GUIDE TO LEGAL ASPECTS OF DOING BUSINESS IN MARYLAND

A Joint Publication of the
Office of the Attorney General
and the
Department of Business and Economic Development

August 2008

Douglas F. Gansler
Attorney General

Martin J. O'Malley
Governor

David W. Edgerley
Secretary of Business
and Economic Development

Acknowledgments

Laila K. Atallah, Principal Counsel, Office of the Attorney General, Department of Business and Economic Development

Ellen S. Cooper, Principal Counsel, Antitrust Division, Office of the Attorney General

Joseph P. Gill, Principal Counsel, Office of the Attorney General, Department of Natural Resources

William Gruhn, Principal Counsel, Consumer Protection Division, Office of the Attorney General

Steven Johnson, Principal Counsel, Office of the Attorney General, Department of the Environment

Colleen A. Lamont, Assistant Attorney General, Department of Business and Economic Development

Melanie Senter Lubin, Commissioner, Securities Division, Office of the Attorney General

David M. Lyon, Principal Counsel, Office of the Attorney General, Department of Assessments and Taxation

Craig A. Nielsen, Principal Counsel, Office of the Attorney General, Department of Agriculture

Brian L. Oliner, Principal Counsel, Office of the Attorney General, Comptroller of the Treasury

David M. Porter, Assistant Attorney General, Department of Business and Economic Development

W. David Rawle, Assistant Attorney General, Department of Business and Economic Development

David Tillman, Director of Communications, Department of Business and Economic Development

Elizabeth H. Trimble, Principal Counsel, Office of the Attorney General, Department of Labor, Licensing and Regulation

Carolyn I. Uchendu, Administrative Aide, Office of the Attorney General, Department of Business and Economic Development

DISCLAIMER

This booklet is for informational purposes only and does not constitute legal services or representation. Further, this booklet is not an exhaustive treatment of the legal obligations of Maryland businesses, but rather focuses on only those matters regulated by State agencies. For specific and complete legal advice, please consult with a practicing attorney who is knowledgeable about Maryland law and is familiar with the relevant details of your situation.

Despite every effort to ensure the accuracy of this booklet's contents, some errors may appear. Moreover, laws can change quite rapidly, and court interpretations of laws often vary. Therefore, no guarantee can be given as to the accuracy and completeness of any information provided in this booklet. The Attorney General's Office and the Department of Business and Economic Development hereby specifically disclaim any liability for loss incurred as a consequence of any material presented in this booklet.

TABLE OF CONTENTS

I. BUSINESS ORGANIZATION

A. Introduction 1
B. Corporation 1
C. General Partnership 4
D. Limited Liability Partnership 5
E. Limited Partnership 6
F. Limited Liability Limited Partnership 8
G. Limited Liability Company 9

II. FOREIGN BUSINESS OPERATIONS IN MARYLAND

A. Introduction 10
B. Independent Operations 10
C. Joint Venture 14

III. MERGERS UNDER MARYLAND LAW 15

IV. SECURITIES LAW

A. Introduction 15
B. Registration of Securities 15
C. Exemptions from Registration Requirement 17
D. Preemptions from Registration Requirement 17

V. MARYLAND TAXATION

A. Introduction 19
B. Tax Registration 19
C. Maryland Sales and Use Tax 20
D. Maryland Corporation Income Tax 21
E. Maryland and Local Personal Income Tax 22
F. Maryland and Local Real Property Tax 23
G. Local Personal Property Tax 24

VI. LABOR AND EMPLOYMENT LAW

A. Introduction 26
B. Employment Eligibility 26
C. Equal Employment Opportunity 27
D. Safety and Health Standards 28

E. Workers' Compensation Insurance 29
F. Wage Laws 30
G. Employment-Related Tax Considerations 32
H. Employee Concerted Activity 34
I. Fringe Benefits 34
J. Workforce Services 35

VII. BUSINESS ASSISTANCE AND FINANCING PROGRAMS

A. Introduction 36
B. Business License Information System 36
C. Domestic Business Assistance Programs 37
D. Domestic Business Financing Programs 38
E. International Business Assistance and Financing Programs 48
F. Employee Training Programs 54
G. Tax Credit Incentive Programs 54

VIII. ASSISTANCE TO AGRICULTURE BUSINESSES

A. Maryland Agriculture 56
B. Selling Maryland Agriculture 56
C. Protecting Maryland Agriculture 58

IX. NATURAL RESOURCES LAW

A. Shoreline Development 59
B. Forest Development 59
C. Licenses 60

X. ENVIRONMENTAL LAW

A. Introduction 63
B. Air and Radiation Management Administration 63
C. Waste Management Administration 65
D. Water Management Administration 66

XI. CONSUMER PROTECTION LAW

A. Consumer Protection Act 70
B. Uniform Commercial Code 70
C. Services of the Consumer Protection Division 70

XII. FRANCHISE LAW

A. Introduction 72
B. Registration and Disclosure 73

XIII. "BUSINESS OPPORTUNITY" LAW

A. Introduction 74
B. Registration and Disclosure 74

XIV. ANTITRUST LAW

A. Introduction 75
B. Enforcement 75
C. Concepts of Antitrust Law 76
D. Prohibited Activities 77
E. Trade Associations 81
F. Conclusion 81
G. Business Review Procedure 82

I. BUSINESS ORGANIZATION

A. INTRODUCTION

State law governs the formation of businesses in the United States; there is no federal law regulating general business forms. Normally, a U.S. business will organize under the law of the state in which its main office or facility is located. This is not a requirement, however; a business may choose to organize under any state law, and then comply with the laws for foreign corporations in those states in which its operations are actually located. (See Section II below, "Foreign Business Operations in Maryland.")

