for the products or services for which registration is requested. As a general rule local registration of a mark is advisable.

Registration of a trademark is accomplished by filing an application with the Puerto Rico Secretary of State together with a sworn statement as to the applicants right to use the mark, facsimiles of the mark as used or proposed to be used and payment of a \$150 fee. Applicants are also required to provide facsimiles of the mark as used, or proposed to be used, in commerce. Registration is valid for ten (10) years after the filing date and may be renewed for successive ten (10) year periods thereafter, provided that the owner of the mark must file a sworn statement of use within five (5) years of the application filing date, otherwise the registration lapses. Registration is prima facie evidence of ownership. Infringers are subject to injunction, actions for damages and/or seizure orders.

Registration in the U.S. Patent and Trademark Office protects marks used in interstate commerce in Puerto Rico but not in some situations where infringement is strictly intrastate.

**(b) Tradenames**

Tradenames may be registered at the Department of State by submitting an application stating the business activity covered by the name, facsimiles of the name as used or proposed to be used, a sworn statement to the effect that no other person else is entitled to use the

name in Puerto Rico, evidence that the applicant has applied for or obtained municipal or other licenses or permits required by law to engage in such business and payment of a \$150 fee. Similar or confusing names may not be registered.

**(c) Trade Secrets**

Trade secrets are not protected by specific statute. However, Puerto Rico general tort and property law as well as the unfair competition statutes and regulations may be used to protect trade secrets. Also, Rule 23.2(g) of the Puerto Rico Rules of Civil Procedure allows protective orders to prevent disclosure of trade secrets.

## **X. DISPUTE RESOLUTION**

### **A. Federal Court System**

The trial courts of the federal court systems are the U.S. District Courts. Puerto Rico has seven federal district court judges who are appointed by the President for life terms upon approval by the United States Senate. The federal district court for the district of Puerto Rico sits in San Juan. Jurisdiction is the same as any other U.S. district court, English is required and the filing fees are those established by the U.S. Judicial Code. Appeals from the Puerto Rico district court decisions are to the First Circuit Court of Appeals.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are mandated by both the U.S. Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, federal antitrust, postal matters, federal internal revenue, admiralty, federal crimes, federal torts, and customs. See also IX.A(1)(i) supra as to patent and copyright matters. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens of different states with an amount in controversy exceeding \$75,000. To be brought in federal court, there must be complete diversity, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second primary basis involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or

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

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

These rules often set forth very specific guidelines for the handling of an action, and close attention must be paid to them. One of the local rules provides court-annexed non-binding mediation for which all civil cases are eligible.

## **B. Puerto Rico Court System**

### **(1) General Court of Justice**

All judicial power is vested in the General Court of Justice composed of a Supreme Court, Courts of Appeal and Courts of First Instance.

### **(2) The Supreme Court**

The Supreme Court sits in San Juan and has final appellate jurisdiction from the courts below. It also reviews decisions of the Registrars of Property and may in its discretion review other extraordinary matters.

### **(3) The Court of Appeals**

The Court of Appeals is the intermediate appellate court between the Court of First Instance and the Supreme Court and also reviews administrative decisions and regulations. It sits in San Juan and has sessions in seven judicial regions throughout Puerto Rico.

### **(4) The Court of First Instance**

The Court of First Instance is the court of original jurisdiction and has offices in 13 judicial regions. It entertains all civil matters, including tax cases, eminent domain, estate and family matters, government agency, administrative orders, arbitration awards, and all criminal and juvenile matters.

**(5) Venue**

Under the local rules of civil procedure, no cause may be dismissed for improper venue. Cases are tried in the district where the action arose, or where the defendants or plaintiffs reside, depending on the facts. Corporations reside where their headquarters are located. The trial court in its discretion may direct a change of venue.

**(6) Alternate Methods of Dispute Resolution (ADR)**

A Bureau on ADR exists to train neutrals and supervise all ADR programs. Local courts can refer cases to mediation arbitration and neutral evaluation.

**(7) Arbitration**

Agreements to arbitrate if in writing are valid and specifically enforceable except in insurance contracts. Issues as to whether arbitration is appropriate are resolved by the Court of First Instance. Special provisions of law govern dealer contracts which can only be arbitrated in Puerto Rico under Puerto Rico law.

