Lex Mundi
World Ready

Guide to Doing Business

Georgia

Prepared by Lex Mundi member firm,
Alston & Bird LLP

This guide is part of the Lex Mundi Guides to Doing Business series which provides general information about legal and business infrastructures in jurisdictions around the world. View the complete series at: www.lexmundi.com/GuidestoDoingBusiness.

Lex Mundi is the world's leading network of independent law firms with in-depth experience in 100+ countries. Through close collaboration, our member firms are able to offer their clients preferred access to more than 21,000 lawyers worldwide – a global resource of unmatched breadth and depth.

Lex Mundi – the law firms that know your markets.

ALSTON & BIRD

Legal Guide to Doing Business in Georgia

July 2018

ATLANTA
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
404-881-7000

BEIJING, CHINA
Hanwei Plaza
West Wing, Suite 21B2
No. 7 Guanghua Road
Chaoyang District
Beijing 100004, China
Phone: +86 10 8592 7500

BRUSSELS, BELGIUM
Level 20 Bastion Tower
Place du Champs de Mars B-1050 Brussels, BE
+32 2 550 3700

CHARLOTTE
Bank of America Plaza
101 South Tryon Street
Suite 4000
Charlotte, NC 28280-4000
704-444-1000

DALLAS
2828 North Harwood
Street 18th Floor Dallas,
TX 75201-2139 214-922-3400

LOS ANGELES
333 South Hope Street
16th Floor
Los Angeles, CA 90071
213-576-1000

NEW YORK
90 Park Avenue
New York, NY 10016-1387
212-210-9400

RESEARCH TRIANGLE
4721 Emperor Blvd.
Suite 400
Durham, NC 27703-8580
919-862-2200

SAN FRANCISCO
560 Mission Street
Suite 2100
San Francisco, CA 94105
415-243-1000

SILICON VALLEY
275 Middlefield Road
Suite 150
Menlo Park, CA 94025-4004
650-838-2000

WASHINGTON, DC
950 F Street, NW
Washington, DC 20004-1404
202-239-3300

TABLE OF CONTENTS

DISCLAIMER ... **1**

INTRODUCTION ... **2**
- Geography ... 2
- Demographics ... 2
- Economy ... 2
- Educational Institutions ... 4

BUSINESS ENTITIES ... **5**
- Corporations ... 5
  - Administrative Agency ... 5
  - State of Incorporation ... 5
  - Corporate Formation ... 5
  - Articles of Incorporation ... 5
  - Name ... 6
  - Bylaws ... 6
  - Share Capital ... 6
  - Meetings of Shareholders and Directors ... 6
  - Limited Liability ... 6
  - Annual Reports ... 6
  - Taxation ... 7
- Partnerships ... 7
  - General Partnerships ... 7
  - Limited Partnerships ... 7
  - Limited Liability Partnerships ... 8
- Limited Liability Companies ... 8
  - Formation ... 8
  - Name ... 9
  - Managers and Members ... 9
  - Annual Reports ... 9
- Foreign Corporations ... 10
  - Qualification Requirements ... 10
  - Foreign Limited Liability Corporations ... 11
- Sole Proprietorship ... 11
- Joint Venture ... 12
- Nonprofit Corporations ... 12
- Alternative Means of Doing Business ... 12
  - Sales Representatives ... 12
  - Distributors ... 13
  - Licensing ... 13

TRADE REGULATION ... **14**
- Federal Trade Regulation ... 14
  - The Sherman and Clayton Acts ... 14
  - The Robinson-Patman Act ... 14
  - The Federal Trade Commission Act ... 14
- State Trade Regulation ... 14

Warranties 14
State Antitrust Law 15
Unfair and Deceptive Trade Practices/Consumer Protection 15

TAXATION 17
Federal Income Taxation 17
Personal Income Tax 17
Corporate Income Tax 17
Federal Tax Benefits 17
State Taxation 18
Personal Income Tax 18
Corporate Income Tax 18

LABOR 21
Federal Considerations 21
Immigration 21
Labor and Employment Statutes 24
Age Discrimination in Employment Act ("ADEA") 24
Americans with Disabilities Act ("ADA") 24
Fair Labor Standards Act ("FLSA") 24
Equal Pay Act ("EPA") 25
Family and Medical Leave Act ("FMLA") 25
National Labor Relations Act 25
Occupational Safety & Health Act ("OSHA") 25
Title VII of the Civil Rights Act of 1964 ("Title VII") 26
The Genetic Information Nondiscrimination Act ("GINA") 26
Employee Benefits 26
State Considerations 28
Georgia Labor Laws 28
Labor Unions 29
Employment and Employment Contracts 29
Child Labor Act 30

ENVIRONMENTAL 31
Federal Considerations 31
Resource Conservation and Recovery Act ("RCRA") 31
Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") 31
Clean Air Act ("CAA") 32
Clean Water Act ("CWA") 32
State Considerations 32

INTELLECTUAL PROPERTY 35
Copyrights 35
Patents 35
Trademarks and Service Marks 35
Trade Names 37
Trade Secrets 38

DISPUTE RESOLUTION 39

Federal Court System ... 39
State Court System ... 40
Inferior State Courts ... 40
Superior Court ... 42
Court of Appeals ... 43
Supreme Court ... 43
Arbitration and Mediation in Georgia ... 44

FINANCING INVESTMENTS ... 45
Tax-Exempt Financing ... 45
Federal Securities Law ... 45
Securities Act of 1933 ... 45
Securities Exchange Act of 1934 ... 46
Sarbanes-Oxley Act of 2002 ... 46
State Securities Law ... 46
Georgia Securities Act ... 46

REAL ESTATE ... 47
Agricultural Foreign Investment Disclosure Act of 1978 (“AFIDA”) ... 47
International Investment and Trade in Services Survey Act (“IITSSA”) ... 47
Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”) ... 48
State Real Estate Statutes ... 48

MISCELLANEOUS ... 49
Registration Requirements ... 49
Applicability of Usury Laws ... 49
Restrictions on Specific Professions ... 49
Business Name Registration Requirements ... 50
Incentives ... 50

STATE AGENCIES ... 52
Georgia Department of Agriculture ... 52
Atlanta Regional Commission ... 52
Georgia Office of the Attorney General ... 52
Georgia Department of Banking and Finance ... 52
Georgia Building Authority ... 52
Georgia Department of Community Affairs ... 52
Georgia Department of Community Health ... 52
Georgia Council of Juvenile Court Judges ... 53
Georgia Court of Appeals ... 53
Georgia Office of Dispute Resolution ... 53
Georgia Department of Economic Development ... 53
Georgia Department of Education {Primary and Secondary Education} ... 53
Georgia General Assembly ... 53
Georgia Governor’s Office ... 54
Georgia Department of Human Services ... 54
Georgia Office of Insurance and Safety Fire Commissioner ... 54
Georgia Department of Labor ... 54
Lieutenant Governor’s Office ... 54

Georgia Department of Natural Resources 54
Georgia Emergency Management and Homeland Security Agency 54
Georgia Ports Authority 55
Georgia Public Defender Council 55
Georgia Public Service Commission 55
Georgia Board of Regents {Higher Education} 55
Georgia Regional Transportation Authority 55
Georgia Department of Revenue 55
Office of Georgia Secretary of State 55
Georgia Supreme Court 56
Georgia Technology Authority 56
Georgia Department of Transportation 56
Georgia Trade Development Foreign Offices 57
- Brazil 57
- Canada 57
- Chile 57
- China 57
- Colombia 57
- Europe 58
- Israel 58
- Japan 58
- Korea 58
- Mexico 58
- Peru 58
- United Kingdom & Ireland 59

Disclaimer

PLEASE NOTE: The information contained in this guide is for general reference only and discusses certain laws applicable to doing business in Georgia as of July 2018. This publication should not be relied upon in any specific factual or legal situation, does not create an attorney-client relationship, and does not cover all laws or regulations that may be applicable in all circumstances. Readers of this guide should seek independent professional advice from a lawyer authorized to practice in Georgia before proceeding to invest or do business in Georgia.

Introduction

Geography

The State of Georgia, the twenty-fourth largest state in the country and the largest state east of the Mississippi River, covers approximately 59,000 sq. mi. (approximately 154,000 sq. km.) and lies in the country's southeastern quadrant, between the 31st and 35th degrees of north latitude in the eastern standard time zone.

Georgia is geographically divided into six physiographic zones. The northern part of the state consists of the Blue Ridge Province, the Ridge and Valley Province, and the Appalachian Plateaus. Mountains, lakes, and mixed forests cover this area of the state. Brasstown Bald Mountain, the highest point in the state at 4,784 feet (1,458 meters), is located in this region. Central Georgia consists of the Piedmont zone, characterized by rolling upland hills, much like Stone Mountain, which is located outside of the Capital City of Atlanta. The southern portion of the state consists of the Atlantic and Gulf Coastal Plains. Characterized by flat lands and salt marshes, this Georgia region is home to the Okefenokee Swamp and the deep-water port cities of Savannah and Brunswick.

Georgia's climate is humid and subtropical, with mean annual temperatures between 60° to 70° Fahrenheit (15° to 21° Celsius), and mean annual precipitation between 40 to 60 inches (102 to 152 centimeters). While the Georgia mountains receive light snow several times a year, the vast majority of the state rarely experiences snow fall.

Demographics

Georgia's population has grown by over 7.6% during the past seven years, adding over 740,000 people between 2010 and 2017. Georgia, with an estimated total population of 10,429,379 residents, is currently the eighth most populous state in the nation. In 2017, the state's demographic diversity included Whites (61.2%); Blacks (32.0%); Hispanics (9.4%); Asians (4.1%); Native Americans (0.5%); and Native Hawaiians and other Pacific Islanders (0.1%).

Economy

Georgia has a strong, diverse and vibrant business community. The fourth fastest growing state, Georgia has consistently provided a progressive, stable environment for both the domestic and foreign financial entities. The state maintains a Standard and Poor's rating of AA+, a Moody's AAA credit rating and a Finch's AAA rating. Moreover, Georgia aggressively solicits foreign investment through a wide array of tax incentives, budgetary policies and financial assistance programs. The state invests in its workforce and its transportation infrastructure, and also such industries as technology, agriculture, manufacturing and forestry.

The Georgia Department of Economic Development provides assistance in the development of international business and trade opportunities, joint ventures, licensing and other business matters. Georgia maintains an international presence in twelve strategic global markets: Brazil, Canada, Chile, China, Colombia, Europe, Israel, Japan, Korea, Mexico, Peru and the United Kingdom and Ireland. In 2017, total trade between Georgia and the world reached 225 unique countries and territories, exceeding $128.6 billion. In the past ten years, international trade has grown by 53% and Georgia now ranks 8th in the U.S. for total trade. In 2017, Georgia's top five import markets were China, Germany, Mexico, Korea and Japan. Sixty-eight governments from throughout the world maintain consular offices and/or trade representation in Atlanta. Additionally, thirty-one bi-national Chambers of Commerce reside in Atlanta. Finally, three general-purpose Foreign Trade Zones in Atlanta, Brunswick and Savannah permit users to delay, reduce and sometimes eliminate U.S. customs duties on imports.

With an eye on the future, Georgia heavily invests in information technology. There are currently 17,000 technology companies in Georgia, with $113.1 billion economic impact. Georgia is the 5th largest IT employment cluster in the United States, with 200,000 high-tech professionals. The first fiber-optic cable was manufactured in Georgia and now the state has become the transmission hub for the country's two largest fiber-optic trunk routes through its 500,000 miles of underground fiber-optic cable. The state also supports a variety of public and private industry, government and university partnerships in technology, including the Georgia Centers for Advanced Telecommunications Technology (a research center that supports new product development and recent technology company start-ups).

Georgia's economy also includes a strong foundation in the agricultural and livestock production, manufacturing and forestry industries. Georgia leads all states in the production of broilers (i.e., young chickens raised for meat), peanuts and pecans. Manufacturing and forestry also provide the state with its primary economic activities. Centered around the cities of Augusta, Columbus, Macon, Rome, Savannah and Atlanta, Georgia's manufacturing and forestry centers provide the world with a vast array of essential goods, such as paper, timber, textiles, turpentine and transportation equipment. Georgia is the 12th largest exporting state in the country.

Many of the world's largest and most influential companies have chosen to do business in Georgia. In fact, seventeen Fortune 500 and thirty Fortune 1000 companies have headquarters in Georgia. Georgia-grown companies include Coca-Cola, CNN/Turner Broadcasting and The Home Depot. Other companies based in Georgia are Philips Electronics, United Parcel Service (UPS), AFLAC, Delta Airlines, Porsche North America, Pirelli Tire North America, Gulf Stream Aerospace, Siemens Energy & Automation and Intercontinental Hotels Group.

Helping these companies achieve success is Georgia's 5.13 million person workforce. A right-to-work state, Georgia provides a diverse, well-

educated workforce trained at solving the challenges of business in the 21st century. The Quick Start employee training program provides free training services to businesses opening new facilities or expanding existing operations in Georgia, customized to each employer's specific needs. The Department of Labor complements this service by posting notices of job openings and offering prospective employers free employee screenings at its offices throughout the state. Georgia's workers have assisted the state in becoming one of the top ten states for technology employment and have given Atlanta the second largest population with a college degree in the United States.

Facilitating Georgia's businesses is an expansive transportation network. Atlanta is recognized as the 12th-largest air cargo hub in North America and 30th worldwide. Atlanta's Hartsfield-Jackson International Airport, the world's busiest passenger airport, serves almost 100 million passengers with over 950,000 flights annually, and hosts 16 cargo carriers with more than 2 million square feet of cargo handling space. Georgia's ground transportation system includes 1,200 miles of interstate highways and 20,000 miles of high-performance roadways that connect the state to the rest of the nation and two major rail systems, CSX and Norfolk Southern Corporation. Finally, the Port of Savannah is the fourth largest container port in the United States and is the fastest growing port in the country. These land, air and water transportation networks allow eighty percent of domestic customers to be reached in 2 hours of air travel or less from Georgia. Similarly, over eighty percent of the domestic industrial market may be reached by truck within two days from Georgia.

Educational Institutions

Georgia is home to forty-nine public colleges, universities and technical colleges. The oldest state-chartered university in the United States, the University of Georgia, is located in Athens, Georgia. Other major state-supported institutions include the Georgia Institute of Technology in Atlanta, the Medical College of Georgia in Augusta, and Georgia State University in Atlanta. Thirty-nine nationally known and respected private colleges and universities also are located in Georgia, including Atlanta's Emory University, Oglethorpe University and Atlanta University Center (a consortium of historically black institutions including Morehouse College, Morris Brown College and Spelman College), as well as Macon's Mercer University.