Maryland's business laws are flexible and serve well those businesses that have chosen to establish operations in Maryland. To encourage the creation and expansion of businesses, Maryland offers several flexible options for organizing business activity. For all of the business forms listed below, all papers are filed with the State Department of Assessments and Taxation ("SDAT") at the following address:

State Department of Assessments and Taxation
301 West Preston Street -- 8th Floor
Baltimore, Maryland, 21201
Telephone: (410) 767-1340

Documents may be filed with SDAT by mail. Filings can also be done on an expedited basis by facsimile transmission (service within 24 hours) or by personal delivery (immediate service). The filing fees are relatively nominal; call SDAT to get up-to-date fee information, or visit SDAT's Web site at:

http://www.dat.state.md.us

Maryland recognizes the following business forms:

B. CORPORATION

1. Formation

A Maryland corporation may be formed by simply having at least one adult (an "incorporator") file articles of incorporation with SDAT.

2. Features

a. Taxation

A corporation is taxed as a separate entity; it files its own tax return and pays taxes without regard to the tax status of the individual shareholders. However, if the corporation distributes a portion of its after-tax income to its shareholders in the form of dividends, each shareholder will pay a separate tax on the dividend received.

b. Liability

A shareholder of a corporation is not personally liable for the acts or obligations of the corporation. However, a small business that chooses the corporate form should be aware that banks and other commercial lenders understand the liability advantages of the corporate structure and will often require the personal guarantees of corporate shareholders as a condition of making a loan to the corporation.

3. Articles of Incorporation

SDAT provides standardized fill-in-the-blank examples for corporations on its above mentioned website. The articles of incorporation must include the following information:

- λ name and address of each incorporator
- λ name of corporation
- λ purpose for which corporation was formed (can be as general as "to engage in any lawful activity")
- λ address of corporation's principal office in Maryland
- λ name and address of corporation's resident agent

- λ authorized number, class, and par value, if any, of shares
- λ a description of each class of stock, if applicable
- λ number and names of corporation's initial directors

The articles of incorporation also include provisions governing the basic rights of shareholders and defining the authority of directors. Since shareholder information is not filed with SDAT, the ownership of the corporation does not become a matter of public record with the State.

4. Corporate Name

A corporation's name must include one of the following words, or its abbreviation:

- λ "company," if <u>not</u> preceded by "and" or "&"
- λ "corporation"
- λ "incorporated"
- λ "limited"

5. Resident Agent

A resident agent is a person or entity that serves as a business organization's "point of contact" in the state for the purpose of receiving legal notices addressed to the business. The address of a resident agent for a corporation and all other entities must be an actual physical location and not simply a post office box. A corporation's resident agent must be one of the following:

- λ a citizen of Maryland who resides in Maryland
- λ a Maryland corporation

6. Corporate Directors and Officers

Maryland requires that each corporation have a minimum of between one and three directors, depending on the number of shareholders. The directors oversee the corporation and elect the officers (the senior management), who manage the day-to-day business activities. The qualifications required of directors are set by the corporation, not by the State.

In addition to its directors, a corporation must have as officers at least a president, a secretary, and a treasurer. A corporation may have other officers, including any number of vice presidents. If the corporation's bylaws permit, one person may hold more than one office, except that one person may not be both president and vice president. Moreover, a person holding more than one office may not act in more than one of those capacities when executing, acknowledging, or verifying certain documents.

C. GENERAL PARTNERSHIP

1. Formation

There are no filing formalities required to form a general partnership. Any unincorporated association of two or more persons, acting as co-owners, that is set up to engage in a business activity for profit is a general partnership.

2. Features

a. Taxation

Profits, losses, and control are proportionately divided among the partners. Although the partnership must file an informational tax return, it is not taxed as a separate entity; rather, taxable income, losses, deductions, and credits are passed through on a pro-rated basis to each of the partners. Each partner is taxed directly on its share of the partnership's net income, whether that income is distributed or not.

b. Liability

Each general partner is personally liable for all the acts and obligations of the partnership. However, under Maryland law, a corporation (foreign or domestic) may be a partner, so for the corporate partner, only its corporate assets would be at risk.

D. LIMITED LIABILITY PARTNERSHIP

1. Formation

A limited liability partnership ("LLP") is formed when a general partnership registers as an LLP by filing a certificate of limited liability partnership with SDAT.

(A limited partnership may also register as a limited liability partnership. See Section F below, entitled "Limited Liability Limited Partnership.")

2. Features

A limited liability partnership functions in the same way as a general partnership, with one exception: in a limited liability partnership, the general partners are not individually liable for the obligations incurred by the partnership or by other partners unless a partner is guilty of negligence or misconduct.

3. Certificate of Limited Liability Partnership

The certificate must contain the following information:

- λ name of the LLP
- λ purpose for which the LLP was formed
- λ address of the LLP's principal office in Maryland
- λ name and address of the LLP's resident agent

4. Limited Liability Partnership Name

The name of the limited liability partnership must contain either the words "limited liability partnership" or the abbreviation "L.L.P." or "LLP."