## **XI. FINANCING INVESTMENTS**

**A. Short-Term Credit**

Short-Term Credit may be obtained from commercial banks doing business in Puerto Rico including local, U.S. or foreign banks. Collateral in the form of a parent company or other guaranty, mortgage or other collateral may be required. Guarantees may be available from the U.S. Small

Business Administration\* for small or medium-size businesses. Interest may be pegged to the lenders or another bank's prime rate or to another index such as Libor (London Inter-Bank Offered Rate).

Principal local banks are:

Oriental Bank  
Banco Popular  
R-G Premier Bank  
FirstBank  
WesternBank  
Doral Bank  
Eurobank

U.S. or Foreign Banks include:

Citibank (U.S.)  
Banco Bilbao Vizcaya Argentaria (Spain)  
Banco Santander (Spain)  
Scotiabank de Puerto Rico (Canada)

**B. Long and Medium-Term Credit**

Long and Medium-Term Credit is available primarily from government sources. The Puerto Rico Government Development Bank (GDB)\* is the primary source for this type of credit and must also approve financing offered by other government agencies.

The other principal source for long term credit is the Puerto Rico Industrial, Tourism, Educational, Medical and Environmental Pollution-Control Facilities Financing Authority (AFICA)\*, which was established to finance new facilities through industrial revenue bonds. Interest on AFICA bonds is exempt from Puerto Rico and federal (U.S., state and local) tax. Neither AFICA or any other government agency is liable on these bonds which are payable only from the underlying project or from other credit enhancement.

Commercial banks may also provide medium-term lending. Other sources are finance companies, insurance companies, leasing firms and pension funds.

Investment bankers and other intermediaries may also arrange for bond placements or loans which provide terms tailored to the borrower's needs.

Loans may also be available from International Banking Entities (IBEs). Although these entities were originally designed to lend only to foreign (non Puerto Rico borrowers) they may now make loans to Puerto Rico borrowers if (1) the GDB or the Economic Development Bank for Puerto Rico\* guarantees or participates in the loan or (2) the loans are made to finance projects designated by the Puerto Rico Department of the Treasury and the Puerto Rico Commissioner of Financial Institutions\* as eligible for IBE financing. For a description of the tax benefits offered by the IBE program see VI B5(iv) supra.

## **C. Securities Laws**

### **(1) Federal Securities Law**

The Securities Act of 1933 is designed to provide disclosure to the investor and requires registration of securities issues with the Securities Exchange Commission (SEC) and periodic public disclosures with respect to the borrower's business, properties, management, securities being offered and certified financials.

The Securities Exchange Act of 1934 created the SEC with the power to regulate brokers, transfer agents, clearing agencies, and stock exchanges and also establishes penalties for fraudulent activities such as insider trading.

### **(2) Puerto Rico Securities Law**

Puerto Rico has adopted (with variations) the Uniform Securities Act, 1956 version, with certain subsequent amendments. Both federal and Puerto Rico laws apply to local securities issues. Registration of a security under federal law permits the security to be registered in Puerto Rico by coordination through filing with the Commissioner of Financial Institutions\*; Broker-Dealers and Investment Advisors must register with and be licensed by the Commissioner.

## **XII. REAL ESTATE**

### **A. Title**

Title to real property (“propiedad inmueble”) may be held and all rights of ownership exercised by one or more individuals, corporations, limited liability corporations, partnerships and trusts, including foreign persons and corporations and other foreign juridic entities. No limitations exist other than certain restrictions on the exercise of ownership rights by minors, and a Puerto Rico constitutional provision (1) limiting corporate and other juridic entity ownership of real property to that necessary for its business (which may not include the business of buying and selling real estate) and (2) limiting ownership of land by an agricultural corporation and its affiliates to 500 acres. These limitations also apply to foreign corporations and juridic entities.

### **B. Concurrent Ownership**

The concepts “joint tenancy”, “tenancy by the entirety” and “joint tenants with right of survivorship” are not known in Puerto Rico law. Joint ownership is covered and regulated by the Puerto Rico Civil Code and the rights of each owner may be defined by contract. No joint owner may be forced to remain a part of the common ownership. Each may demand the division of the property held in common, provided that the joint ownership contract may provide that the property remain undivided for a period not exceeding ten years. This period can be extended by the owners. The right to require division cannot be enforced if to do so would render the property unserviceable for the use for which it was intended.