Business Entities

Corporations

Administrative Agency

Business corporations, nonprofit corporations, professional corporations, limited partnerships, limited liability partnerships and limited liability companies are required to register and file reports with the Corporations Division of the Georgia Secretary of State, located at 2 Martin Luther King Jr. Dr. SE, Suite 313 West Tower, Atlanta, GA 30334.

State of Incorporation

State statutes regulate public and private corporations in the U.S. Georgia's Business Corporation Code (O.C.G.A. § 14-2-101 et seq.), adopted in 1988, was modeled on the 1984 Revised Model Business Corporation Act, as amended, and portions of the Delaware General Corporation Law. The Corporate Code Revision Committee of the Corporate and Banking Section of the State Bar of Georgia monitors changes in United States corporation law to assure that Georgia maintains a modern business corporation law.

Corporate Formation

A Georgia corporation may be formed by submitting its Articles of Incorporation, a completed Transmittal Form 227, and a $100.00 filing fee to the Corporations Division of the Georgia Secretary of State. Articles of Incorporation are effective on the date received by the Corporations Division unless a post-effective date is specified. (O.C.G.A. § 14-2-203) Forms and a sample Articles of Incorporation may be obtained at the Georgia Secretary of State's website located at http://www.sos.ga.gov.

All corporations must also publicize a notice of intent to incorporate in the newspaper that is the legal organ for the county they are registering their initial office of the corporation or in a newspaper of general circulation in a county where at least 60% of the subscriptions are paid. The notice and the $40.00 publication fee must be sent to the newspaper no later than the next business day after filing the Articles of Incorporation with the Secretary of State's office. A list of authorized newspapers can be obtained from the Clerk of the County Superior Court.

Articles of Incorporation

Articles of Incorporation are considered a matter of public record. They must be written in English and include at a minimum the exact name of the corporation, the number of shares the corporation is authorized to issue, the street address and county of the initial registered office and the name of the initial registered agent at that office, the name and address of each incorporator, and the corporation's initial principal mailing address.

Name

The name of a Georgia corporation may be reserved prior to filing by accessing the Secretary of State's website at http://www.sos.ga.gov. A reservation fee of $25.00 must accompany the request. Corporate names must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," "ltd.," or words or abbreviations of like nature. (O.C.G.A. § 14-2-401)

Bylaws

Bylaws help regulate the overall structure of the corporation. They typically include such information as the governance structure of the corporation, the meeting structure of shareholders and directors, the authority of the corporation's officers, and the liability of the officers. The Board of Directors typically can amend bylaws, unless the provisions amend shareholder or director authority, in which case, shareholder approval is needed prior to altering the bylaws. (O.C.G.A. § 14-2-1020)

Share Capital

The articles of incorporation stipulate the class of shares and the numbers of shares of each class that is offered by the corporation. All shares of a certain class must have the same preferences, limitations, and relative rights. All issued shares are considered outstanding shares until they are reacquired, redeemed, converted, or canceled. Finally, the articles of incorporation must authorize (1) one or more classes of shares that together have unlimited voting rights and (2) one or more classes of shares that together can receive the net assets of the corporation upon dissolution. (O.C.G.A. § 14-2-601 et seq.)

Meetings of Shareholders and Directors

Meetings of both shareholders and directors may be held either within or without the state and may be conducted in accordance with the bylaws through any means of communication whereby all may hear each other simultaneously.

Limited Liability

Shareholders of most corporations enjoy "limited liability," that is, they are not liable for debts incurred during the operation of the corporation, only for their individual amounts invested into the corporation. One exception to this rule is if the shareholders specifically agreed to be liable for such debts as stated in the articles of incorporation.

Annual Reports

Every Georgia corporation must annually register with the Secretary of State. The initial registration must be filed within 90 days of incorporation. Subsequent registrations must be submitted by April 1 of each year. Reports

may be filed electronically at http://www.sos.ga.gov. A $50.00 filing fee must also be submitted. Failure to register annually could lead to an administrative dissolution of the corporation.

Taxation

"For Profit" corporations are subject to "double taxation" in Georgia. That is, the corporation pays taxes on the income earned by the corporation, and its shareholders pay taxes on the dividends received from the corporation. S corporations, however, are not subject to double taxation; their income is not taxed, but the income and losses of the S corporation are "passed through" to the shareholders in relation to their ownership interests. S corporations are constructed by having (1) no more than seventy-five shareholders, (2) no shareholders who are partnerships, corporations or non-resident aliens, and (3) only one class of stock. Corporations interested in the tax benefits of an S corporation designation should consult a tax professional to fully understand the advantages and disadvantages of such a change.

Partnerships

General Partnerships

Georgia has adopted the Uniform Partnership Act with minor but helpful modifications. (O.C.G.A. § 14-8-1 et seq.) Partnerships consist of two or more persons, the general partners, who share management duties and who share in the profits of the group. A general partner's interest in the organization cannot be transferred without the consent of the other general partners (unless the transferred interest is only a right to profits), and, upon the death of any general partner, the general partnership is dissolved. Partnerships are common business entities because they provide a convenient taxation advantage; that is, partnerships are not separate taxpayers for state or federal income tax purposes. In fact, partnerships are "pass-through" tax entities, making only the general partners liable for taxation on their respective shares of general partnership income, losses, deductions and credits. However, one disadvantage of a general partnership is that each general partner has joint and several unlimited personal liability for obligations of the entire partnership. Thus, each partner may personally be indebted for the debts and obligations of the general partnership as a whole or for another general partner. The Georgia Secretary of State imposes no recordkeeping or filing requirements on general partnerships.

Limited Partnerships

Georgia has adopted its own Revised Uniform Limited Partnership Act based upon, but with significant changes from, the official version of the Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in 1976 and amended in 1985. (O.C.G.A. § 14-9-100 et seq.) In Georgia, unlike in other states, limited partners may exercise control over the business without being personally liable for the limited partnership's obligations and debts. Limited partners may assign profit interests

and assignees may become limited partners if allowed under the governing documents. General partners have the authority to fully control the partnership, but also assume full liability for the partnership. Limited partnerships do not pay taxes at the entity level. Instead, the tax is applied to each share of individual partner's profits from the partnership. Likewise, individual limited partners cannot be held liable for the partnership's debts and obligations.

Unlike general partnerships, limited partnerships must meet certain filing requirements with the Georgia Secretary of State. To register a limited partnership, an individual must file with the Secretary of State an original and one copy of the group's certificate of limited partnership, a completed Transmittal Form 246 (obtained from the Secretary of State's website), and the $100.00 filing fee. The certificate of limited partnership must include: (1) the exact name of the limited partnership, (2) the street address and county of the initial registered office and the name of the initial registered agent at that office, (3) the name and address of each general partner, and (4) the signatures of all general partners. Furthermore, a registered limited partnership must continue to pay an annual registration fee of $50.00 to the Secretary of State's office. The initial payment is due between January 1 and April 1 of the year following the calendar year in which the limited partnership was formed.

Limited Liability Partnerships

Limited Liability Partnerships ("LLPs") function like general partnerships but provide extra protections for the general partners. Such protections include personal immunity for liability arising from the negligence and wrongful acts of other partners, unless the other partners were under their direct supervision. Thus, a partner's loss with respect to the LLP is limited to his or her investment into the partnership.

Limited Liability Companies

Formation

The Georgia Limited Liability Company Act (O.C.G.A. § 14-11-100 et seq.) regulates the creation of a limited liability company ("LLC") in Georgia. Formation of an LLC is allowed after one or more organizers of the LLC file articles of organization with the Georgia Secretary of State. The articles of organization must include the following information: (1) the name and address of each organizer, (2) the street address and county of the LLC's initial registered office and the name of its initial registered agent at that office, and (3) the mailing address of the LLC's principal place of business. (O.C.G.A. § 14-11-203) An LLC must also submit its articles of organization, completed Transmittal Form 231, and its $100.00 filing fee to the Corporations Division of the Georgia Secretary of State. Articles of organization are effective on the date received by the Corporations Division unless a post-effective date is specified.

Name

A name may be reserved prior to filing an application to create an LLC by accessing the Corporations Division's website at http://sos.ga.gov/index.php/corporations. A reservation fee of $25.00 must accompany the request. Names must contain the words "limited liability company" or "limited company" or the abbreviations "L.L.C.," "LLC," "L.C." or "LC." The name must also be distinguishable from any other name held by a Georgia LLC, corporation or limited partnership held on record at the Georgia Secretary of State's office.

Managers and Members

An LLC may be governed by either its members or selected managers. An LLC operated by its members functions in many ways like a partnership. Each member has an equal say in the decision-making processes of the company. (O.C.G.A. §§ 14-11-301(a) – 304) However, the members may elect to select a manager or managers to run the LLC in much the same way a board of directors governs a corporation. These managers are responsible for the daily affairs of the corporation. (O.C.G.A. §§ 14-11-301(b) – 304) The election of managers must be permitted by and pursuant to the articles of organization. Managers do not have to be members of the LLC to be selected to their position. (O.C.G.A. § 14-11304) With either type of governance structure, there is no personal liability borne by the members or manager for the debts and obligations of the LLC as a whole, unless members elect to become personally liable through written consent in the operating agreement. (O.C.G.A. § 14-11-303) Moreover, with either manager-managed or member-managed LLCs, either members or managers get one vote regarding the direction of the business affairs of the company and majority rule decides outcomes. However, approval of the dissolution of the LLC or the sale, exchange, lease or transfer of all or a substantial amount of its assets requires the unanimous consent of the members. (O.C.G.A. § 14-11-308).

Annual Reports

Each LLC must file an annual registration with the Georgia Secretary of State's office. The fee is $50.00. The initial registration is due between January 1 and April 1 of the year following the calendar year in which the LLC was formed. The registration can be filed online at the Georgia Secretary of State's website (http://www.sos.ga.gov).

Foreign Corporations

Qualification Requirements

To engage in business in Georgia, a foreign corporation must (1) obtain a certificate of authority from the Secretary of State and (2) maintain a registered office and appoint a registered agent within Georgia. However, not all activities require a foreign corporation to so act.

The following non-exclusive list of activities does not constitute transacting business within the meaning of O.C.G.A. § 14-2-1501(b):

(1) Maintaining or defending any action or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;
(2) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
(3) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
(4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositories with respect to its securities;
(5) Effecting sales through independent contractors;
(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;
(7) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;
(8) Securing or collecting debts or enforcing any rights in property securing the same;
(9) Owning, without more, real or personal property;
(10) Conducting an isolated transaction not in the course of a number of repeated transactions of a like nature;
(11) Effecting transactions in interstate or foreign commerce;
(12) Serving as trustee, executor, administrator, or guardian, or in like fiduciary capacity, where permitted so to serve by the laws of this state;
(13) Owning (directly or indirectly) an interest in or controlling (directly or indirectly) another entity organized under the laws of, or transacting business within, this state; or
(14) Serving as a manager of a limited liability company organized under the laws of, or transacting business within, this state.

Moreover, under O.C.G.A. § 14-2-1503 et seq., the application for a certificate of authority filed with the Secretary of State must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in Georgia, a fictitious or trade name adopted by its directors;
(2) The state or country under whose law it is incorporated;
(3) Its date of incorporation and period of duration;
(4) The mailing address of its principal office;
(5) The address of its registered office and name of its registered agent in Georgia; and
(6) The names and usual business addresses of its current directors and officers.

Failure to obtain a certificate of authority deprives the foreign corporation, its successors and its assignors from maintaining a proceeding in any Georgia court until it obtains a certificate, and also subjects the foreign corporation to civil penalties. Requirements similar to those imposed on foreign corporations are imposed on foreign limited partnerships desiring to transact business in Georgia. (O.C.G.A. § 14-2-1502 et seq.)

Foreign Limited Liability Corporations

Foreign LLCs are regulated under O.C.G.A. § 14-11-702 et seq. A foreign LLC transacting business in Georgia must obtain a certificate of authority from the Georgia Secretary of State's office. The foreign LLC must first submit an application for the certificate which includes the following: (1) the name of the foreign LLC, and if different, the name it will use in Georgia; (2) the name of the jurisdiction under whose laws it is organized; (3) its date of organization and period of duration; (4) the street address and county of its registered Georgia office and its registered agent at that office; (5) a statement identifying the Georgia Secretary of State as its agent for service of process if the foreign LLC has not already identified its agent; (6) the address of its principal place of business; (7) the address of the office at which it keeps a list of names and addresses of its members; and (8) the name and business address of a person who has substantial responsibility for managing its business activities. Some activities of a foreign LLC do not count as transacting business in Georgia, thereby exempting the LLC from registering with the Secretary of State (for examples of such exceptions, see O.C.G.A. § 1411-702(b)).

Sole Proprietorship

Persons conducting business alone without the protection afforded by incorporation are called sole proprietors. Business income is reflected on a schedule attached to the proprietor's personal income tax returns. The proprietor may operate under a trade name registered in the county in which the business is carried on (to allow creditors and others the opportunity to learn who the owner of the business is to obtain payment on any debts or obligations). Such registration, however, provides limited protection for exclusive use of the name, absent trademark or service mark registrations. The main disadvantage of forming a sole proprietorship is that the owner is wholly liable for all debts and

obligations. All the personal and business assets of the sole proprietor can be seized to make payments.

Joint Venture

A joint venture is not, as such, a specific legal form of doing business. It may be a partnership for a limited purpose or may, depending upon its form of organization, be in corporate form or evidenced only by a series of agreements. Regardless, the joint venture's purpose is more specific than generally to carry on any business.

Nonprofit Corporations

In 1991, Georgia enacted a new Nonprofit Corporation Code, based upon its Business Corporation Code, with a few provisions based upon the Revised Model Nonprofit Corporation Act published in 1988. (O.C.G.A. § 14-3-101 et seq.) Basic differences between nonprofit and business corporations are that nonprofit corporations have no shareholders and are prohibited from having "operating for profit" as a corporate purpose.

Nonprofit corporations in Georgia must all submit the $100.00 filing fee, Transmittal Form 227, and their Articles of Incorporation to the Georgia Secretary of State. Articles of Incorporation for nonprofit corporations should contain the same information as for profit corporations (and have similar publication requirements), except that they should include at a minimum an article that states "The corporation is organized pursuant to the Georgia Nonprofit Corporation Code," rather than a statement of the number of shares the corporation is authorized to issue and should include a statement indicating whether or not the corporation will have members. An example of an acceptable Articles of Incorporation can be obtained at http://www.sos.ga.gov.