5. Resident Agent

An LLP's registered agent must be one of the following:

- λ a citizen of Maryland who resides in Maryland
- λ a Maryland corporation
- λ a Maryland limited liability company

E. LIMITED PARTNERSHIP

1. Formation

A limited partnership is a partnership of two or more persons, with at least one general ("managing") partner and at least one limited ("investing") partner. A limited partnership is formed when all of the general partners file a certificate of limited partnership with SDAT.

2. Features

a. Taxation

A limited partnership is taxed in the same way that a general partnership is taxed.

b. Liability

Under usual partnership law, a general partner is personally liable for the acts and obligations of the limited partnership, while a limited partner is not. However, Maryland offers three other features to protect partners in limited partnerships from liability:

- λ A corporation may serve as the general partner, thus exposing only corporate assets to risk.
- λ Limited partnership agreements may be drafted to indemnify partners, employees, and agents of the limited partnership for all acts except fraud and reckless conduct.
- λ A limited partner may act as an officer, director, or shareholder of the corporate partner without subjecting himself to liability as a general partner, so long as a creditor does not have a "reasonable belief" that, based upon his conduct, the limited partner is instead a general partner.

3. Certificate of Limited Partnership

The certificate must contain the following information:

- λ name of limited partnership
- λ address of limited partnership's principal office in Maryland
- λ name and address of limited partnership's resident agent
- λ name and address of each general partner
- λ latest date upon which the limited partnership is to dissolve

4. Limited Partnership Name

The name of the limited partnership must contain either the words "limited partnership", or the abbreviation "L.P." or "LP". In addition, the name of the limited partnership may not contain the name of the limited partner, unless that is also the name of a general partner, or unless the business of the limited

partnership had been carried on under that name before the admission of that limited partner.

5. Resident Agent

A limited partnership's resident agent must be one of the following:

- λ a citizen of Maryland who resides in Maryland
- λ a Maryland corporation

F. LIMITED LIABILITY LIMITED PARTNERSHIP

1. Formation

As mentioned in Section D above, a limited partnership may, like a general partnership, register as a limited liability limited partnership ("LLLP"). The limited partnership registers by doing two things:

a. Including in its certificate of limited partnership the following information:

- λ name of the LLLP
- λ purpose for which the LLLP was formed
- λ address of the LLLP's principal office in Maryland
- λ name and address of the LLLP's resident agent

and

b. Using the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP."

2. Features

All of the legal provisions that govern a general partnership that has registered as a limited liability partnership also govern a limited partnership that has registered as a limited liability limited partnership. Thus, this form provides the same limited liability for

the limited partners, but will also provide limited liability for the general partner in the same fashion that a limited liability partnership does for the partners of a general partnership.

G. LIMITED LIABILITY COMPANY

1. Formation

A limited liability company ("LLC") is formed by filing articles of organization with SDAT.

2. Features

An LLC is an unincorporated business organization with at least one "member." Members may be individuals, corporations, partnerships, or other LLCs.

a. Taxation

An LLC is normally taxed in the same way a partnership is taxed; however, businesses considering using the LLC form should review those factors that establish corporate tax status for the Internal Revenue Service.

b. Liability

An LLC is similar in function to a partnership, but offers the same liability protection for its members as a corporation does for its stockholders.

3. Articles of Organization

The articles of organization must contain the following information:

- λ name of the LLC
- λ purpose for which the LLC was formed
- λ address of LLC's principal office in Maryland

- λ name and address of LLC's resident agent

4. Limited Liability Company Name

The name of the limited liability company must contain either the words "limited liability company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC."

II. FOREIGN BUSINESS OPERATIONS IN MARYLAND

A. INTRODUCTION

The State of Maryland welcomes direct foreign investment in terms of the ownership and active management of business enterprises. ("Foreign" businesses are those that are organized under the laws of another country, the United States, or another state in the United States.) Foreign investors may organize their business activities in Maryland in a variety of ways that are designed to provide sufficient flexibility to fit the needs of any particular business venture. However, the final determination will depend upon a number of legal and tax considerations.

Initially, the foreign business must determine whether it plans to operate independently, or in a joint venture with another U.S. firm. If the foreign business is planning to operate independently, it may simply establish a branch office in Maryland. Alternatively, it may choose to operate through a wholly owned subsidiary corporation organized under the laws of a state in the United States.

B. INDEPENDENT OPERATIONS

1. Branch Office

A foreign corporation, partnership, or limited liability company may establish a branch office in Maryland by registering or qualifying with the State Department of Assessments and Taxation ("SDAT").

a. Foreign Corporations

(i) Registration (Interstate and Foreign Business)

If a foreign corporation wishes to engage in interstate or foreign business operations in Maryland, it must register with SDAT. To register, the foreign corporation must:

- λ certify its address; and
- λ certify the name and address of its resident agent in Maryland.