Puerto Rico has separate legislation governing condominium property, time shares and vacation clubs.

### **C. Spousal Rights**

Spousal rights are regulated by the Puerto Rico Civil Code. Except for property belonging to the spouses prior to the marriage and property received through gift or inheritance, all property of spouses is community property and may not be sold or mortgaged without the consent of both

spouses. These rights may be altered pursuant to a pre-nuptial agreement. In the absence of such an agreement, all property is divided evenly between the spouses, or the surviving spouse and the heirs of the deceased spouse upon divorce or death. In the event of one spouse's death the survivor acquires title to his/her one-half share as a matter of right and not through inheritance.

Common law marriages and other similar partnerships are not recognized by Puerto Rico law. In such cases, in the event of death or separation, and in the absence of a contract, the parties are only entitled to the property each contributed to the relationship.

#### **D. Purchase and Sale of Real Property**

Puerto Rico has not adopted Article 2 of the U.S. Uniform Commercial Code. Contracts of sale are governed by the Puerto Rico Civil and Commercial Codes.

By a contract of purchase and sale one party agrees to deliver a specified thing and the other to pay a specified price in money or otherwise. The sale is perfected if the parties have agreed on the thing to be sold and the price to be paid, even without delivery or payment. If the object of the sale is real property the sale must be evidenced by a public deed before a notary public and must be recorded in the Registry of the Property to be binding upon third parties. Stamp fees are due on the deed and recording fees are due upon presentation for record. In addition the Notary is entitled to fees prescribed by law. In the absence of agreement to the contrary, the seller selects the notary and pays the stamp fees on the original deed and the buyer pays the notarial fees, the fees on the certified copy of the deed and the costs of recording. See E below.

Except in the case of residential housing developments which are subject to strict rules for protection of purchasers enforced by the Puerto Rico Department of Consumer Affairs (DACO)\* no special requirements for real estate purchase contracts or options to purchase exist other than those mentioned above.

**(1) Protection from fraud** with respect to purchase/sale contracts is provided by Puerto Rico Civil Code provisions which specify that the seller warrants to the buyer the legal and peaceful possession of the thing sold and that no hidden faults or defects exist. The Code further provides

that persons guilty of fraud, negligence or delay or other violations of the Code are liable for losses or damages caused thereby. Consumers can seek protection and advice from DACO should they feel their rights have been violated. Article 1802 of the Civil Code of Puerto Rico, 1930 edition, provides that persons, including all juridic entities, who in fulfilling their obligations are guilty of fraud, negligence or delay, and those who violate contractual clauses, shall be liable for any loss or damage caused thereby. Concurrent negligence of the aggrieved party results in a reduction of the indemnity due, but does not eliminate the liability.

**E. Taxes Due with Respect to Real Property Sale/Purchase/Lease**

(1) Internal Revenue Stamps (IRS) are cancelled on each original public deed and on each certified copy thereof, based on the value of the transactions as stated in the deed or in the case of leases on the stipulated rent for the full term of the lease and renewals as follows:

<u>Deed Value</u>	<u>IRS Original Deed</u>	<u>IRS Per Certified Copy</u>
\$1-\$250	\$0.50	\$0.20
\$251-\$500	\$1.00	\$0.50
\$501-\$1,000	\$2.00	\$1.00
\$1,000-\$5,000	\$2.00 first \$1,000 and .50 each additional \$1,000 or fraction	\$1.00 first \$1,000 and .20 each additional \$1,000 or fraction
Over \$5,000	\$2.00 first \$1,000 and .50 each additional \$1,000 or fraction	\$1.00 first \$1,000 and .50 each additional \$1,000 or fraction

(2) A Bar Association of Puerto Rico (BAR) \$1 stamp is cancelled on each original deed and on each certified copy and a Legal Aid Society (LAS) stamp is also cancelled on deeds as follows:

<u>BAR: Deed Value</u>	<u>Original Deed</u>	<u>Per Certified Copy</u>
Any Value	\$1.00	\$1.00

  

<u>LAS: Deed Value</u>	<u>Original Deed</u>	<u>Per Certified Copy</u>
\$25,000-\$50,000	\$5.00	\$2.50

Over \$50,000	\$5.00 first \$50,000 and each additional \$50,000 or fraction	\$2.50 first \$50,000 and each additional \$50,000 or fraction
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There is also a \$3 Legal Aid Society Stamp cancelled on each notarial affidavit.