Nonprofit corporations do not automatically gain tax-exempt status under Section 501(c)(3) of the Internal Revenue Service Code. Recognized entities must submit an Application for Recognition of Exemption with the Internal Revenue Service before submitting incorporation documents to the Georgia Secretary of State. Further information can be found in Internal Revenue Service Publication 557, located at https://www.irs.gov/pub/irs-pdf/p557.pdf or by calling the Internal Revenue Service.

Alternative Means of Doing Business

Sales Representatives

A non-resident business may act in Georgia through one or more sales representatives. The legal questions raised by this form of conducting business are first, whether the activities of a sales representative are sufficient to require the foreign corporation that employs the representative to qualify with the Secretary of State to do business in Georgia under O.C.G.A. § 14-2-1501; and

second, whether the representative's activities are sufficient to subject the foreign corporation to an apportioned Georgia income tax under O.C.G.A. § 48-731. This latter question is generally one of either constitutional or federal statutory dimension, because the Georgia statute is drafted with the intention of subjecting to an apportioned income tax every foreign corporation that has any constitutionally cognizable connection with the state "for the purpose of financial profit or gain." If tangible personal property is shipped into Georgia, the presence of a sales representative will require registration as a dealer for sales and use tax purposes and collection of tax, unless a valid exemption certificate is obtained from each customer.

Distributors

Whether the activities of a resident distributor are sufficient to require that the foreign entity whose products are being distributed qualify to do business in Georgia or to pay Georgia taxes is a question of agency. Namely, is the relationship of the foreign entity with the local distributor a principal-agent relationship (with the acts of the local agent being deemed the acts of the foreign principal under the theory of respondeat superior) or is it an independent-contractor relationship (where the foreign entity is not treated as acting through the distributor)? The question is fact intensive. The answer depends upon the level of the foreign entity's right to control the manner in which the distributor conducts its business activities.

Licensing

The relationship between the grantor (licensor) and grantee (licensee) of a license (the customary way of transferring certain rights in intellectual property such as patents, trademarks and trade names), is ordinarily a relationship between independent contractors. Therefore, the licensor is customarily not considered to be transacting business in Georgia just because of the presence in the state of its licensee, absent other factors suggesting the licensor's presence through agency principles of control. No aspects of Georgia law affect the licensing relationship, unless by reason of the facts and circumstances it is deemed to constitute a "business opportunity," the sale of which is regulated.

Trade Regulation

Federal Trade Regulation

The Sherman and Clayton Acts

The Sherman Act, passed in 1890, prohibits all contracts and agreements between independent commercial actors that unreasonably restrain commerce. Section 1 of the Sherman Act prohibits such horizontal restraints on trade as competitors agreeing to fix prices restrict output, allocate territories or customers, or rig bids. Section 1 also prohibits vertical restraints on trade like attempts by a manufacturer to limit dealers' territories or customers, and attempts by a seller to require exclusive dealing contracts if they are found to have an anticompetitive effect in a relevant economic market. Section 2 of the Sherman Act prohibits monopolization, attempted monopolization and conspiracies to monopolize. The Clayton Antitrust Act amended the Sherman Act in 1914. Section 7 of the Clayton Act prohibits acquisitions that may substantially lessen competition or create a monopoly.

The Robinson-Patman Act

The Robinson-Patman Act, passed in 1936 as an amendment to the Clayton Antitrust Act, prohibits a supplier from discriminating in price against different buyers of the same good where effectively competition is harmed. Quantity discounts, among other exceptions, are only legal if all competing buyers, regardless of size, are given access to and can reasonably take advantage of the discounts. The Robinson-Patman Act has its roots in ensuring that independent retailers could remain profitable against growing chain-store competition.

The Federal Trade Commission Act

The Federal Trade Commission Act, administered and enforced by the Federal Trade Commission, prohibits unfair competition or deceptive trade practices in business activities. The Act prohibits false advertising, inaccuracy of prices, deceptive media commercials and misleading product representations by a business or any of its employees, agents or representatives. The law also only requires the possibility of deceit to find fault, not actual deception.

State Trade Regulation

Warranties

The implied warranties of merchantability and fitness for a particular purpose, as well as the extent to which and manner in which such warranties may be excluded or modified, are dealt with in Georgia's enactment of Title 2 of the Uniform Commercial Code (O.C.G.A. § 11-2-314 et seq.) Under the implied warranty of merchantability, goods must meet the following standards:

(1) Pass without objection in the trade under the contract description; and
(2) In the case of fungible goods, are of fair average quality within the description; and
(3) Are fit for the ordinary purposes for which such goods are used; and
(4) Run, within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved; and
(5) Are adequately contained, packaged, and labeled as the agreement may require; and
(6) Conform to the promises or affirmations of fact made on the container or label, if any.

Under the implied warranty of fitness for a particular purpose, "[w]here the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified . . . an implied warranty that the goods shall be fit for such purpose." (O.C.G.A. § 11-2-315) As a general rule, "to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous." (O.C.G.A. § 11-2-316(2)) Additionally, these implied warranties can be excluded or modified under the particular circumstances outlined in O.C.G.A. § 11-2-316(3).

State Antitrust Law

No Georgia state statute provides a private cause of action for damages for antitrust activity; however, Article III, Section VI, Paragraph V(c) of the Georgia Constitution prohibits agreements to defeat or lessen competition or to encourage monopoly. Contracts "in general restraint of trade" are declared void and unenforceable by O.C.G.A. § 13-8-2.

Although Georgia has historically been hostile to restrictive covenants, which include non-competition, non-solicitation and nondisclosure provisions, Georgia amended its Constitution and enacted a bill providing additional leeway for restrictive covenants in employment contracts. The new law contains additional guidance on what qualifies as a reasonable restrictive covenant and also permits judicial modification of an otherwise overly broad covenant to make it enforceable. (O.C.G.A. 13-8-50, et seq.)

Unfair and Deceptive Trade Practices/Consumer Protection

While consumer protection legislation in Georgia is less prolific than in many states, there are Georgia statutes dealing with false advertising (O.C.G.A. § 10-1-420 et seq.), fair business practices (O.C.G.A. § 10-1-390 et seq.), farm tractor sales (O.C.G.A. § 10-1-810 et seq.), retail installment and home

solicitation sales (O.C.G.A. § 10-1-1 et seq.), unsolicited merchandise (O.C.G.A. § 10-1-50 et seq.), sale of business opportunities (O.C.G.A. § 10-1-410 et seq.), and weights and measures (O.C.G.A. § 10-2-1 et seq.). Consumer protection legislation is administered and enforced by the Georgia Department of Law's Consumer Protection Unit.

Taxation

Federal Income Taxation

Personal Income Tax

United States citizens and resident aliens must pay federal personal income taxes on all income by April 15 of each calendar year. In 2018, the highest marginal United States individual federal income tax rate is 37%. Non-resident aliens are generally subject only to taxes on dividends received from United States companies.

Corporate Income Tax

Domestic and foreign corporations doing business in the United States are subject to federal corporate income taxes on all income. In 2018, the highest marginal United States corporate income tax rate is 21%. Additionally, all dividends distributed by such companies to both domestic and foreign individuals are still taxable by the United States Internal Revenue Service and must be listed in annual federal tax disclosures. United States branches of foreign companies are subject to similar tax laws as United States corporations owned by foreign shareholders.

Federal Tax Benefits

New Markets Tax Credit

For tax years through 2019, a credit is allowed to a taxpayer who makes a "qualified equity investment" in a community development entity ("CDE") that further invests in a "qualified active low-income community business." CDEs are required to make investments in designated low-income census tracts. The credit is allowed over seven years, 5% in each of the first three years and 6% in each of the next four years. No amount of unused allocation limitation may be carried to any calendar year after 2024.

Qualified Opportunity Funds

Designated low-income census tracts are also considered "qualified opportunity zones," for which two main tax incentives are designed to encourage investment. First, temporary deferral of capital gains is allowed for capital reinvested in a "qualified opportunity fund," which holds at least 90% of its assets in qualified opportunity zone property. The deferred gain is recognized on the earlier of the date on which the qualified opportunity zone investment is disposed of or December 31, 2026.

Second, post-acquisition capital gains on investments in opportunity zone funds that are held for at least 10 years are excluded from gross income. Taxpayers can continue to recognize losses associated with investments in qualified opportunity zone funds as under current law.

State Taxation

Personal Income Tax

The state personal income tax (O.C.G.A. § 48-7-1 et seq.) is imposed on federal adjusted gross income, with state statutory adjustments, less allowable deductions and exemptions. The tax rate is graduated from 1% to 6%. Married persons filing jointly in the 6% bracket pay $340 plus 6% of their taxable income over $10,000. Furthermore, exemptions follow federal guidelines. For example, there is a $3,000 exemption for dependents and a $2,700 personal exemption ($7,400 exemption for married couples filing jointly). Non-residents are taxable on net income from property owned and from activity conducted for financial gain in Georgia. Further, non-residents are also taxable on certain retirement income earned while working in Georgia.

Any business employing one or more individuals in Georgia must contact the Georgia Department of Revenue in order to obtain a withholding identification number and withhold state income tax due by their employees. Additionally, employers must file reports and remit the withholdings amounts to Georgia, based upon each employee's withholding allowance certificate (Form G-4). Employers are classified as either annual, quarterly, monthly or semi-weekly payers based upon the aggregate amount they were required to withhold during the previous year, and they must remit withholdings accordingly. Annual filers must file a return (G-7 Quarterly Return for Quarterly Payer) by January 31 of the following year in which the withholding was required. Quarterly and monthly filers must file a return (G-7 Quarterly Return for Quarterly Payer and G-7 Return for Monthly Payer) on or before the last day of the month following the end of the calendar quarter in which the withholding tax was required. Semi-weekly filers must remit payments electronically and file a return (G-7/Sch. B Quarterly Return for Semi-Weekly Payer) on or before the last day of the month following the end of the calendar quarter in which the withholding tax was required. Georgia has also enacted a "one-day rule" specifying that withholdings totaling more than $100,000 for a given payday must be remitted electronically by the next business day after the payday. Any employer that triggers the one-day rule automatically becomes a semi-weekly filer for the remainder of that calendar year and for the next calendar year. All employers are also required to file an annual tax statement (Form G-1003) on or before February 28 of each calendar year with the Department of Revenue.

Finally, all employers must furnish to each employee a withholding tax statement reflecting income paid to, and tax withheld from, the employee by January 31 of each year.

Corporate Income Tax

The state corporate income tax (O.C.G.A. § 48-7-1 et seq.) is imposed at the rate of 6% on a corporation's Georgia taxable income, which is income from property owned in Georgia and from business done in Georgia. Such income is calculated based on a corporation's federal taxable income with state statutory

adjustments. Further, where business is done both within and without Georgia, a corporation's income must be allocated and apportioned to Georgia. All of a corporation's non-business income must be allocated either to Georgia or another state; it is not apportioned. Non-business income includes interest received from property held for investment, rental income and gains from the sale of property not held, owned or used in connection with the trade or business of the corporation, nor held for sale in its regular course of business. A corporation's business income, on the other hand, is apportioned to Georgia based on the application of a particular statutory apportionment formula. For tax years beginning on or after January 1, 2008, the general apportionment formula consists of only a single factor: gross receipts. To compute the gross receipts factor, a corporation must divide its gross receipts from business done in Georgia by its gross receipts from business done everywhere.

Affiliated groups of corporations that file consolidated federal income tax returns are not entitled to file consolidated Georgia returns unless the group obtains prior approval or has been requested to file a consolidated return by the Department of Revenue. In order to receive such permission, the following must be true: (1) all members of the group must be subject to Georgia income tax; and (2) the filing of a consolidated return will clearly and equitably reflect the income of the corporations attributable to Georgia.

There is no local income tax levied by any political subdivision of Georgia.

Corporate Net Worth (License) Tax

Georgia imposes an annual corporate net worth tax (O.C.G.A. § 48-13-70 et seq.) on the net worth (comprised of capital stock and retained earnings) of domestic and foreign corporations. Domestic corporations are taxed on 100% of their net worth. Foreign corporations, on the other hand, are taxed only on the amount of their net worth apportioned to Georgia, as determined by the following formula:

Net Worth in Georgia = Total Net Worth x (Property and Sales in Georgia/Total Property and Sales)

S Corporations

Georgia recognizes subchapter-S elections only if all stockholders in the corporation are subject to tax in Georgia on their portion of the corporation's income. If all non-resident stockholders pay Georgia income tax on their portion of the income, the subchapter-S election shall also be allowed. S-corporations file and pay income tax to Georgia only on built-in gains and other items of income taxable at the corporate level for federal income tax purposes.

Property Tax

In Georgia, real and tangible personal property are subject to annual ad valorem taxes (O.C.G.A. § 48-5-1 et seq.) levied by counties, municipalities, and

school districts. The state ad valorem tax levy was phased out in 2016. Counties are responsible for valuing and assessing property. All rates are set locally. County, municipality and school district rates vary greatly. Intangible property is no longer subject to ad valorem taxation in Georgia, and intangible assets cannot be considered by a county when determining a property's fair market value. Finally, Georgia levies a real estate transfer tax on the conveyance of real property.

Effective January 1, 2011, all business inventories are exempt from *state* ad valorem taxation. Further, Georgia counties are authorized to exempt certain classes of inventories from *local* taxation, including: (i) inventories of goods in the process of being manufactured or produced and raw materials; (ii) inventories of finished goods manufactured or produced in Georgia held by the original manufacturer or producer for a period of up to 12 months; and (iii) inventories of finished goods stored in a warehouse, dock or wharf which are destined for shipment outside the state and finished goods shipped into Georgia from outside the state for transshipment out of the state. Most Georgia counties exempt all three of these classes of inventories. Businesses must, however, submit an annual application in order to receive an exemption.

Unemployment Insurance Tax

All Georgia businesses pay an unemployment insurance tax (O.C.G.A. § 34-8-1 et seq.) on the first $9,500 of each of their employees' wages. A new business's tax rate is 2.7% (or $237.50 per employee). However, after 36 months, a business's tax rate is recalculated using 5.4% as the standard rate, with variations therefrom depending on the business's employee retention rate. Many Georgia businesses pay well below the 2.7% initial rate.