(ii) Qualification (Intrastate Business)

If a foreign corporation wishes to engage in intrastate business operations in Maryland, it must qualify with SDAT. To qualify, the foreign corporation must:

- λ certify its address; and
- λ certify the name and address of its resident agent in Maryland; and

Note: if a foreign corporation is qualified to do intrastate business in Maryland, it need not also register to do interstate or foreign business in Maryland.

b. Foreign Limited Liability Company (LLC), Limited Liability Partnership (LLP), or Limited Liability Limited Partnership (LLLP)

If a foreign LLC, LLP, or LLLP wishes to engage in interstate, intrastate, or foreign business in Maryland, it must register with SDAT. To register, the foreign LLC, LLP, or LLLP must submit an application to SDAT containing:

- λ The name of the foreign LLC, LLP, or LLLP, and if different, the name it proposes to use in Maryland to do business

- λ The name of the state under which laws it was formed
- λ The date of formation of the foreign LLC, LLP, or LLLP
- λ A general description of the business to be transacted in Maryland
- λ The name and address of its resident agent in Maryland, and a statement that SDAT may act as the resident agent for the foreign LLC, LLP, or LLLP if it has no resident agent
- λ The address of the office that it is required to have under the laws of the state in which it was formed, or if there is no such requirement, the address of its principal office

c. Foreign Limited Partnership (LP)

If a foreign LP wishes to engage in interstate, intrastate, or foreign business in Maryland, it must register with SDAT. To register, the foreign LP must submit an application to SDAT containing:

- λ The name of the foreign LP, and if different, the name it proposes to use in Maryland to do business
- λ The name of the state or country under which laws it was formed
- λ The date of formation of the foreign LP
- λ A general description of the business to be transacted in Maryland
- λ The name and address of its resident agent in Maryland, and a statement that SDAT may act as

the resident agent for the foreign LP if it has no resident agent

- λ The address of the office that it is required to have under the laws of the state in which it was formed, or if there is no such requirement, the address of its principal office
- λ The name and address of each of its general partners

d. Maintaining Qualification.

Once the foreign business is registered or qualified, it must only file an annual personal property report (plus a $300 fee for a corporation doing intrastate business) to maintain its registration/qualification. In addition, a foreign corporation must maintain its resident agent in Maryland.

e. Contacting Comptroller.

Depending on the type of business and the presence of employees in Maryland, the foreign business may need to contact the Office of the Comptroller for purposes of sales tax and employment tax withholdings. (See other sections of this Guide.)

2. Subsidiary Corporation

Instead of using a branch office, many foreign businesses choose to operate in Maryland though a subsidiary corporation formed under the laws of another state in the United States. One benefit of this arrangement for foreign national businesses is that as a general rule, only the assets of the U.S. subsidiary are placed at risk in the U.S. operations. In addition, the use of a separate U.S. subsidiary will help to clarify what income will be subject to U.S. taxation.

The parent corporation, as the sole shareholder of the subsidiary, will decide who the subsidiary's

director is, and through the director, will oversee senior management. Maryland permits a subsidiary corporation to have only one director, who may be a citizen or resident of another state or nation.

Please refer to Section I for information on setting up a business in Maryland; a foreign business would follow the same procedures in setting up its Maryland subsidiary. In addition, the foreign business must also comply with the laws for foreign corporations in Maryland (and in any other state in which the foreign corporation has located operations.)

C. JOINT VENTURE

A "joint venture" is an arrangement through which a foreign business enters into an enduring relationship with a U.S. business for the purpose of sharing resources in a common enterprise in order to produce together goods or services. Joint ventures between foreign businesses and U.S. businesses are common today and we believe that the number of joint ventures will increase markedly in the future as more businesses pool their resources to serve world markets.

In Maryland, joint ventures may be formally structured in several ways:

- The two businesses may each contribute capital to a newly created corporation in exchange for an equity interest. Each of the co-venturers would then be a shareholder with voting rights in deciding who serves on the board of directors. However, with only two shareholders, only two directors are required under Maryland law.
- Alternatively, the foreign business and the U.S. business, either directly or through wholly owned subsidiaries, may enter into a partnership agreement and operate the joint venture as a general or limited partnership.
- Finally, the joint venture may be structured as a limited liability company ("LLC") with each of

the parties, either directly or through subsidiaries, becoming members of the LLC and managing the newly formed venture according to an operating agreement.

There are various tax and legal issues relating to the preferred form of organization in particular cases, but the business goals of the venture may be accomplished in any of these formats.

III. MERGERS UNDER MARYLAND LAW

One last example of the flexible options offered by Maryland law is in the area of mergers. Under Maryland law, a Maryland business entity may merge into or with one or more foreign business entities. Likewise, Maryland law permits foreign business entities to merge with business entities organized under Maryland law.

IV. SECURITIES LAW

A. INTRODUCTION

The Maryland Securities Act and related regulations allow companies, large and small, to raise capital in Maryland in a manner consistent with the protection of investors against investment fraud. Like the federal securities laws, Maryland law requires a company offering securities to provide potential investors with full and complete disclosure about the company, so that investors are able to make informed investment decisions. Unlike some states, Maryland does not pass on the merits of an investment offering.

Securities come in all shapes and sizes. Corporate stock or limited partnership interests are well-known types of securities; however, limited liability company interests, notes issued in loan transactions, viatical settlement agreements, and other investment-type contracts may also be securities.

B. REGISTRATION OF SECURITIES

The Securities Division of the Attorney General's Office is the agency that enforces the Maryland Securities Act. Any offer or sale of a security in Maryland must be registered with the Securities Division, unless the Maryland Securities Act or federal law exempts or preempts the specific type of security or transaction from the registration requirement.

1. General

In most cases, an issuer has a number of choices in the manner of registration or exemption of its securities offering. There is also more than one way for the selling agent to qualify to sell the offering.