For recording of documents in the Registry of Property, including leases, conveyances, mortgages and cancellations of mortgages, charges are based on the amount of the transaction stated in the document, provided that the value for leases is fixed at stipulated rent for the first twelve years of the lease, or total rent to be paid, whichever is less, as follows:

<u>Value</u>	<u>Stamp Fee</u>
\$1,000 or less	\$2.00
\$1,001 - \$25,000	\$2.00 each \$1,000 or fraction
Over \$25,000	\$50 first \$25,000 and \$4.00 each additional \$1,000 or fraction

There is also a standard filing fee of \$10.50 for any document filed in the Registry.

**F. Public Deeds**

**Public deeds** for real estate sales, mortgages, long term leases, trusts, wills and certain other documents are prepared by a notary public who participates in the signing of the deed, must certify that he personally knows the parties, or has assured himself of their identify through approved means, and has a responsibility to all parties to the deed to orient them on the legal consequences of the document and is responsible for seeing that stamp fees are paid and stamps cancelled and for recording the deed in the appropriate registry, which is required in order to bind third parties. Notaries cannot represent title insurers or act as brokers for the transaction.

Only lawyers may qualify to be notaries and must pass a special examination administered by the Puerto Rico Supreme Court in order to qualify. Notaries are responsible for the validity of

documents authorized by them, including deeds and sworn statements and may be sued for damages caused as well as sanctioned by the Supreme Court for failure to act properly.

**G. Deeds executed Outside of Puerto Rico**

**Deeds of conveyance of Puerto Rico** real property may be executed outside of Puerto Rico provided they comply with requirements of form and content of the jurisdiction where the document is signed or with those of Puerto Rico and, provided further that the document is then protocolized by a Puerto Rico notary. Protocolization serves to convert the foreign document into a Puerto Rico public deed which is suitable for recording in the Registry of the Property. The same stamp fees must be paid on the document and certified copies thereof as would have been paid had the document been originally executed as a public deed in Puerto Rico.

In order for a deed executed in a foreign country (not the United States), which conforms substantially with the formalities required for a public deed under the Puerto Rico notarial law, to be valid in Puerto Rico the deed must be authenticated by the appropriate government official of the foreign country, whose signature must then be authenticated by a U.S. embassy or consular officer or, if the country has adhered to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, by certificate of apostille issued by the foreign country's designated officer, and must also be protocolized in Puerto Rico.

Fees for notaries are fixed by law: for deeds involving less than \$10,000 the fee cannot exceed \$100; from \$10,001 to \$500,000 the fees is 1% of the value of the transaction; if in excess of \$500,000, fee is 1% for the first \$500,000, plus .5% of the excess over \$500,000.

**H. Title Insurance**

**Title insurance** is recommended for all real estate transactions. This is due primarily to delays in recording of deeds in the Registry. The cost of title insurance is normally borne by the buyer or borrower.

**I. Real Property Taxes**

**Real property taxes** in the case of a sale/purchase are usually allocated in the deed so that those taxes due up to the sale date are paid by the seller and those due thereafter by the buyer. Taxes are billed annually as of July 1 which is the beginning of the government fiscal year. Taxes for the current fiscal year are prorated between seller and buyer.

**J. Closing Procedures**

(1) **Public deeds** must be used for sales, mortgages, long term leases for 6 years or more and trusts. Deed content, notaries and costs involved in deeds are discussed above.

(2) **Bills of sale** are used only for non real property transactions. However, there are no statutory requirements for bills of sale in Puerto Rico. The Civil Code covers perfection of a sale. See D above. A simple statement signed by the parties reciting the delivery of the thing sold and receipt of the purchase price is useful as evidence of the transaction.