Sales and Use Tax

Georgia imposes its sales and use tax (O.C.G.A. § 48-8-1 et seq.) on the sale or use of tangible personal property and certain services at the rate of 4%. Local sales and use taxes are authorized for various purposes, including the joint county and municipal sales and use tax, the homestead option sales tax, the special county sales and use tax, the educational local option sales and use tax, and the Metropolitan Atlanta Rapid Transit Authority tax. The aggregate sales tax rate in Georgia counties thus ranges from 6% to 8% (and 8.9% in the city of Atlanta due to its municipal option sales tax). Exemptions from sales and use taxes include purchases for resale and purchases of certain enumerated products, including machinery used directly in making a product for sale, raw materials that will become a component of a finished product, machinery and equipment used for pollution control, and film production equipment and services for use by certified film production companies in Georgia.

Labor

Federal Considerations

Immigration

Note that the executive branch of the U.S. government (i.e., the President and his or her administration) has more influence and control over immigration law than over many other areas of law covered herein. Because of that, immigration law can at times change more rapidly than law in those other areas.

A variety of U.S. permanent and temporary visas allow domestic employers to hire foreign employees. Specific kinds of visas are granted based on a variety of facts, including for example, the proposed U.S. position, the individual's nationality(s), the educational or employment history, the intended length of stay in the United States, any relationship between the U.S. employers and foreign employers, etc. In general, lawful permanent residents have the freedom to work in any occupation in the United States, or not, while most temporary visa holders are subject to U.S. employment terms and length of stay, etc. restrictions.

Permanent Residence ("Green Card")

The United States has an annual quota on the number of permanent visas issued (excluding immediate relatives, such as spouses and minor children of U.S. citizens, or parents of adult U.S. citizens). Permanent resident status is often secured via two avenues: sponsored by a U.S. relative or U.S. employer. The petitioner facts, and nationality of the individual, will affect the permanent respondent processing time. Employers interested in sponsoring an individual for permanent residency status may contact the U.S. Embassy or Consulate, or U.S. Citizenship and Immigration Services ("USCIS") for general information. Additional information can be found by referencing the Immigration and Nationality Act and the Code of Federal Regulations.

Temporary Visas

- B-1 and B-2 Short Term Visas

B-1 Visas are for short-term business visits to the United States, and B-2 Visas are for short-term pleasure. B-1/B-2 visas enable multiple short visits over a period of visa validation. Employers often seek a B-1 visa for employees sent to the United States to attend meetings or conferences, or to negotiate contracts. Typically, no employer sponsorship documents are required. Neither B-1 nor B-2 visa holders may be employed at any point during their U.S. stay. Citizens of certain countries might enter into the United States for business or pleasure

purposes for up to ninety days without a B-1 or B-2 visa under the Visa Waiver Program.

- F-1 and F-2 Academic Student Visas

Individuals pursuing an F-1 academic visa must be accepted by an accredited U.S. school, must both petition the Bureau of Citizenship and Immigration Services (BCIS, formerly the INS) for approval and must obtain a Form I-20 from an authorized sponsoring institution of education (university, college, etc.). F-1 visa holders must enroll in and attend classes fulltime at the institution. F-1 students may not be employed, but for certain school approved situations on- or off-campus job during their stay. F-2 visas are provided to spouses or children (under 21 years of age) of F-1 students, upon application including proof of marriage and/or birth.

- H-1B and H-4 Temporary Worker Visas

Degreed professional individuals selected to fill a "specialty occupation" in the United States may be eligible for an H1-B temporary worker visa. The occupation must at minimum require a U.S./equivalent bachelor's degree, highly specialized and theoretical knowledge skills, or an abundance of projected professional experience H1-B (an initial 3 year + a 3 year extension), eligible. Certain U.S. salary and location changes require amended applications. H-4 visas are given to eligible dependents, spouses and children under age 21. H-4 dependents generally may not work, yet the spouses and children may matriculate at any educational facility, full- or part-time, during their U.S. stay.

- J-1 and J-2 Exchange Visitor Visas

The J-1 visa provides certain foreign academic students, intern, scholars, exchange students, researchers and teachers an opportunity to participate in U.S. exposure/educational activities. J-1 visa applicants must obtain a Form DS-2019 (Certificate of Eligibility) from the sponsoring institution. Academic students may stay in the United States until receipt of their respective degree (and as long as they remain full-time students) and must have additional sources of funding outside of personal funds. Short term scholars may obtain a 6-month visa, while research scholars and professors may obtain a 3-year visa (with the possibility of certain extensions). The J-1 allows for a stipend or salary. Certain J-1 visa holders are required to a "two year home country residence requirement." Before being eligible for returning to the United States in another visa classification. J-2 visas may be obtained for spouses and minor children under 21 years of age of J-1 visa holders. J-2 individuals may work with approved permission from USCIS.

- O-1 Exceptionally Talented Individual Visas

Individuals who exhibit and can document to the satisfaction of USCIS their extraordinary ability in the sciences, education, business, art, motion picture or television industries, or athletics may receive an O-1 visa. Legal criteria include such merits as receipt of an internationally recognized prize (Nobel Prize) and/or multiple publications in reputable peer-reviewed journals, detailed recommendations from prominent colleagues, membership in internationally and/or invitation only recognized associations, command of an extremely high salary, public accolades, awards, etc. O-1 visa holders may initially remain in the United States for up to 3 years, and one-year extensions. Individuals who assist O-1 visa holders in their artistic or athletic performances may also qualify for an O-1 support visa.

- E-3 TN and TD North American Worker Visas

Under North American Free Trade Act (NAFTA) and certain country specific treaties, Canadian, Mexican, and Australian citizens may be sponsored to work in the United States for a number of years, and may be eligible for extensions. Dependent spouses and children may obtain dependent visas, but generally may not work while in the United States.

- Employment Verification

U.S. employees are required, under the law and a certain specific process, to timely verify the identity and U.S. employment authorization of each newly hired employee. In limited situations this verification process applies to existing employees. The failure to properly comply may result in fines and penalties, and such liability is often assumed via a corporate transactions. Certain employer actions in the verification process can result in fines and penalties if deemed discriminatory, even if unintentional discrimination.

Georgia E-Verify

Georgia law requires a Georgia employer with 10 or more employees to use E-Verify to verify the legal work authorization of new hires.

- Effective July 1, 2012 for private employers with 100 or more, but fewer than 500 employees

- Effective July 1, 2013 for employers with more than ten (10), but fewer than 100 employees.

Labor and Employment Statutes

Age Discrimination in Employment Act ("ADEA")

The ADEA prohibits employment discrimination based on age against individuals who are 40 years of age or older and makes it illegal to retaliate against individuals for making a complaint or charge of discrimination or participating in a discrimination investigation or lawsuit. The ADEA applies to private employers with 20 or more employees, all state and local governments, employment agencies, labor organizations, and the federal government. While an individual may waive his or her rights or claims under the ADEA in connection with a settlement or separation incentive program, the ADEA, as amended by the Older Workers Benefit Protection Act ("OWBPA"), requires that additional procedures – such as a consideration period and a revocation period – be followed in order for such a waiver to be effective.

Americans with Disabilities Act ("ADA")

The ADA prohibits employment discrimination against any qualified individual who has, or is regarded as having, a physical or mental impairment that substantially limits one or more life activities, and makes it illegal to retaliate against any individual for making a complaint or charge of discrimination or participating in a discrimination investigation or lawsuit. The Act also requires that employers take reasonable measures to accommodate disabled individuals in the workplace unless such actions would be an undue hardship on the employer – that is, a significant difficulty or expense. Applicable employers under the ADA include private employers, state and local governments, employment agencies, and labor unions, provided that those entities or agencies have 15 or more employees for each working day in 20 or more calendar weeks in the current or preceding calendar year. The ADA also applies to the federal government.

Fair Labor Standards Act ("FLSA")

The FLSA provides a minimum wage, overtime pay rate, record-keeping requirements, and child labor restrictions for companies and organizations that are involved in interstate commerce or that have an annual gross volume of sales or receipts of at least $500,000, regardless of the number of employees they maintain. The FLSA also applies to federal, state and local governmental entities; hospitals; and schools. Currently, the minimum wage is $7.25 per hour. Overtime pay is set at one and one-half times regular rate of pay after 40 hours of work in a workweek. Certain defined employees may be exempt from the FLSA's minimum wage and overtime pay requirements. The FLSA requires employers to keep records on wages, hours and other items. Child labor restrictions include limits on the number of hours a week a child under 16 may work and limits on allowing youths to work in certain dangerous occupations. Finally, the FLSA prohibits retaliation against an employee for making a complaint relating to his or her rights under the Act.

Equal Pay Act ("EPA")

The EPA, part of the FLSA, is administered and enforced by the Equal Employment Opportunity Commission ("EEOC") and requires that men and women both receive the same wages if they work in the same establishment; perform jobs that require substantially equal skill, effort and responsibility; and do so under similar working conditions. Pay differences are allowed if they are based upon differences other than sex, such as those made pursuant to a merit or seniority system.

Family and Medical Leave Act ("FMLA")

The FMLA requires that all state, local, federal and private employers with 50 or more employees for each working day during 20 or more work weeks in the current or preceding calendar year give eligible employees up to a total of 12 work weeks of job-protected, unpaid leave during any 12-month period for any of the following reasons: (1) for the birth and care of a newborn child of the employee, (2) for the placement with the employee of a son or daughter for adoption or foster care, (3) to care for an immediate family member (spouse, child, or parent) with a serious health condition, or (4) to take medical leave when the employee is unable to work because of a serious health condition. To be eligible for protection under the FMLA, an employee must have worked for the employer for 12 months and have worked at least 1,250 hours over the prior 12 months.

National Labor Relations Act

The National Labor Relations Act, administered and enforced by the National Labor Relations Board, governs relationships between labor unions and business management. The Act allows employees to organize and to bargain collectively with management about issues such as wages, benefits, hours, and other working conditions, or to refrain from such activities entirely. The Act applies to almost all industries involved in interstate commerce; however, agricultural, domestic, railway, airline and governmental workers are not covered by its provisions.

Occupational Safety & Health Act ("OSHA")

OSHA, administered and enforced by the Occupational Safety and Health Administration and Administration-approved state programs, requires that employers and employees follow federal and state workplace safety and health guidelines. OSHA allows workers to file a complaint or ask the Administration to conduct an inspection, and the Act prohibits retaliation for filing a complaint or asserting other OHSA rights. OSHA covers all private employers affecting commerce and their employees, regardless of the number of employees.

Title VII of the Civil Rights Act of 1964 ("Title VII")

Title VII, administered and enforced by the EEOC, prohibits employment discrimination against employees on the basis of race, color, sex, religion or national origin and makes it illegal to retaliate against any individual for making a complaint or charge of discrimination or participating in a discrimination investigation or lawsuit. Employers cannot use those protected categories to refuse to hire an otherwise qualified applicant, to fire an individual, or to otherwise discriminate against any employee with respect to his/her compensation, terms, conditions or privileges of employment; this includes harassment on the basis of one of those categories. Additionally, Title VII requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the employer. Title VII applies to federal, state and local governments, as well as private employers with 15 or more employees during each working day 20 or more calendar weeks in the current or preceding calendar year. Some of Title VII's provisions do not apply to certain religious and bona-fide private membership clubs

The Genetic Information Nondiscrimination Act ("GINA")

GINA prohibits the use of genetic information in making employment decisions and makes it illegal to retaliate against individuals for making a complaint or charge of discrimination or participating in a discrimination investigation or lawsuit. It also restricts employers from requesting, requiring or purchasing genetic information with limited exceptions. Finally, it requires employers to keep any genetic information they have about applicants and employees confidential. Genetic information is defined as a genetic test of the individual and his or her family members, as well as any family medical history. GINA applies to private employers with 15 or more employees.

Employee Benefits

<u>Employee Retirement Income Security Act of 1974 ("ERISA")</u>

ERISA sets minimum standards for most voluntarily-established employee benefits plans, including retirement and pension programs, life and disability insurance programs, medical reimbursement plans, health care plans, and severance policies. It requires that employers provide employees with plan features and payment/funding information, provide fiduciary responsibility for those who manage plan assets, establish a grievance and appeals process for plan members, satisfy specific annual reporting and disclosure requirements, and give employees the right to sue for benefits and breaches of fiduciary duty.

Both the Department of Labor and the Internal Revenue Service regulate how employee benefits are provided. The Department of Labor generally focuses on fiduciary issues while the Internal Revenue Service focuses on the tax treatment of employee benefits, but these areas of focus occasionally overlap.

Most ERISA retirement plans can be further split into "Qualified" and "Nonqualified" plans, as described below.

Qualified Plans

Employee benefit plans that offer tax benefits to participants (such as 401(k) plans, pension plans, and certain flexible spending accounts) are considered to be "qualified plans" under the Internal Revenue Code. In order to meet the standards of a qualified plan and be eligible for the special tax treatment of the benefits, such plans must follow tax rules regarding coverage, participation, vesting, annual benefit limits, minimum funding, and distributions. Qualified plans must also satisfy other regulations set forth in the Internal Revenue Code, including passing nondiscrimination testing to ensure that benefits do not benefit primarily highly compensated employees.

Nonqualified Plans

Employee benefit plans that are not required to meet many of the requirements of ERISA or qualified plans are known as "nonqualified plans." They may only be provided to a select group of management or highly compensated employees. Such plans must generally file a "top hat" letter with the Department of Labor in order to be exempt from ERISA reporting requirements. Nonqualified plans may also provide tax-deferred benefits provided they meet certain provisions of the Internal Revenue Code.

Patient Protection and Affordable Care Act ("PPACA")

The PPACA is also known as the "Affordable Care Act," the "ACA," or "Obamacare." The law provides a long list of requirements around healthcare that affect individuals, health insurers, and employers. The PPACA's employer mandate requires employers with 50 or more "full-time equivalent" employees to offer employer-sponsored health insurance to employees or face tax penalties. The health insurance provided must meet certain coverage and affordability requirements, and employers must report the offers of coverage they make to employees annually.

Consolidated Omnibus Budget Reconciliation Act ("COBRA")

COBRA provides employees and their families the right to continue health care coverage provided by their group health plan for a limited time under certain circumstances, such as voluntary or involuntary job loss, reduction in work hours, transition between jobs, death or divorce. Employees may be required to pay the entire premium for continued coverage. Coverage can be continued for approximately 18 months in most cases. COBRA also contains very specific notification requirements for employers to provide employees regarding their COBRA rights.

Health Insurance Portability and Accountability Act ("HIPAA")

HIPAA affects participants and beneficiaries in group health plans. The Act limits the restrictions a plan can place on benefits based upon preexisting conditions, prohibits discrimination against employees and dependents based on their health status, and allows a special opportunity to enroll in a new plan to individuals in certain circumstances. HIPAA also contains provisions protecting the privacy and security of plan members' medical records.