Many of the registration and exemption provisions in the Maryland statute relate directly to the federal securities laws and the regulations of the U.S. Securities and Exchange Commission ("SEC"), so that an issuer of securities may readily coordinate compliance with both Maryland and federal law. In many large national offerings, Maryland regulation is minimized or eliminated in favor of SEC oversight. In other local or regional offerings, Maryland takes a primary role in review of the offering.

2. Streamlined Procedure

In many cases, issuers who are registering their securities offering may take advantage of a streamlined procedure for coordinating state registration with SEC registration. For example, offerings under Regulation A of the SEC rules may be registered with several states concurrently using this coordinated procedure.

3. Small Company Offering Registration (SCOR)

For small company offerings that meet certain conditions, the Small Company Offering Registration ("SCOR") program is available. Under SCOR, certain small business issuers may raise capital in the public market without incurring the expense of a typical securities registration. The SCOR program offers several advantages to the small entrepreneur:

- λ The disclosure document is in a "plain English" format
- λ Requirements for expensive audited financial statements and exhibits are relaxed
- λ With less involvement of lawyers and accountants, offering expenses are reduced

- λ An entrepreneur may coordinate a SCOR registration at the state level with a Regulation D, Rule 504 limited offering at the federal level

Under SCOR, shares received by investors are not restricted, general solicitation may be used, and the issuer may sell up to $1 million in securities in any 12 month period. Before offering securities under SCOR, the issuer must file the completed Form U-7 and accompanying documents with the Securities Division, and pay the filing fee. An attorney in the Division will work with the company to help ensure that the SCOR disclosure document meets the requirement of the state securities law that the company disclose to potential investors all information material to an investment decision.

C. EXEMPTIONS FROM REGISTRATION REQUIREMENT

The following types of offerings are exempt from the registration requirement:

- λ Certain offers to existing security holders
- λ A "limited offering" or "private placement" usually requires only the filing of a short notice form with the Division
- λ Certain very small offerings do not require any filing at all

Of course, the issuers of these securities are still subject to the law's requirement of full disclosure to potential investors.

D. PREEMPTIONS FROM REGISTRATION REQUIREMENT

The following types of offerings are pre-empted from the registration requirement:

- λ Offers of certain national exchange listed securities sold by a Maryland registered broker-dealer
- λ Offerings of Investment Company securities made pursuant to federal securities Regulation D, Rule 506

These two exemptions are "self-executing" and do not require any filing with the Securities Division. Of course, the

issuers of exempt or preempted securities are still subject to the law's requirement of full disclosure to potential investors.

For more information regarding the requirements of the Maryland Securities Act, registration, exemption or preemption provisions generally or the SCOR program in particular, please contact:

Maryland Securities Division
200 St. Paul Place
Baltimore, MARYLAND 21202-2020
Telephone: (410) 576-7050

or

www.oag.state.md.us – website
securities@oag.state.md.us – e-mail

V. MARYLAND TAXATION

A. INTRODUCTION

In Maryland, the principal State taxes are:

- λ Sales and use tax
- λ Corporation income tax
- λ Personal income tax
- λ Real property tax

The major local revenue sources for the counties and Baltimore City include:

- λ Real property tax
- λ Personal property tax
- λ Local income tax on individuals

Overall, the total tax burden imposed on businesses operating in Maryland and on Maryland residents is lower than in most states in the United States.

B. TAX REGISTRATION

1. State Tax Registration – Combined Registration Application

Maryland provides one-stop business registration online through the State Comptroller's web site at www.marylandtaxes.com. The Combined Registration Application meets the requirements for most State taxes, including sales and use tax, income tax withholding, and the unemployment insurance tax. Combined Registration Applications and instructions may be obtained from the Clerk of the Circuit Court in each Maryland county, at any branch of the State Comptroller's Office, on-line at https://interactive.marylandtaxes.com/webapps/comptrollercra/entrance.asp, or directly from:

Taxpayer Registration Assistance Center
(TRAC)
Room 206
301 W. Preston Street
Baltimore, Maryland 21201
Telephone: (410) 767-1300

If the Combined Registration Application is prepared completely and accurately, the registration may generally be completed within one hour if the applicant appears in person; it will generally be completed within 72 working hours if submitted by fax (410-767-1571) and within 14 working days if submitted by mail.

2. Local Tax Registration

Local taxes in Maryland require no additional registration. Local taxes are usually collected as part of the various State tax systems. Questions about local property taxes collected by the State should be directed to the County Supervisor's Office of the State Department of Assessments and Taxation for the county where the business is or will be located.

C. MARYLAND SALES AND USE TAX

Maryland has a 6% sales and use tax on the sale or use of tangible personal property and taxable services unless a specific exemption is provided. There are no sales and use taxes levied by Maryland's counties or municipalities, except for certain narrow exceptions that generally permit a local tax on the sale or use of fuels, utilities, space rentals, and, in a resort area, on the sale or use of food and beverages. Major business-oriented exemptions from the sales and use tax include:

- λ Sales for resale and sales of property to be incorporated in other property manufactured for resale
- λ Sales of manufacturing machinery and equipment, including sales of equipment used in research and development

- λ Sales of property used in a production activity, including fuels
- λ Sales of transportation vehicles used principally for interstate and foreign commerce
- λ Certain capital transactions, including transfers to newly-formed corporations
- λ Sales of certain end-item testing equipment used to perform a contract for the U.S. Department of Defense and transferred to the federal government

All retail vendors are required to register and collect the Maryland sales and use tax and obtain a sales and use tax license. To obtain the license, complete the Combined Registration Application described in Part B.1.