(3) **Mortgages** on real (immovable) property must be constituted by public deed which must be recorded to create a valid lien on the property. A mortgage in which the mortgagor's recourse is limited to the mortgaged property is valid. Mortgages with no recourse to the mortgagor are valid. Mortgages may be constituted to secure a direct obligation or a mortgage note payable to the mortgagee or to bearer. Title to the mortgaged property remains with the mortgagor. Future advances up to amount of the lien are allowed if provided for in the mortgage. Open-end mortgages are not provided for. Upon satisfaction, a deed of cancellation is required which must be recorded. For a discussion of public deeds, stamp fees and recording fees payable, see E and F above.

(4) **Closing statements** are not provided for under Puerto Rico law. Federal law does require closing statements for federally guaranteed mortgage loans. As a practical matter either the seller's or buyer's attorney may prepare a closing statement identifying the transaction and detailing the date, price, down payment and other payments made and allocation of funds to the purchase price and other required disbursements due from seller and buyer.

**(5) Foreclosures**

Although statute providing for summary foreclosure proceedings exists, most foreclosures are generally made by ordinary proceedings similar to foreclosures in equity.

Foreclosure sales are by public auction with statutory and judicial notice requirements. The mortgagee may bid at a foreclosure sale.

**PUERTO RICO PRINCIPAL ECONOMIC  
DEVELOPMENT AND BUSINESS  
ASSISTANCE AGENCIES**

COMPANY	ADDRESS	TELEPHONE/ FAX NUMBER	EMAIL	WEBSITE
PUERTO RICO INDUSTRIAL DEVELOPMENT COMPANY (PRIDCO)	#355 FD Roosevelt Avenue Suite 404 Hato Rey, PR 00918	Tel. 787-758-4747 Fax 787-764-1415	executivedirector@pridco.com <sup>1</sup>	www.pridco.com
DEPARTMENT OF STATE Registry of Marks and Commercial Names	PO Box 9023271 San Juan, PR 00901	Tel. 787-722-2121 Fax 787-725-7303	marcasemail@estado.gobierno.pr	www.estado.gobierno.pr/ marcas
DEPARTMENT OF STATE Registry of Corporations	PO Box 9023271 San Juan, PR 00901	Tel. 787-722-2121 Fax 787-725-7303	corpemail@estado.gobierno.pr	www.estado.gobierno.pr/ corporaciones
DEPARTMENT OF CONSUMER AFFAIRS (DACO)	Physical Address: Ave. José De Diego Pda. 22 Centro Gubernamental Minillas, Edif. Norte, Piso 4 San Juan, PR 00940-1059  Postal Address: Apartado 41059 Minillas Station Santurce, PR 00940	Tel. 787-722-7555 Fax 787-726-0077	servicio@daco.gobierno.pr	www.daco.gobierno.pr
GOVERNMENT DEVELOPMENT BANK (GDB)	Physical Address: Calle Aldebarán #638 Urb. Altaminra San Juan, PR 00922-2134  Postal Address: PO Box 2134 Río Piedras, PR 00922	Tel. 787-641-4300 Fax 787-724-4733	amontoto@bde.gobierno.pr <sup>2</sup>	www.bdepr.prg
ENVIRONMENTAL QUALITY BOARD (EQB)	Physical Address: 431 Ave. Ponce de León Edif. National Plaza Hato Rey, PR 00917  Postal Address: PO Box 11488 San Juan, PR 00910	Tel. 787-767-8181 Fax 787-767-4861	carloswlopez@jca.gobierno.pr <sup>3</sup>	www.jca.gobierno.pr

<sup>1</sup> Email of the current executive director of PRIDCO, Boris Jaskille, Esq.

<sup>2</sup> Email of the President, Mrs. Annette M. Montoto Terrassa, CPA.

<sup>3</sup> Email of the President, Mr. Carlos W. López.