State Considerations

Georgia Labor Laws

Under Georgia's Workers' Compensation statute, any employer with three or more employees must have workers' compensation insurance, either by purchasing it from a licensed insurer, by qualifying as a self-insurer, or through a group self-insurance program. Periodic reports evincing such insurance are required with the State Board of Workers Compensation. (O.C.G.A. § 34-9-1 et seq.)

The Georgia Employment Security Law (O.C.G.A. § 34-8-1 et seq.) requires each employing unit – any person or entity employing one or more individuals – to contribute to the state's unemployment compensation fund if the unit meets a minimal alternative employment standard. The initial rate is 2.7% of the first $8,500 of annual wages paid to each employee per year. An employer status report (Form DOL-1A) must be filed by an employer with the Department of Labor at the inception of employment and periodically thereafter. A tax and wage report (Form DOL-4) must be filed quarterly with payment to the Georgia Department of Labor. A separation notice (Form DOL-800) must be delivered to each employee who separates from employment, regardless of reason.

State wage and hour laws, requiring that employees be paid at least bi-monthly, supplement the federal FLSA and set specific standards for employment of child labor. Garnishment laws define the circumstances under which a portion of an employee's wages may be garnished or assigned.

The Georgia Equal Pay for Equal Work Act (O.C.G.A. § 34-5-1 et seq.) prohibits pay discrimination based on sex for similar jobs under similar working conditions; the Georgia Age Discrimination Act (O.C.G.A. § 34-1-2 et seq.) prohibits employment discrimination based on age for individuals between the ages of 40 and 70; and the Georgia Equal Employment for People with Disabilities Code (O.C.G.A. § 34-6A-1 et seq.), covering employers with fifteen or more employees, prohibits discrimination against an employee because of a disability with respect to wages, hours or other terms and conditions of employment.

Labor Unions

Georgia has no law requiring an employer to bargain collectively or otherwise directly encouraging or protecting the formation of, or membership in, a labor union. Georgia, a "right to work" state, does prohibit employers from making union membership a condition of employment or requiring that an employee join, or remain a member of, a labor union, even pursuant to a union contract (O.C.G.A. § 34-6-20 et seq.). The State Constitution has been interpreted to prohibit a public employer (e.g. State, county, or municipal government) from becoming party to a collective-bargaining agreement covering government employees.

Employment and Employment Contracts

Georgia remains an "employment at will" state. Georgia courts have refrained from construing oral representations, employee handbooks, or similar material to create implied employment contracts. Therefore, both employer and employee remain free to terminate the employment relationship absent an agreement between them providing for a definite period of employment (O.C.G.A. § 34-7-1).

In 2011, Georgia reformed its laws concerning restrictive covenants, making the law much more employer-friendly. Employment agreements executed before the effective date of the new statute are governed by the prior common law rules, which place significant limitations on the duration, geographic area, and scope of prohibited activities in restricted covenants contained in those agreements. Additionally, under the earlier law, Georgia courts subject restrictive covenants to rigorous review in determining their reasonableness; courts took an "all or nothing" approach, invalidating a restrictive covenant in its entirety if any part of it was found to be unreasonable. A collection of complicated and sometimes counterintuitive rules have been developed, introducing significant uncertainty for employers and making it difficult to create and enforce meaningful employment covenants in Georgia.

Employment agreements executed after the effective date are governed by the new statute (O.C.G.A. § 13-8-50, et seq.), which allows broader restrictions to be included and provides guidance regarding the duration, area, and scope of the restrictions; and Georgia courts are allowed to modify otherwise overbroad restrictive covenants to make them enforceable.

Perhaps most importantly, the statute allows for judicial modification of an otherwise overly broad covenant to make it enforceable. The new statute allows courts to uphold and enforce overly broad covenants either by removing unenforceable provisions in their entirety or enforcing provisions only to the extent that they are reasonable. (O.C.G.A. §§ 13-8-51 (11)-(12), 13-8-53(d), 13-8-54(b).)

The statute provides guidance regarding the permissible time limits of restrictive covenants. Employment covenants of two years or less are presumed

reasonable, while covenants of more than two years are presumed unreasonable. (O.C.G.A. § 13-8-57.)

Importantly, if an employer wishes to avail itself to the new statute's protections and guidance with its current employees, it must still execute new agreements.

Child Labor Act

Supplementing the federal FLSA, the Child Labor Act requires that individuals 17 years of age or younger obtain an employment certification form to work in Georgia, refrain from selling, serving, or dispensing alcoholic beverages (except where consumption is off the premises), file a special form if working in entertainment industries, and abstain from working in identified dangerous industries.

Environmental

Federal Considerations

Resource Conservation and Recovery Act ("RCRA")

RCRA, and its subsequent amendments, establishes environmentally sound procedures for managing hazardous and nonhazardous waste. Under RCRA, only solid waste (garbage, refuse, sludge, water treatment plant sludge, and other discarded materials, including solid, liquid, semisolid or contained gaseous material) can be considered hazardous waste, and therefore, be regulated. RCRA's "cradle to grave" permitting system monitors hazardous waste at each step of its creation, storage, transportation, treatment and disposal through a rigorous system of labeling, recordkeeping and transportation requirements.

RCRA is administered and enforced by interagency coordination among several federal agencies, including the U.S. Environmental Protection Agency ("EPA") and the U.S. Department of the Interior ("DOI"). The EPA issues regulations and policy guidance on the proper management of hazardous and non-hazardous waste, certifies state waste management programs, and provides financial assistance to state waste management programs. The DOI regulates waste creation from metal and mineral mining operations.

RCRA also authorizes the EPA to bring suit against any person or entity that endangers public health and safety through negligent or willful storage, treatment or disposal of hazardous waste. Finally, RCRA also empowers the federal government to authorize states to implement and enforce hazardous waste regulations and requirements of RCRA.

Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

CERCLA, also known as "Superfund," authorizes the federal government to regulate hazardous materials, to respond to hazardous substance emergencies, and to address future hazardous substance concerns. CERCLA also created a Hazardous Substance Response Trust Fund (the "Trust Fund"), supported by a tax on the chemical and petroleum industries, to pay for cleanup activities at abandoned or uncontrolled hazardous waste sites, but that tax has not been collected since FY1995, which resulted in the Trust Fund being exhausted by the end of FY2003.

Under Superfund, potential responsible parties ("PRPs") must pay for the clean-up activities of the damage they have created; if no PRP comes forward, clean-up costs which were formerly supplied through the Trust Fund are now appropriated by Congress out of general revenues. The EPA then has the authority under Superfund to take PRPs to court to obtain up to three times the clean-up costs in damages.

In 1986, CERCLA was amended by the Superfund Amendments and Reauthorization Act ("SARA"). SARA expanded the federal government's response authority, clarified that federal facilities are subject to the same CERCLA requirements as private industry, and provided a statutory right of contribution between PRPs.

Clean Air Act ("CAA")

The CAA regulates the discharge of pollutants into the air. United States standards for pollutants are set by the EPA and must conform to National Ambient Air Quality Standards. Additional regulations concerning stratospheric ozone protection, mobile sources (e.g., vehicle emissions), and acid rain control were added to the CAA in 1990. The CAA uses a permit system, administered by authorized states, to regulate all major source and some minor source facilities that emit pollutants into the air. The permits are fee-based to offset the cost of the administration of the regulatory scheme. Administrative penalties for non-compliance of the CAA may be as high as $97,229 per day (up to $295,000 generally) for any violation, and facilities may be fined up to $7,500 a day for more minor infractions found during inspections ("field citations"). The CAA also creates criminal sanctions for negligent or willful violations of its provisions.

Clean Water Act ("CWA")

The CWA penalizes the discharging of pollutants into navigable waters from a point source without a permit by creating (1) a system of minimum national effluent standards for each industry, (2) a set of water quality standards, (3) a discharge permit program that creates enforceable limits, (4) a set of provisions for special situations like toxic chemical and oil spills, and (5) a construction loan program for publicly-owned treatment plants. Permits issued under the Clean Water Act derive from federally-approved State programs or from the EPA directly if the State has not been approved to distribute permits. The EPA uses the National Pollutant Discharge Elimination System ("NPDES") to determine the enforceable limits for its permits. States may, but are not required to, obtain grants under the CWA for regulating the flow of pollutants through run-off of precipitation from non-point sources, such as parking lots, farming or pasturing operations. Under Section 404 of the CWA, the EPA and the U.S. Army Corps of Engineers jointly regulate placement of dredge or fill material into the waters of the United States, including wetlands. Like the CAA, the CWA provides for administrative and criminal penalties for violations of its provisions.

State Considerations

The EPA authorizes the Environmental Protection Division ("EPD") of the Department of Natural Resources of the State of Georgia to issue certain environmental permits required by federal law. The EPD has instituted a "one stop" permitting procedure in Georgia to enhance the efficiency of the permitting process when a corporation locates a facility in the State. However, permits required under the Coastal Marshlands Protection Act and "dredge and fill"

permits under Section 404 of the federal Clean Water Act are not governed by the “one stop” permitting provisions.

The EPA has granted authority to the EPD to implement and enforce federal hazardous waste management rules within the state of Georgia. The Georgia Hazardous Waste Management Act (O.C.G.A. § 12-8-60 et seq.) essentially adopts the federal Resource Conservation and Recovery Act (“RCRA”) regulations. The Act regulates the generation, transportation, treatment, storage and disposal of hazardous wastes. EPD has the authority to impose civil and criminal penalties for violations under the Act.

The Georgia Underground Storage Tank Act (O.C.G.A. § 12-13-1 et seq.) provides a comprehensive program to prevent, detect and correct releases from underground storage tanks (“USTs”) of “regulated substances” other than hazardous wastes governed by the RCRA regulations. The regulations provide design, construction, installation and operating standards for new USTs, a schedule for upgrading existing USTs, release detection methods for new USTs, and a phase-in of such methods for existing USTs. Notification and record keeping are required, as is reporting and correction of releases. Procedures for removal or abandonment of USTs are governed on a local level, usually by the local Fire Marshall.

A 2015 update to the federal UST training rule requires operators of USTs in Georgia to demonstrate competency in complying with applicable UST rules by October 13, 2018. The rule update retains the division of UST operators into three classes depending upon job responsibilities – Class A, B and C. Class A and Class B operators – persons having primary and daily responsibility for the onsite operation and maintenance of USTs – are required to pass the Georgia UST Operator Test within 30 days of assuming their duties. Class C operators – persons responsible for initially addressing emergencies – are required to pass the test before they assume their duties.

The Georgia Water Quality Control Act (O.C.G.A. § 12-5-20 et seq.) works in conjunction with the federal Clean Water Act to deal with waste water discharge, site selection, and wetlands mitigation requirements. Georgia also requires NPDES permitting of storm water point sources such as municipal storm sewer systems and discharges from certain industrial and construction activities. The Director of EPD may require any person authorized under a general permit for storm water to apply for and obtain an individual NPDES permit if certain criteria are met. In 2008, the Georgia General Assembly adopted the Georgia Comprehensive State-wide Water Management Plan, a forward-looking plan that provides for water resource assessments and forecasting through the development of ten regional water planning counsels. The Georgia Water Stewardship Act, which went into effect statewide on June 2, 2010, restricts outdoor water use by anyone whose water is supplied by a water system permitted by the EPD.

Likewise, the Georgia Air Quality Act (O.C.G.A. § 12-9-1 et seq.) establishes a pre-construction permitting process to impose specific emissions

limitations on sources of air pollution, such as manufacturing projects, printing establishments and dry cleaners. Also in regards to air pollution, the Georgia Motor Vehicle Emission Inspection and Maintenance Act (O.C.G.A. § 12-9-40 et seq.) mandates that all motor vehicles in Georgia be inspected periodically (determined by regulation) to ensure that exhaust and evaporative emissions meet federal and state guidelines and that all on-board diagnostic equipment complies with emission standards. The Georgia Asbestos Safety Act (O.C.G.A. § 12-12-1 et seq.) also regulates air emissions by governing the removal of asbestos from buildings and other structures, requiring notification before demolition or removal, and employment of licensed contractors who must use specified emission control and worker protection techniques.

In 1992, Georgia adopted its own “baby Superfund” law, the Georgia Hazardous Site Response Act (“HSRA”). (O.C.G.A. § 12-8-90 et seq.) HSRA provides for graduated fees on the disposal of hazardous waste, a trust fund to enable the EPD to clean up sites and administer the program, a strict joint and several liability scheme similar to that of CERCLA, and an EPD inventory (the Hazardous Site Inventory, or “HSI”) of “known or suspected” Georgia hazardous sites that is populated based on notifications submitted by owners of properties having substance releases in excess of “reportable quantities” (as defined by regulation). HSRA also provides EPD with the authority to issue non-appealable corrective action orders with punitive damages for noncompliance, and a system requiring deed notices and affidavit recording in county real property records for HSI sites.

Georgia has also adopted the Brownfield Act (O.C.G.A. § 12-8-200 et seq.), which provides certain limitation of liability benefits for a prospective purchaser of certain types of contaminated property, provided that proper application and approvals are obtained from EPD within 30 days of the purchase of the contaminated property and that the prospective purchaser did not contribute to the release of hazardous substances, have a substantial business relationship or other affiliation with a party responsible for the release, or be in violation of EPD’s rules and regulations. Under the Brownfield Act, the seller retains liability for groundwater contamination beneath the property. The Brownfield Act was most recently amended to clarify, among other things, that a holder of any type of interest in real property can be eligible for these protections.

Finally, in 2009, the Georgia Voluntary Remediation Program Act (O.C.G.A. § 12-8-100, et seq.) was adopted. It encourages voluntary and cost-effective investigation and remediation of certain contaminated properties using site-specific cleanup standards. To be eligible, the property must be listed on the HSI pursuant to HSRA, qualify for a limitation of liability under the Brownfields Act, or otherwise have a release of regulated substances into the environment. The applicant must be the property owner or have the express permission of the property owner to perform remediation on the property, and a voluntary remediation plan must be submitted to and approved by EPD before remediation can begin.

Intellectual Property

Copyrights

Copyrights protect original, intellectual literary, artistic, musical or dramatic work products. The 1976 Copyright Act generally gives a copyright owner the exclusive right to reproduce the copyrighted work, to publicly perform such works and to publicly display such works. In the United States, copyrights are governed by federal law and are administered through the United States Copyright Office of the Library of Congress. Further information can be obtained by calling the office at (202) 707-3000 or visiting the Copyright Office website at www.copyright.gov.