D. MARYLAND CORPORATION INCOME TAX

1. General

Every corporation having income allocable to the State of Maryland is required to file an annual income tax return with the State. The tax rate is 8.5% of the net income allocable to Maryland. In general, the Maryland corporation income tax law conforms to the federal law, with federal taxable income as the starting point in the Maryland computation. Depreciation is deductible to the same extent as permitted under the Internal Revenue Code, except that the additional depreciation deduction authorized for federal income tax purposes by the Economic Growth Tax Relief Reconciliation Act of 2001 is not deductible in Maryland. In computing its Maryland taxable income, a corporation may deduct from its federal net taxable any income dividends received from foreign subsidiaries if the corporation owns 50% or more of the foreign subsidiary.

2. Allocation of Business Income

Corporations whose trade or business is carried on partly in Maryland generally allocate business income to the State by means of a widely used three-factor formula. This formula allocates income to Maryland based on a ratio of the

corporation's sales, property, and payroll located in Maryland to its total sales, property and payroll, with the sales factor being double-weighted. A special rule applies to a corporation in the business of manufacturing; its Maryland income is determined by using a single sales factor formula that provides for multiplying Maryland income by 100% of the sales factor.

3. New Reporting Requirements

In order to provide the new Maryland Business Tax Reform Commission with necessary information to review and evaluate the state's current business tax structure and make specific recommendations for changes, the Maryland General Assembly is requiring the Comptroller to collect certain information from multistate corporations and manufactures. For taxable years beginning after December 31, 2005, these entities will be required to file information reports containing certain information. The reporting form and regulations regarding the information to be reported can be found on the Comptroller's website (www.comp.state.md.us).

4. Estimated Tax Payments

All corporations that estimate current annual Maryland income tax liability to exceed $1,000 must make a declaration and payment of the estimated tax on the 15th day of the 4th, 6th, 9th and 12th months of its taxable year, which, in the case of a calendar year, corresponds to the months of April, June, September, and December. Corporations that fail to comply with the estimated tax requirements may be subject to penalties.

E. MARYLAND AND LOCAL PERSONAL INCOME TAX

1. General

The Maryland personal income tax is based essentially on the adjusted gross income reported on an individual's federal income tax return, with certain additions and subtractions. The rates range from 2% on the first $1,000 of taxable income to 4.75% on taxable income between $3,001

and $200,000, up to 6.25% on taxable income in excess of $1,000,000.

In addition, Baltimore City and the Maryland counties impose a local income tax on Maryland taxable income at rates ranging from 1.25% to 3.2%; the local tax is collected and administered by the State.

2. Business Withholding Requirements

Businesses are required to withhold the personal income tax from employees' wages and periodically remit the tax to the State on behalf of the employees. Officers and directors of a corporation who exercise direct control over the corporation's fiscal matters are personally liable for unpaid employee withholding taxes. Individuals whose tax is not withheld may be required to make quarterly payments based upon their estimated yearly tax.

3. Nonresident Officials

Partnerships, S Corporations and limited liability companies that have a shareholder, partner, or member who is not a resident of Maryland and that have income from certain Maryland sources are subject to a tax of 7.5% of each nonresident's taxable income. The tax is treated as a tax imposed on the individual nonresident.

F. MARYLAND AND LOCAL REAL PROPERTY TAX

Maryland imposes a property tax on real property according to its market value. Visit the website for the State Department of Assessments and Taxation (www.dat.state.md.us) for current state and local rates. The 2008 state tax rate was $0.112 per $100 of assessed value of real property and $0.28 per $100 of assessed value of operating real property of a public utility. The assessed value equals 100% of the market value which is reassessed every three years. Any increase in value is phased in over the three-year period. For primary residences, the phase-in of the increase is restricted to 10% of the previous year's assessment for State taxes if there has not been a transfer of the property or a major improvement within the preceding tax year.

The local counties and municipalities also impose real property taxes. The tax rates vary between a low of $0.449 per $100 of assessed value in Talbot County to a high of $2.268 per $100 of assessed value in Baltimore City (2008 rates). Municipal tax rates vary considerably and should be reviewed individually. Additionally, when the municipality provides services that the county provides outside of that municipality, the county tax rate will be lower for the property within the town limits. For primary residences, the phase-in of the increased assessment is also restricted for county and municipal property taxes, but the percentage of increase is set by the taxing authority. The maximum is 10%.

Certain tax preferences for businesses are available where they have been adopted by the local county officials, such as real property tax credits for improvements within enterprise zones, for new manufacturing industries, and for business expansion that creates a specified number of new jobs.

G. LOCAL PERSONAL PROPERTY TAX

The State of Maryland does not impose a state personal property tax. However, nineteen counties plus Baltimore City do impose a personal property tax which must equal 2.5 times the county's real property tax rate. Some municipalities also impose a personal property tax, but those rates are not necessarily tied to the local real property rate. Personal property assessments are based on the fair market value of the property which is normally set at the cost of acquisition, less depreciation. Depreciation rates vary depending on the type of property, but there is a floor of 25% of original cost unless otherwise established.