COMPANY	ADDRESS	TELEPHONE/ FAX NUMBER	EMAIL	WEBSITE
DEPARTMENT OF NATURAL ENVIRONMENTAL RESOURCES (DNER)	Physical Address: Ave. Muñoz Rivera Pda. 3, Puerta de Tierra San Juan  Postal Address: PO Box 9066600 Puerta de Tierra Station Santurce, PR 00906-6600	Tel. 787-724-8774 Fax 787-723-4255	jvelez@dnra.gobierno.pr <sup>4</sup>	www.dnra.gobierno.pr
SOLID WASTE AUTHORITY (SWA)	Physical Address: Sector El Cinco Carr. # 8838 Km. 6.3 Río Piedras, PR  Postal Address: PO Box 40285 San Juan, PR 00940-0285	Tel. 787-765-7575 6 1-866-732-4252		www.ads.gobierno.pr
PUERTO RICO PLANNING BOARD (PRPB)	Centro Gubernamental Roberto Sánchez Vilella Apartado 41119 San Juan, PR 00940-1119	Tel. 787-723-6200 Fax 787-724-3153		www.jp.gobierno.pr
PUBLIC SERVICE COMMISSION (PSC)	Physical Address: Ave. Luis Muñoz Rivera #50 Esquina Prudencio Martínez Hato Rey  Postal Address: Comisión de Servicio Público PO Box 190870 San Juan, PR 00918	Tel. 787-756-1919		www.csp.gobierno.pr
COMMISSIONER OF FINANCIAL INSTITUTIONS	Physical Address: Edif. Centro Europa Ave. Ponce de León 1492 Piso 6 San Juan, PR  Postal Address: PO Box 11855 Fernández Juncos Station Santurce, PR 00909	Tel. 787-723-3131 Fax 787-723-4042	comisionado@ocif.gobierno.pr  alfredop@ocif.gobierno.pr <sup>5</sup>	www.ocif.gobierno.pr

<sup>4</sup> Email of the Secretary of DNER, Mr. Javier Vélez Arrocho.

<sup>5</sup> Email of the Commissioner, Mr. Alfredo Padilla.

COMPANY	ADDRESS	TELEPHONE/ FAX NUMBER	EMAIL	WEBSITE
PUERTO RICO TRADE AND EXPORT COMPANY	Centro de Desarrollo de Negocios Metro Edif. New San Juan Ave. Chardón 159 San Juan, PR 00918	Tel. 787-294-0101	ecolon@comercioyexportacion.com <sup>6</sup>	www. comercioyexportacion.com
U.S. PATENT AND TRADEMARK OFFICE	Office of Public Affairs U.S. Patent and Trademark Office PO Box 1450 Alexandria, VA 22313- 14507	Tel. 800-786-9199 (in USA of Canada) or 571-272-1000-	usptoinfo@uspto.gov <sup>8</sup>	www.uspto.gov/patft
U.S. COPYRIGHT OFFICE	Library of Congress Copyright Office 101 Independence Avenue S.E. Washington, DC 20559- 6000	Tel. 202-707-3000		www.copyright.gov
U.S. SMALL BUSINESS ADMINISTRATION	252 Ponce de León Ave. Citibank Tower Suite 200 San Juan, PR 00918	Tel. 787-766-5572 or 800-669-8049 Fax 787-766-5309	angelique.adjutant@sba.gov <sup>9</sup>	www.sba.gov
PUERTO RICO SMALL BUSINESS DEVELOPMENT CENTER	Edif. Union Plaza, Piso 10 Suite 1013 Ave. Ponce de León #416 Hato Rey, PR	Tel. 787-763-6811 Fax 787-763-6875	cmarti@prsbdc.org <sup>10</sup>	www.prsbdc.org

<sup>6</sup> Email of the Director of Puerto Rico Trade and Export Company, Mrs. Enid Colón.

<sup>7</sup> Papers relating to pending litigation in court cases shall be mailed only to:

Office of the General Counsel; U.S. Patent and Trademark Office; PO Box 15667; Arlington, VA 22215

For matters pertaining patents shall be mailed to: Commissioner for Patents; PO Box 1450; Alexandria, VA 22313-1450

For matters pertaining trademarks shall be mailed to: Commissioner of Trademarks; PO Box 1451; Alexandria, VA 22313-1451

<sup>8</sup> Place one of the following phrases into the SUBJECT line of your email: Patents or Trademarks or Products and Services or Electronic Business Support.

<sup>9</sup> Email of the Public Relations Manager, Mrs. Angelique Adjutant.

<sup>10</sup> Email of the Executive Director, Mrs. Carmen Marti.