Patents

The Patent Act of 1952 affects patents and grants a property right to inventors. Protections provided by the Act include the right to "exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States. Patents are protected for 20 years following the date on which the application was filed with the United States Patent and Trademark Office. However, United States patents are only valid within the United States, United States territories, and United States possessions. Like copyrights, patents are governed by federal law.

Trademarks and Service Marks

Although parties may be aware of federal trademark protections, they should also note that Georgia provides for separate trademark registration within the state by statute.

Trademarks are words, names, symbols, or devices used by a person or entity to identify goods made or sold and to distinguish them from goods made or sold by another party. (O.C.G.A. § 10-1-440). Service marks, on the other hand, are words, names, symbols, or devices used by a person to identify its services and to distinguish them from the services of others. (O.C.G.A. § 10-1-440). As a practical matter, there is little difference between trademarks and service marks with regard to the acquisition and protection of rights; accordingly, trademarks and service marks are referred to below collectively as "trademarks" unless otherwise noted.

As is true with federal law in the United States, trademark rights in Georgia arise through use, not registration. A trademark that is used but not registered is referred to as a common law trademark. Rights in a common law trademark are generally limited to the geographic territory in which the trademark owner sells its goods or services under the mark.

A trademark can be registered with the Georgia Secretary of State's office. Registration provides three primary benefits. First, registration provides

notice to others of the trademark owner's use of and rights in its trademark. This notice may prevent a third party from adopting a confusingly similar mark for the same or similar services in order to avoid infringement of the registered mark. Second, registration provides the registrant with the option to recover liquidated damages in the amount of $10,000 in lieu of actual damages in the event an infringer had knowledge of the registration prior to infringement. (O.C.G.A. § 10-1-450). Third, willful counterfeiting of a registered mark can subject the counterfeiter to criminal prosecution. (O.C.G.A. § 10-1-454).

A Georgia state trademark registration does not provide statewide rights in a mark. Thus, it is possible that two parties could lawfully use the same mark for the same goods or services in different parts of the state, despite the fact that one of the marks is registered, provided that the two uses are geographically remote from one another and the junior user adopted its mark without knowledge of the senior registrant. A trademark owner that does business in interstate commerce is generally better served to secure a federal trademark registration because federal registration provides nationwide constructive notice of the registrant's trademark rights. However, for trademark owners that do business only in Georgia with no intent of expanding outside the state, or who do not wish to pay the higher fees incurred in securing a federal registration, a Georgia state registration is still useful because of the public notice registration provides.

Generally, a mark may be registered in Georgia unless it consists of or comprises (1) immoral, deceptive or scandalous matter, (2) matter that may disparage or suggest a false connection with a person, institution, belief or national symbols or bring them into contempt or disrepute, (3) the flag or coat of arms or other insignia of the United States or any state, country, municipality, foreign nation, or a simulation thereof (except that a country or municipality may register its own service mark for its own use), (4) the name signature or portrait of any living individual without his/her written consent, (5) a mark which is descriptive or deceptively misdescriptive of the goods or services to which it is applies, (6) a mark which is geographically descriptive or deceptively misdescriptive of the goods or services to which it is applies, (7) a mark which is primarily a surname, or (8) a mark which so resembles a mark registered in Georgia or by the United States Patent and Trademark Office as to be likely to cause confusion among consumers when applied to the applicant's goods or services. (O.C.G.A. § 10-1-441). The prohibition on registration of disparaging marks in O.C.G.A. § 10-441(2) is likely no longer enforceable following the U.S. Supreme Court's ruling in Matal v. Tam, 137 S. Ct. 1744 (2017), in which the Court held that a similar provision in the federal trademark statute is unconstitutional under the First Amendment's Free Speech Clause.

Both trademark and service mark registrations can be obtained from the Georgia Secretary of State's office by filing the appropriate application (obtainable on the Secretary of State's website), paying a $15.00 non-refundable examination fee, and providing three specimens. Specimens are actual examples of use of the mark for which registration is sought. Acceptable trademark specimens include the actual label or packaging of the product for

goods, and advertisements showing use of the mark for services. All registered trademarks and service marks are protected for 10 years, although they may be renewed for additional 10 year terms.

Under the Georgia statute, any trademark or service mark and its registration is assignable with the goodwill of the business in which the trademark or service mark is used or with that part of the goodwill of the business connected with the use of and symbolized by the trademark or service mark. Assignments must be made in writing and may be recorded with the Secretary of State if the mark is registered. Upon recording of the assignment, the Secretary of State will issue a new certificate in the name of the assignee for either the remainder of the term of the registration or the last renewal of the registration. (O.C.G.A. § 10-1-446).

The Georgia statute enables a mark owner to sue any person for infringement of its registered mark (1) where use of a reproduction, counterfeit copy or colorable imitation of a trademark in connection with the sale or advertising of any goods or services is likely to cause confusion among consumers of the goods or services and (2) for use of the mark or a colorable imitation thereof on counterfeit goods. (O.C.G.A. § 10-1-450). Additional information regarding registration of a mark in Georgia may be obtained from the Georgia Secretary of State's office at www.sos.ga.gov.

Information on federal registration of trademarks through the United States Patent and Trademark Office can be obtained by contacting the Office at 1-800-786-9199 or www.uspto.gov.

Trade Names

Trade names are names that business owners use to identify their businesses. Georgia provides for trade name registration within the state by statute.

Trade names are not registered with the Georgia Secretary of State's office but rather with the Clerk of the Superior Court of the county where the business operates. (O.C.G.A. § 10-1-490) Trade names are also sometimes referred to as "DBAs" or "fictitious names." The purpose of trade name registration is to give the public notice of the person or entity doing business under the trade name for use in business contracts and litigation.

Trade names and trademarks differ in that a trade name identifies the business, and trademarks and service marks identify the goods and services sold by the business. If a business offers its services under its trade name (such as a dry cleaner), the business's trade name is also a service mark.

Adoption of a name or mark by a third party that is likely to cause confusion or mistake as to whether the third party's goods or services originate from, or are sponsored or approved by, a trade name owner can give rise to a claim for trade name infringement under Georgia common law and violation of

the Georgia Uniform Deceptive Trade Practices Act (O.C.G.A. § 10-1-370 et seq.).

Importantly, neither trade name registration nor registration of a company name with the Georgia Secretary of State's office confers the exclusive right to do business under the name in the state. (See O.C.G.A. § 14-2-401(e) (profit corporations) and O.C.G.A. § 14-3-401(e) (nonprofit corporations) stating that the "issuance of a corporate name does not affect the commercial availability of the name"). Rather, the business must use its trade name/corporate name in connection with the offering for sale of goods or services in the state to have enforceable rights in the name.

Trade Secrets

Trade secrets are protected by both federal and state law. At the federal level, trade secrets are protected by the Defend Trade Secrets Act, 18 U.S.C. § 1836 et seq. In Georgia, trade secrets are also protected by the Georgia Trade Secrets Act ("GTSA") (O.C.G.A. § 10-1-760 et seq.). Under the GTSA, a "trade secret" is defined as "information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information: (A) Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (O.C.G.A. § 10-1-761).

Although the GTSA substantially increases the likelihood of protection of a trade secret, factors such as the extent to which the relevant information is publicly known, the measures taken by the owner to protect the information, the value of the information to competitors, and the ease or difficulty with which others could independently create the information are relevant to determination of whether protection will be afforded by the Act. In cases of willful or malicious misappropriation, a court may award reasonable attorneys' fees to the trade secret owner. (O.C.G.A. § 10-1-764).

Dispute Resolution

Federal Court System

Article I of the United States Constitution authorizes the Legislative Branch (the United States Congress, consisting of the House of Representatives and the Senate) to create federal law. Article II authorizes the Executive Branch (led by the President of the United States) to enforce federal law. Article III establishes the Judicial Branch and charges the federal courts with interpreting and applying federal law.

Since the Constitution's ratification, federal courts have enjoyed judicial independence, underscoring the significance of their role. For example, federal judges are appointed for life (after being nominated for their positions by the President of the United States and being confirmed by the United States Senate) and can be removed from office only through impeachment and conviction by both chambers of Congress for "Treason, Bribery, and other high Crimes and Misdemeanors." (U.S. Const., Art. II, Sec. 4).

United States District Courts are the trial courts of the federal judiciary, and they have jurisdiction to hear both civil and criminal matters. Currently, there are 94 federal judicial districts, including at least one district in each state, the District of Columbia, Puerto Rico, and the three United States territories (Virgin Islands, Guam and Northern Mariana Islands). Georgia comprises three districts: the Northern, Middle, and Southern Districts. Moreover, there are two special trial courts that have nationwide jurisdiction in specialized matters: the Court of International Trade (trade and customs issues) and the United States Court of Federal Claims (claims for money damages against the United States, disputes over federal contracts, unlawful "takings" claims against the federal government, etc.).

Federal courts have limited subject matter jurisdiction granted by the United States Constitution and federal statutes. They maintain exclusive jurisdiction over bankruptcy, patent and copyright, foreign consuls and vice-consuls, admiralty and maritime, and all matters where the United States is involved. There are two primary sources of federal subject matter jurisdiction. First is federal question jurisdiction, which exists when a case arises under the Constitution, laws, or treatises of the United States. (*See* 28 U.S.C. § 1331). Second is diversity jurisdiction, which exists when a dispute is between citizens of different states (each plaintiff must be from a state that is different from each of the defendants), and the amount in controversy is greater than $75,000. (*See* 28 U.S.C. § 1332). U.S. District Courts also have supplemental jurisdiction over claims so related to claims creating original subject matter jurisdiction that they form part of the same case or controversy. (*See* 28 U.S.C. § 1367). If a matter proceeds to federal court, parties must be aware of both the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, and any local rules of the particular federal court.

Civil cases are initiated in a U.S. District Court by filing a complaint and then paying a filing fee pursuant to Section 1914 of Title 28 of the United States Code. Currently, the fee is set at $350. Complaints may be accompanied by a form to file *in forma pauperis*, meaning the plaintiff is incapable of paying the filing fee. Criminal matters, however, are not filed by individuals in U.S. District Courts. Instead, only the U.S. government can commence a criminal action against an individual or other entity (corporations, organizations, etc.). Allegations of criminal behavior should be reported to local police, the Federal Bureau of Investigation ("FBI"), the Georgia Bureau of Investigation ("GBI"), or other law enforcement agencies. Finally, bankruptcy cases are initiated by filing a petition to the court along with a statement of all held assets and liabilities and schedules listing one's creditors. Fees vary depending on the type of bankruptcy filed.

Appeals from a U.S. District Court proceed to the U.S. Court of Appeals with jurisdiction over that U.S. District Court. Currently, the 94 U.S. Judicial Districts are organized into 13 Circuit Courts of Appeal, including the Court of Appeals for the Federal Circuit and the District of Columbia Court of Appeals. (A list of states that compose each circuit is located in Section 41 of Title 28 of the United States Code). Appeals from U.S. District Courts located in Georgia are directed to the Eleventh Circuit Court of Appeals. U.S. Courts of Appeal hear appeals not only from the district courts located within their circuits but also from decisions of federal administrative agencies. The Court of Appeals for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases, like those involving patent laws and cases heard by the Court of International Trade and the Court of Federal Claims.

Appeals from the decisions of U.S. Courts of Appeal may be made by petitioning the United States Supreme Court to grant certiorari, or a review of the merits of one's case. The Supreme Court's authority derives from Article III, § 1 of the Constitution, which states that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Further authority arises out of the Judiciary Act of September 24, 1789. The Court, which consists of a Chief Justice of the United States and a number of Associate Justices determined by Congress (currently set at eight Associate Justices), reviews only a limited number of cases a year, all of which involve important questions of federal law or the Constitution. These cases, moreover, must comport to the jurisdictional authority provided by Article III, § 2 of the Constitution, which establishes the Supreme Court's original jurisdiction (cases involving Ambassadors and other public officials and those in which a State is a party) as well as its appellate jurisdiction.

State Court System

Inferior State Courts

There is no uniform system of inferior State Courts in Georgia. Instead, each county and some municipalities retain unique systems of inferior courts,

created by legislative acts. Georgia's inferior State Courts have concurrent jurisdiction with the state Superior Courts over non-felony criminal cases and all civil cases except equity cases, divorce cases, and cases involving title to real estate.

State Court

The Georgia General Assembly created the State Courts in 1970. State Courts possess jurisdiction over all misdemeanor violations, including traffic cases and all civil actions not covered by the Superior Court's exclusive jurisdiction. (O.C.G.A. § 15-7-4). State Courts may issue search and arrest warrants and may hold preliminary hearings. (*See id.*). State Court judges are popularly elected to four-year terms through countywide, non-partisan races. (O.C.G.A. § 15-7-20). Candidates must be at least 25 years old, have been admitted to practice law for at least 7 years, and have been a resident of Georgia for at least 3 years. (O.C.G.A. § 15-7-21).

Juvenile Court

Juvenile Courts in Georgia operate in the best interest of the minors they serve. A Juvenile Court may, at any time during a minor's case, provide a guardian ad litem for a child who is a party to the proceeding if the child has no parents, guardians or custodians appearing on the child's behalf, or if the interests of the parents, guardians, or custodians conflict with the child's interest. (O.C.G.A. § 15-11-9). Juvenile Courts maintain exclusive jurisdiction over any child under the age of 17 who (1) is alleged to be delinquent, (2) is alleged to be unruly, (3) is alleged to be deprived, (4) is alleged to be in need of treatment or commitment as a mentally ill or mentally retarded child, or (5) is alleged to have committed a juvenile traffic offense, or (6) has been placed under the supervision of the court or on probation to the court; provided, however, that such jurisdiction shall be for the sole purpose of completing, effectuating, and enforcing such supervision or a probation begun prior to the child's seventeenth birthday. (O.C.G.A. §§ 15-11-2(2); 15-11-28(a)(1)). Juvenile and Superior Courts generally share concurrent jurisdiction over child support and custody cases. (O.C.G.A. 15-11-28(c)(1)). As to criminal cases, Juvenile Courts maintain concurrent jurisdiction with Superior Courts over a child who is alleged to have committed a delinquent act which would be considered a crime if tried in a superior court and for which the child may be punished by loss of life, imprisonment for life without possibility of parole, or confinement for life in a penal institution. (O.C.G.A. § 15-11-28(b)(1)). However, the Superior Courts have exclusive jurisdiction over juveniles who commit certain violent felonies, including murder, voluntary manslaughter, rape and other sexual offenses, and armed robbery with a firearm. (O.C.G.A. § 15-11-28(b)(2)(A)). Juvenile Court judges are often appointed by Superior Court judges to four-year terms. Appointees must be at least 30 years of age, have practiced law for five years, and have been citizens of Georgia for three years. (O.C.G.A. § 15-11-18).