Certain personal property is exempt in whole or in part from tax. Business inventory, manufacturing property, research and development property, ready to use shrink-wrapped software, vehicles, vessels, and aircraft all receive preferential tax treatment.

The responsibility for setting the value of both real property and personal property and for determining the applicability of most exemptions lies with the State Department of Assessments and Taxation. Those values and any applicable exemptions are then adopted by the counties and the municipalities.

For more information about Maryland sales and use or income taxes, contact:

Comptroller of Maryland
Taxpayer Services Section

at either

301 W. Preston Street
Baltimore, Maryland 21201
Telephone: (410) 767-1300

or

Revenue Administration Center
Annapolis, Maryland 21401
Telephone: (410) 260-7980

Or through the Comptroller's web site at:

www.marylandtaxes.com

For more information about Maryland property taxes, contact:

State Department of Assessments and Taxation
301 West Preston Street
Baltimore, Maryland 21201
Telephone: (410) 767-1184
E-mail: datmd@atlantech.net

Or through SDAT's web site at:

www.dat.state.md.us

VI. LABOR AND EMPLOYMENT LAW

A. INTRODUCTION

One of the principal business factors that must be weighed when deciding where to locate your enterprise in the United States is the quality of the labor force —whether a location has available the kind of labor you need (experienced, sophisticated, educated, skilled, semiskilled, unskilled) at appropriate wage rates. For up-to-date economic information concerning the labor factor in Maryland, contact:

Department of Labor, Licensing and Regulation
Office of Workforce Information and Performance
1100 N. Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 767-2250
www.dllr.state.md.us

The workplace is regulated by both federal and state law, and these employment laws are equally applicable to both U.S. and foreign employers.

This section will identify major employer obligations under both federal and state law, and the agencies responsible for enforcement of those obligations. For more detailed information, please contact these enforcement agencies.

B. EMPLOYMENT ELIGIBILITY

The Immigration Reform and Control Act (IRCA 1986) requires all employers to verify the identity and employment eligibility of all persons hired after November 6, 1986. Employers comply by requiring and reviewing appropriate documentation and by preparing and retaining the I-9 form for each person hired. The Bureau of Citizenship and Immigration Services of the United States Department of Homeland Security issues and enforces regulations under IRCA.

IRCA also prohibits discrimination in hiring against eligible alien applicants on the basis of foreign nationality unless the employer can establish that a U.S. citizen is better qualified or that the law restricts employment to U.S. citizens.

For more information, please contact:

Bureau of Citizenship and Immigration Services
Baltimore District
Fallon Federal Building
31 Hopkins Plaza
Baltimore, Maryland 21201
Phone: (410) 962-7449
Toll Free: (800) 357-2099

C. EQUAL EMPLOYMENT OPPORTUNITY

Both federal law (Title VII of the Civil Rights Act Of 1964) and Maryland law (Maryland Article 49B) prohibit employers with fifteen or more employees from discriminating in any employment practice or with regard to compensation, benefits, privileges, or conditions of employment among job applicants or employees for any of the following reasons:

- λ race
- λ color
- λ national origin
- λ sex (including pregnancy-related conditions)
- λ religion
- λ age (forty or older, under the federal Age Discrimination in Employment Act of 1967— applies to employers with more than 20 employees)
- λ disability.

Maryland law also prohibits employment discrimination on the basis of marital status or physical or mental handicap.

Equal opportunity laws impose three basic requirements upon an employer:

- λ to make employment decisions by evaluating each person on the basis of individual, objective, job-related abilities without regard to any stereotypical assumptions

- λ to pay compensation, provide benefits, and set work conditions without regard to any of the prohibited factors
- λ to establish actual job-related requirements

Persons who think that they are being mistreated or denied an employment opportunity (hiring, promotion, transfer, training, etc.) for any of the prohibited reasons listed above must first file a complaint with either the Equal Employment Opportunity Commission (EEOC) or the equivalent State agency, the Maryland Commission on Human Relations. The agency will investigate, and if it determines that there is some merit to the complaint, will first attempt to reconcile the parties before allowing the complainant to sue. In extreme cases, the agency itself may bring the suit.

For more information, please contact:

Maryland Commission on Human Relations
William Donald Schaefer Tower
6 Saint Paul Street, 9th Floor
Baltimore, Maryland 21202
Telephone: (410) 767-8600

D. SAFETY AND HEALTH STANDARDS

Federal law (the Occupational Safety and Health Act of 1970 or OSHA) requires employers to provide a work environment free of all recognized hazards likely to cause death or serious bodily injury and to comply with any specific safety and health standards set for firms in particular industries. The federal government has approved the Occupational Safety and Health Plan of the State of Maryland and has authorized the State to be the enforcement agency. The Maryland Occupational Safety and Health Act approach is preventive-regulatory, featuring on-site inspections to assure compliance. If an employer is not in compliance with the law and the regulations, citations and civil fines may be issued.

The Maryland Occupational Safety and Health unit (MOSH) in the Division of Labor and Industry, Department of Labor, Licensing and Regulation, establishes safety and health standards and enforces them by an inspection system. Specific standards regulate such matters as machine guarding and employee exposure to noise, asbestos, lead, silica, and other hazardous substances.

MOSH also enforces "right to know" regulations requiring employers to warn their employees about exposure to hazardous materials and substances.

There are two methods for assuring compliance with MOSH standards: enforcement activities and voluntary compliance activities. Enforcement activities include unannounced inspections which may result in the issuance of citations.