Probate Court

Georgia Probate Courts have original, exclusive, and general jurisdiction over the probate of wills, granting or revocation of letters testamentary or letters of administration, administration of estates of deceased or incapacitated persons, guardianship, and other related matters. (O.C.G.A. § 15-9-30). Probate Court judges may also issue oaths of office and issue marriage licenses. (*Id.*) Probate judges are popularly elected to four-year terms in county-wide elections. (O.C.G.A. § 15-9-1). Candidates must be at least 25 years of age, a high school graduate, a U.S. citizen, and a county resident for at least two years prior to the election. (O.C.G.A. § 15-9-2).

Magistrate Court

Georgia's Magistrate Courts were created to allow more direct citizen participation in the legal system. Magistrate Courts are authorized to hear a variety of civil cases, including garnishment and attachment in which exclusive jurisdiction is not vested in the Superior Court, and the amount demanded or the value of the property claimed does not exceed $15,000.00. (O.C.G.A. § 15-10-2). Magistrate Courts may also hear applications for and issue arrest and search warrants. (*Id.*) Magistrate Courts may not, however, exercise jurisdiction over cases respecting title to land, divorce cases, or equity cases. (*See* Ga. Const. Art. VI, Sec. IV, ¶ 1)

Each county in Georgia retains one Chief Magistrate and may also have one or more other associate magistrates (O.C.G.A. § 15-10-20). Most Chief Magistrates are popularly elected to four-year terms in county-wide races. (*Id.)* Magistrate judges must reside in the applicable county for at least one year prior to the term of office, be at least 25 years of age, and have at least a high school diploma. (O.C.G.A. § 15-10-22(a)).

Superior Court

Georgia's Superior Courts are general jurisdiction trial courts that have exclusive jurisdiction over felonies, divorces, equity cases, and matters regarding title to land. (Ga. Const. Art. VI, Sec. IV, ¶ 1). Superior Court judges can grant all necessary writs, original and remedial. (O.C.G.A. § 15-6-9(4)). Moreover, Superior Courts may exercise appellate jurisdiction from judgments of the probate or magistrate courts (O.C.G.A. § 15-6-8(3)); exercise general supervision over all inferior tribunals (O.C.G.A. § 15-6-8(4)); and review and correct the judgments of Magistrates, municipal courts or councils, any inferior judicature, any person exercising judicial powers, and judges of the probate courts, except in cases touching the probate of wills and the granting of letters of administration, in which a jury must be impaneled (*id.*). Georgia is divided into 49 judicial districts. Each district includes multiple circuits, and each circuit includes multiple counties (a full listing of districts, circuits, and counties can be found at O.C.G.A. § 15-6-1). Each county has its own Superior Court. Superior Court judges must be at least 30 years old, have been a citizen of Georgia for at least 3 years, and have practiced law for at least 7 years. (O.C.G.A. § 15-6-4). Superior Court

judges are elected by the electors of the judicial circuit in which the judge is to serve for four-year terms. (Ga. Const. Art. VI, Sec. VII, ¶ 1; O.C.G.A. § 15-6-4.1).

Court of Appeals

The Court of Appeals of Georgia possesses appellate and certiorari jurisdiction in all cases not reserved to the Supreme Court of Georgia or conferred on other courts by law. (Ga. Const. Art. VI, Sec. V, ¶ 3). The Court of Appeals typically hears cases regarding civil claims for damages, child custody cases, workers' compensation cases, administrate law cases, and criminal cases other than murder cases. The Court of Appeals consists of 15 judges. The position of Chief Judge is rotated, usually for a two-year term and upon the basis of seniority of tenure on the Court. Cases are heard by a three-judge panel. All Court of Appeals judges are popularly elected to staggered, six-year terms through nonpartisan state-wide elections. (O.C.G.A. § 15-3-4). Judges must have practiced law in Georgia for at least seven years prior to being elected to the bench. (Ga. Const. Art. VI, Sec. VII, ¶ 2).

Supreme Court

Cases may arrive at the Supreme Court through various avenues. First, federal appellate courts or the Court of Appeals of Georgia may certify questions of law to the Supreme Court of Georgia for instructions on how to interpret and apply state law matters. (Ga. Const. Art. IV, Sec. VI, ¶¶ 2(7), 4; O.C.G.A. § 15-2-9). Second, the Supreme Court may review decisions of the Disciplinary Board of the State Bar of Georgia, the Judicial Qualifications Commission, and the proceedings of the Office of Bar Admissions. Third, the Supreme Court may grant a petition for certiorari from a party who has lost a case or an issue in a case before the Georgia Court of Appeals. (Ga. Const. Art. IV, Sec. VI, ¶ 5). Fourth, the Supreme Court may hear cases brought by discretionary appeal. Finally, in certain cases, litigants have a right to direct appeal to the Supreme Court (e.g., death penalty cases). The Supreme Court of Georgia maintains exclusive appellate jurisdiction in all cases that: (1) involve the construction of a treaty, the Georgia Constitution, or the United States Constitution, and all cases where the constitutionality of a law, ordinance, or constitutional provision has been questioned; or (2) involve election contests. (Ga. Const. Art. IV, Sec. VI, ¶ 2). The Court also has general appellate jurisdiction over the following: (1) cases involving title to land; (2) all equity cases; (3) cases involving wills; (4) habeas corpus cases; (5) cases involving extraordinary remedies; (6) cases involving divorce or alimony; (7) cases certified to it by the Court of Appeals; and (8) all cases where a sentence of death was imposed or could be imposed. (Ga. Const. Art. IV, Sec. VI, ¶ 3). The Supreme Court of Georgia consists of seven Justices who are popularly elected to serve six-year terms and who elect from their membership a Chief Justice and a Presiding Justice. (Ga. Const. Art. IV, Sec VI, ¶ 1; O.C.G.A. § 15-2-1.1).

Arbitration and Mediation in Georgia

Both private and court-connected alternative dispute resolution ("ADR") programs are being used increasingly throughout the state. Arbitration in Georgia is governed by the Georgia Arbitration Code (O.C.G.A. 9-9-1, *et seq.*). The Georgia Arbitration Code applies to all disputes which the parties agree in writing after July 1, 1988, to arbitrate, except for: (1) certain medical malpractice claims; (2) any collective bargaining agreements between employers and labor unions representing employees of such employers; (3) certain insurance contracts; (4) any other subject matters currently covered by an arbitration statute; (5) any loan agreement or consumer financing agreement in which the amount of indebtedness is $25,000.00 or less at the time of execution; (6) certain contracts for the purchase of consumer goods; (7) any contract involving consumer acts or practices or involving consumer transactions under Georgia's Fair Business Practices Act of 1975; (8) certain sales or loan agreements for the purchase or financing of residential real estate; (9) certain employment contracts; and (10) any agreement to arbitrate future claims arising out of personal bodily injury or wrongful death based on tort. (O.C.G.A. § 9-9-2). Two alternate ADR systems were created out of the Georgia Arbitration Code: Private ADR Organizations and Court-Connected ADR programs. Private parties desiring assistance in the settlement of disputes may request the private ADR services. All costs in those matters are borne by the private negotiating parties. Court-connected ADR programs, consisting of arbitration, mediation, and case evaluation services, on the other hand, are available to litigants already involved in the court system. Court-connected ADR programs are run by the Georgia Commission on Dispute Resolution, a body of judges, lawyers, and non-lawyers appointed by the Georgia Supreme Court. The Georgia Commission on Dispute Resolution has created a state-wide plan allowing any Superior, State, Probate, Magistrate, or Juvenile Court in Georgia to offer litigants the chance to settle matters through ADR techniques pursuant to the Georgia Supreme Court Alternative Dispute Resolution Rules and appropriate filing requirements. The court-connected ADR programs are entirely funded through the filing fee surcharges (made permanent by O.C.G.A. § 15-23-1, et seq.). These two programs provide conflicting parties with a cost-effective and less-adversarial method of resolving disputes.

Financing Investments

Tax-Exempt Financing

Georgia authorizes a number of state and locally created quasi-governmental authorities to assist for-profit, non-profit and governmental entities to develop and finance projects. Such authorities include those primarily focused on developing and financing economic development projects, (including, without limitation, industrial, commercial, business, office and parking projects, sports facilities, airports and ports), healthcare facilities, senior housing and multifamily housing projects, private colleges and universities, and energy and utility projects. The interest payable on bonds and other forms of indebtedness issued by such authorities may qualify as tax-exempt financings, the interest on which would be excludable from gross income for federal income tax purposes if the applicable requirements of the Internal Revenue Code of 1986, as amended, are satisfied. Almost all revenue bonds issued by such authorities are subject to mandatory judicial validation in the Superior Court of the County in which such issuing authority is located or as otherwise authorized by applicable law. However, the debt issued by almost all of such authorities does not constitute a debt of the State or any political subdivision or municipality thereof and cannot be directly secured by any tax revenue or other property of the State or any political subdivision or municipality thereof.

Certain of such authorities have condemnation powers and can undertake tax increment financings whereby increased tax revenues resulting from a development project may be used to support the financing of project infrastructure and other related development costs.

Federal Securities Law

Securities Act of 1933

The Securities Act, also known as the “truth in securities” law, forbids misrepresentation and fraud in connection with the sale of securities and, to this end, requires companies to disclose certain information to investors before securities are offered for public sale. Information required to be disclosed includes a description of the company’s business and properties, information about the management of the company, conflicts of interest, financial statements audited by independent accountants and a description of the security being offered for sale. These disclosure requirements are implemented by requiring the company to register public offerings of securities to be sold with the Securities and Exchange Commission (“SEC”) and requiring the company’s registration statement to include the disclosures prescribed by the applicable registration form. The company files its registration statement with the SEC electronically and then maintains and updates the disclosure in the registration statement through subsequent filings with the SEC.

Securities Exchange Act of 1934

The Securities Exchange Act authorizes the SEC to regulate and oversee stock brokerage firms and related securities self-regulatory organizations (such as the New York Stock Exchange and the Financial Industry Regulatory Authority ("FINRA")). The Act also authorizes five distinct oversight mechanisms to regulate the securities industry and instill public confidence in the nation's financial systems. First, all companies with more than $10 million in assets whose securities are held by more than 500 owners must file annual and other periodic reports with the SEC. Second, all proxy statements – materials used to solicit shareholders' votes in annual or special meetings held for the approval of corporate action – must meet certain disclosure requirements and, subject to limited exceptions, be filed with the SEC prior to distribution to shareholders. Third, anyone who acquires more than 5% of a company's securities or makes a tender offer for a company's securities must promptly disclose certain information about the purchaser and the transaction by means of a public filing with the SEC. Fourth, the Act provides penalties for fraudulent activities in the securities markets, such as insider trading. Finally, the Act imposes broad public disclosure requirements for various market participants, such as stock exchanges, brokers and dealers, transfer agents, and clearing agencies.

Sarbanes-Oxley Act of 2002

The "Sarbanes-Oxley Act of 2002" contains a comprehensive array of corporate governance, reporting and disclosure requirements for United States public companies. In addition, it includes various accounting practice reform provisions and provides new, or enhanced, criminal and civil liability provisions related to securities fraud. Specifically, the Act, among other items, (1) requires a public company's chief executive officer and chief financial officer to certify the accuracy of the company's annual and quarterly reports and financial statements filed with the SEC; (2) prohibits personal loans from the company to directors and executive officers; and (3) mandates new audit committee independence requirements and responsibilities. Finally, the Act establishes a new oversight board to monitor the accounting industry, and prohibits accounting firms from performing certain non-audit services for their public company clients.

State Securities Law

The Georgia Secretary of State acts as the Georgia Commissioner of Securities, regulating the sale of securities within and from the state of Georgia. Securities covered include common stocks, bonds, investment contracts and derivatives.

Georgia Securities Act

The Georgia Uniform Securities Act of 2008 (O.C.G.A. § 10-5-1 et seq.) regulates the offer and sale of securities within the state of Georgia in a manner similar to that of the registration regime created by the federal Securities Act of 1933 and Securities Exchange Act of 1934, seeking to protect consumers from

fraudulent and deceptive securities brokers, dealers, salesmen and investment advisors. The Georgia Act accomplishes this goal through a series of regulations regarding the registration of securities, disclosure of information and prohibitions on fraudulent, manipulative and deceptive sales practices. However, there are several exemptions from the registration requirements of the Georgia Act, such as for securities offerings registered under the federal Securities Act, certain small offerings and many employee benefit plans. However, even if an exemption is available, certain notice or other filings under the Georgia Act may still be required. Those violating the Georgia Act may be subject to both civil and criminal penalties.

Real Estate

Georgia permits foreign persons to acquire real property within the state. However, there are certain requirements and provisions that must be met before property rights are transferred to such individuals or entities. Generally, foreign persons interested in purchasing or maintaining real estate in the United States should be aware of the following tax and reporting requirements:

Agricultural Foreign Investment Disclosure Act of 1978 ("AFIDA")

AFIDA requires that certain reports be filed with the United States Department of Agriculture ("USDA") when: (1) a foreign person acquires or transfers any interest in agricultural land; (2) a foreign person holds or acquires an interest in land which is not agricultural at the time but *subsequently* becomes agricultural land; or (3) a person who is not a foreign person acquires or holds an interest in agricultural land and *subsequently* becomes a foreign person. Under any of these situations, the individual must file Form FSA-153 with the USDA within 90 days of the occurrence of the triggering event. The form requires extensive disclosure of information regarding the land and the foreign person. The USDA can penalize foreign persons up to a maximum civil penalty of 25% of the fair market value of their land for failure to submit a report, submission of an incomplete report, knowingly submitting a report that is false or misleading, or knowingly failing to maintain the accuracy of a submitted report.

International Investment and Trade in Services Survey Act ("IITSSA")

IITSSA requires that a Form BE-13 (BE-13A, BE-13B, BE-13D, BE-13E, or BE-13 Claim for Exemption, according to the type of transaction), be filed with the Bureau of Economic Analysis area of the United States Department of Commerce within 45 calendar days following the occurrence of either (1) a foreign person acquiring, directly or indirectly, through an existing United States affiliate, a 10% or more voting securities in a domestic business enterprise or (2) the United States affiliate to the foreign person acquiring a United States business enterprise or operating unit that the existing United States affiliate merges into its own operations. Purely residential real estate transactions and

certain private funds can claim exemption from reporting requirements. Failure to file Form BE-13 can result in a maximum civil penalty of $44,539 and not less than $4,450, subject to inflationary adjustments. Furthermore, IITSSA imposes a fine of up to $10,000 and/or up to one year of imprisonment for the willful failure to file Form BE-13.

Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA")

FIRPTA states that if a foreign person disposes of a U.S. real property interest, the transferee of such interest must deduct and withhold a tax generally equal to 15% (10% for dispositions before February 17, 2016) of the total amount realized, unless an exception applies. Foreign persons include nonresident aliens, foreign corporations not treated as domestic corporations, and foreign partnerships, trusts, and estates. Resident aliens are not considered foreign persons under FIRPTA. Numerous exceptions from FIRPTA withholding, however, do exist.

The most common exception occurs when the transferor provides the transferee with a non-foreign person affidavit stating under penalty of perjury that the transferor is not a foreign person. Another exception is a transaction involving the transfer of a property acquired for use as the transferee's residence when the purchase price does not exceed $300,000. Under certain circumstances (e.g., where a seller shows that it is incurring a capital loss on the sale of property), the transferor may obtain a "qualifying statement" from the Internal Revenue Service stating that no withholding is required. In addition to being liable for the amount required to be withheld, a transferee can be subject to penalties for failing to meet FIRPTA's requirements including separate penalties of up to 25% of the tax due for failure to file and for failure to pay by the deadline. The transferee may also be found criminally liable for fraud.

State Real Estate Statutes

Foreign persons interested in purchasing or maintaining real estate in Georgia should also be aware of the following state statutory provisions:

Foreign persons may take full advantage of purchasing, selling, or maintaining real property within Georgia. In fact, Georgia statutes provide that any foreign person from a country in good standing with the United States and Georgia "shall have the privilege of purchasing, holding, and conveying real estate in this state." (O.C.G.A. § 1-2-11)

Upon the sale of any property in Georgia owned by a Georgia nonresident, the purchaser is required to withhold and remit to the Commissioner of Revenue a withholding tax equal to the 3% of the purchase price (this amount can be reduced if the amount payable to the seller is less than 3%). This withholding requirement does not apply if the property was the "principal residence" of the seller within the meaning of IRC § 1034. (O.C.G.A. § 48-7-128)

Miscellaneous

Registration Requirements

Any business securing from the city or county an annually renewable local business license should inquire from the county Board of Health if any health and sanitary regulations apply to the business contemplated, and should inquire of the city or county planning or inspection department concerning, among others, the following:

(1) Certificate of occupancy before occupying a new or remodeled building;
(2) Zoning, with regards to use of premises to be occupied;
(3) Housing and construction codes compliance; and
(4) Necessity for local licenses and permits for demolition, driveway construction, excavation, landfills, outdoor signs, refuse hauling, septic tank installation, sewer installation, water hookup, and well drilling.

With respect to the purchase of real property, all deeds are recorded in the Office of the Clerk of the Superior Court of the county in which the real property is located. All ad valorem tax returns, homestead exemption applications, and similar matters are handled by the city or county or joint city-county tax assessor.

Applicability of Usury Laws

O.C.G.A. § 7-4-2(a) discusses the maximum legal rate of interest allowable on loans based upon the dollar amount of the loan. O.C.G.A. § 7-4-17 prohibits interest on interest except in the case of a loan secured, directly or indirectly, by a first priority on real estate. O.C.G.A. § 7-4-18 makes criminal the charging of interest of more than 5% per month. In addition, certain transactions are subject to special usury-type statutes that control over general usury laws, e.g., transactions subject to the Georgia Industrial Loan Act (O.C.G.A. § 7-3-1 et seq.), The Credit Card and Credit Card Bank Act (O.C.G.A. § 7-5-1 et seq.), and the Motor Vehicle Sales Finance Act. (O.C.G.A. § 10-1-30 et seq.)

Restrictions on Specific Professions

The licensing and regulation of the practice of professions is a matter of state law. Most professions in Georgia are licensed and regulated by a state examining board under the jurisdiction of the Secretary of State (O.C.G.A. § 43-1-1 et seq.). The Georgia Occupational Regulation Review Council evaluates the need for licensure and certification of any profession or business. Lawyers licensed by the State of Georgia are regulated by the State Bar of Georgia subject to rules approved by the Supreme Court of Georgia.

Professional corporations may incorporate under the provisions of O.C.G.A. § 14-7-1 et seq. A foreign professional corporation may obtain a certificate of authority under such Code sections, provided all shareholders are persons licensed to practice the profession in Georgia. In like manner, professionals licensed in Georgia may form a professional association as distinguished from a partnership or a corporation by complying with O.C.G.A. § 14-10-1 et seq.

Business Name Registration Requirements

General partnerships and proprietorships, both domestic and foreign, are subject to the local name registration requirements of O.C.G.A. § 10-1-490 et seq., but not to any central state filing requirement. Corporations, limited partnerships and professional partnerships are exempt from business or trade name registration requirements by O.C.G.A. § 10-1-490 et seq. Failure of a proprietorship or general partnership to register locally is a misdemeanor but does not adversely affect the validity or enforceability of contracts of the unregistered business. Applications are filed in the county of the place of business. Corporations and limited partnerships, both domestic and foreign, maintain their registration by annual filing with the Secretary of State.

Incentives

The Georgia Department of Economic Development aggressively recruits business and commerce to Georgia through a wide variety of tax credits and incentives. Companies receive tax credits and incentives on a sliding scale – greater tax savings for investing in Georgia's less developed counties. Applicable tax credits include the Jobs Tax Credit (for creation of full-time jobs paying above minimum requirements in selected industries), the Investment Tax Credit (for running or creating manufacturing or telecommunications facilities), the Research & Development Tax Credit (for qualified research spending), the Mega Project Tax Credit (for projects that employ 1,800 net new jobs and have a minimum annual payroll of $150 million or invest at least $450 million), the Port Tax Credit Bonus (bonus to Jobs or Investment Tax Credit for companies that increase imports or exports through Georgia ports), the Film, Television, and Digital Entertainment Tax Credit (for production and post-production of films, television, music videos, commercials, games and animation), and the Music Tax Credit (for eligible musical or theatrical performances or recorded musical performances).

In addition, Georgia cities and counties also often offer economic development incentives to industrial, commercial and even some retail and multi-family housing companies for the purpose of attracting local investment and stimulating job creation. These incentives can include the extension of utility lines to development sites, the construction of road improvements and the waiver of local utility tap and other similar fees. Local development authorities can also offer assistance in reducing property taxes and, for certain qualifying projects, assistance in obtaining state grants to pay for land acquisition, site preparation

and on-site rail and road construction, utility improvements and infrastructure construction costs.

State Agencies

Georgia Department of Agriculture

19 Martin Luther King, Jr. Drive, S.W.
Atlanta, Georgia 30334
Commissioner: Gary W. Black | (404) 656-3600

Atlanta Regional Commission

229 Peachtree Street NE, STE 100
Atlanta, Georgia 30303
Executive Director: Doug Hooker | (404) 463-3100

Georgia Office of the Attorney General

40 Capitol Square, S.W.
Atlanta, Georgia 30334
Attorney General: Honorable Chris Carr | (404) 656-3300

Georgia Department of Banking and Finance

2990 Brandywine Road
Suite 200
Atlanta, Georgia 30341
Commissioner: Kevin B. Hagler | (770) 986-1633

Georgia Building Authority

1 Martin Luther King Jr. Drive, SW
Atlanta, Georgia 30334
State Property Officer: Steve Stancil | (404) 656-3253

Georgia Department of Community Affairs

60 Executive Park South, N.E.
Atlanta, Georgia 30329
Commissioner: Christopher Nunn | (404) 679-4940

Georgia Department of Community Health

2 Peachtree Street, NW
Atlanta, Georgia 30303
Commissioner: Frank W. Berry | (404) 656-4507

Georgia Council of Juvenile Court Judges

230 Peachtree St. NW
Suite 1625
Atlanta, Georgia 30303
President of the Executive Committee: Honorable Philip Spivey | (404) 657-5020

Georgia Court of Appeals

47 Trinity Avenue, S.W.
Suite 501
Atlanta, Georgia 30334
Chief Judge: Stephen Louis A. Dillard | (404) 656-3450

Georgia Office of Dispute Resolution

244 Washington St., SW
Suite 300
Atlanta, Georgia 30334-5900
Chairperson: Judge Charles E. Auslander III | (404) 463-3808

Georgia Department of Economic Development

75 Fifth Street, NW
Suite 1200
Atlanta, Georgia 30308
Commissioner: Pat Wilson | (404) 962-4000
International Trade Deputy Commissioner: Mary Waters | (404) 962-4120
Tourism Deputy Commissioner: Kevin Langston | (404) 962-4083

Georgia Department of Education {Primary and Secondary Education}

2054 Twin Towers East
205 Jesse Hill Jr. Dr. SE
Atlanta, Georgia 30334
State Superintendent of Schools: Richard Woods | (404) 656-2800

Georgia General Assembly

Atlanta, Georgia 30334
House: House Public Information Office | (404) 656-5082
Senate: Senate Public Information Office | (404) 656-0028

Georgia Governor's Office

Office of the Governor
206 Washington Street
111 State Capitol
Georgia State Capitol
Atlanta, Georgia 30334
Governor: Hon. Nathan Deal | (404) 656-1776

Georgia Department of Human Services

2 Peachtree Street, NW
29th Floor
Atlanta, Georgia 30303
Commissioner: Robyn A. Crittenden | (404) 651-6316

Georgia Office of Insurance and Safety Fire Commissioner

2 Martin Luther King Jr. Drive
Suite 704, West Tower
Atlanta, Georgia 30334
Commissioner: Ralph T. Hudgens | (404) 656-2070

Georgia Department of Labor

148 Andrew Young International Boulevard N.E.
Atlanta, Georgia 30303-1751
Commissioner: Mark Butler | (404) 232-7300

Lieutenant Governor's Office

240 Georgia State Capitol
Atlanta, Georgia 30334
Lieutenant Governor: Hon. Casey Cagle | (404) 656-5030

Georgia Department of Natural Resources

2 Martin Luther King, Jr. Drive, S.E.
Suite 1252-East Tower
Atlanta, Georgia 30334
Commissioner: Mark Williams | (404) 656-3500

Georgia Emergency Management and Homeland Security Agency

P.O. Box 18055
Atlanta, Georgia 30316-0055
Director: Homer Bryson | (404) 635-7000

Georgia Ports Authority

P.O. Box 2406
Savannah, Georgia 31402-2406
Executive Director: Griffith V. Lynch | (912) 964-3874

Georgia Public Defender Council

104 Marietta Street NW
Suite 400
Atlanta, Georgia 30303
Executive Director: Bryan P. Tyson | (404) 795-2440

Georgia Public Service Commission

244 Washington Street, SW
Atlanta, Georgia 30334-9052
Chairman: Lauren "Bubba" McDonald | (404) 656-4501

Georgia Board of Regents {Higher Education}

Board of Regents of Georgia
270 Washington Street, SW
Atlanta, Georgia 30334
Chancellor: Dr. Steve Wrigley | (404) 962-3000
Chair: James M. Hull

Georgia Regional Transportation Authority

245 Peachtree Center Avenue NE
Suite 2200
Atlanta, Georgia 30303
Chairman: Walter M. "Sonny" Deriso, Jr. | (404) 893-6100

Georgia Department of Revenue

1800 Century Center Blvd., N.E.
Atlanta, Georgia 30345-3205
State Revenue Commissioner: Lynnette T. Riley | (404) 417-2100

Office of Georgia Secretary of State

214 State Capitol
Atlanta, Georgia 30334
Secretary of State: Brian P. Kemp | (844) 753-7825

Georgia Supreme Court

244 Washington Street
Suite 572
Atlanta, Georgia 30334
Chief Justice: P. Harris Hines | (404) 656-3470

Georgia Technology Authority

47 Trinity Ave., S.W.
Atlanta, Georgia 30334
Executive Director: Calvin Rhodes | (404) 463-2300

Georgia Department of Transportation

One Georgia Center
600 W. Peachtree NW
Atlanta, Georgia 30308
Commissioner: Russell R. McMurry, P.E. | (404) 631-1990

Georgia Trade Development Foreign Offices

Brazil

Georgia Department of Economic Development
Al. Lorena 800, Suite 1803
Jardins, São Paulo, SP 01424-001
Brazil
Managing Director: José Madeira | jmadeira@georgia.org

Canada

Georgia Department of Economic Development
P.O. Box 4856 | Long Branch
Toronto, Ontario M8W 4Y6
Canada
Managing Director: Gail Morris | gmorris@georgia.org

Chile

Georgia Department of Economic Development
Avenida Viticura 2969, 17th Floor
Las Condes, Santiago
Chile
Managing Director: Veronica Medina | vmedina@georgia.org

China

Georgia Department of Economic Development
HI Office Tower, Suite 1003
899 Dong Fang Road
Shanghai 200122
China
Managing Director – Trade: Paul Swenson | pswenson@georgia.org

Colombia

Georgia Department of Economic Development
CRA. 18 # 78-40 of 704
Bogota D.C.
Colombia
Managing Director: Juan Carlos López Gutiérrez | jlopez@georgia.org

Europe

Georgia Department of Economic Development
Tal 26
80331 München
Germany
Managing Director: Sergio Domingues | SDomingues@georgia.org

Israel

Georgia Department of Economic Development
27 Histadrut Street
Hod Hasharon 4527027
Israel
Managing Director: Sima Amir | Samir@georgia.org

Japan

Georgia Department of Economic Development
Holland Hills Mori Tower RoP #1202
5-11-1 Toranomon, Minato-ku
Tokyo 105-0001
Japan
Managing Director: Yumiko Nakazono | ynakazono@georgia.org

Korea

Georgia Department of Economic Development
Suite 1705, Officia building, 92 Saemunan-ro, Jongno-Gu
Seoul 03186
Korea
Managing Director: Peter A. Underwood | punderwood@georgia.org

Mexico

Georgia Department of Economic Development
José Alvarado 31, Colonia Roma Norte
Delegación Miguel Hidalgo, Ciudad de México, 06700
Mexico
Trade Representative: Walter Alejandro Heredia Davila | wheredia@georgia.org

Peru

Georgia Department of Economic Development
Trade Representative: Eduardo Gardía-Zapatero | EGarciaZapatero@georgia.org

United Kingdom & Ireland

Georgia Department of Economic Development
2 The Barn, Puckshipton
Beechingstoke, Wiltshire SN9 6HG
United Kingdom
Managing Director: Mike Harling | mharling@georgia.org