Voluntary compliance consists of on-site consultative surveys cooperative compliance programs and training. Employers may request a free-of-charge, on-site consultation survey to determine whether they are in compliance. There are no citations or penalties associated with a consultation visit.

For more information, please contact:

MOSH
Division of Labor and Industry
1100 N. Eutaw Street, 6th Floor
Baltimore, Maryland 21201
Telephone: (410) 767-2215

E. WORKERS' COMPENSATION INSURANCE

The Maryland workers' compensation law requires employers to purchase insurance to pay compensation to employees for work-related injuries, occupational diseases, or deaths, regardless of whether someone is at fault (the employer, the injured employee, a co-worker, or a non-employee). This non-fault compensation is the employee's exclusive remedy against the employer for work-related injuries; the injured employee may not sue the employer in an attempt to recover greater compensation. The compensation available includes medical and rehabilitation expenses, a percentage of lost wages, and an amount for impairment of earning capacity. The amount of the insurance premiums varies with the accident rate of the industry and of the specific employer, so an employer has a financial incentive to maintain a safe and healthy work environment, to hire competent and careful employees, and to train and discipline them in on the job safety and health practices.

Employers may obtain coverage for their employees in one of three ways:

- The employer may insure with the State Accident Fund, which is a non-profit self-supporting agency of

the State of Maryland. For more information, please contact:

State Accident Fund
Underwriting Fund
6900 Loch Raven Boulevard
Baltimore, Maryland 21204
Telephone: (410) 832-1998

λ The employer may insure with any company authorized to write this coverage in the State. To obtain a directory of licensed insurance companies, please contact:

Insurance Commissioner
525 St. Paul Place
Baltimore, Maryland 21202
Telephone: (410) 468-2000
Toll Free: (800) 492-6116
www.mdinsurance.state.md.us

λ The employer may self-insure with the prior permission of the Maryland Workers' Compensation Commission. For more information, please contact:

Director of Self Insurance
Maryland Workers' Compensation Commission
6 North Liberty Street
Baltimore, Maryland 21201
Telephone: (410) 333-4700

F. WAGE LAWS

1. Wage Requirements -- General

Maryland's Wage Payment and Collection Law requires employers to pay employees all promised wages, including benefits. Employers must establish a regular payday, at least every other week for hourly employees. In addition, employers are prohibited from making deductions from employee paychecks unless the deductions are specifically authorized in writing by the employee, allowed by the Commissioner of Labor and Industry, or approved by

a court. The Wage Payment and Collection Law is enforced by the Department of Labor, Licensing and Regulation, Division of Labor and Industry—Employment Standards Service.

2. Minimum Wage and Overtime Pay Requirements

The federal Fair Labor Standards Act (FLSA 1938) and the Maryland Wage and Hour Law regulate the wages and hours of employees. Employers are required to keep accurate records of the hours worked and to pay at least the statutorily required minimum wage, currently $6.55 an hour. All hours worked by covered employees over forty hours in a week are considered "overtime" and must be compensated at one-and-a half times the employee's regular rate of pay. These minimum and overtime pay requirements may not be eliminated by agreement or by union contract.

There are numerous technical exceptions to the minimum wage and overtime requirements, including, for example, commissioned salespersons, outside salespersons, professional and administrative employees, and supervisory and managerial employees at or above a certain salary level. Both Maryland and federal law regulate the use of "child labor" (i.e., the employment of persons below the age of eighteen) and the employment of people to do work in their homes. The Maryland Division of Labor and Industry issues work permits for minors.

3. Equal Pay Requirements

The Equal Pay Act of 1963 requires employers to pay male and female employees the same wage where the work they perform requires "equal skill, effort, and responsibility in substantially identical working conditions." In addition, Title VII of the Civil Rights Act of 1964 prohibits employers from paying employees differently because of their race, national origin, color, sex, or religion. Both laws allow an employer to pay employees differently on the basis of longevity or seniority, a merit pay system, quantity or quality of work performed, or some factor other than one of those prohibited.

For more information concerning wage and hour requirements, wage payment requirements, the employment of minors, and equal pay requirements, please contact:

Employment Standards Service
Division of Labor and Industry
1100 N. Eutaw Street, 6th Floor
Baltimore, Maryland 21201
Telephone: (410) 767-2357

4. Prevailing Wage Rate Requirements

The Maryland Prevailing Wage Law requires the payment of specific wage rates to employees on "public works" construction projects over $500,000. The Prevailing Wage Unit of the Maryland Division of Labor and Industry, Department of Labor, Licensing and Regulation compiles wage data and sets the wage and benefit rates for various construction crafts (cement mason, carpenter, painter, etc.) in each county on a yearly basis. That Unit also investigates complaints and audits payrolls to ensure compliance with the law. If you have any questions about the Prevailing Wage Law, please contact:

Prevailing Wage Unit
Telephone: (410) 767-2365

G. EMPLOYMENT-RELATED TAX CONSIDERATIONS

1. Withholding Employee Income Taxes

Federal and State tax laws require employers to withhold and forward to the appropriate government their employees' income taxes.

2. Withholding and Paying FICA Taxes

The Social Security Act requires employers to withhold and forward their employees' required Federal Insurance Contributions Act (FICA) tax. The employer is also required to contribute a matching FICA percentage along with the employee's FICA tax.

3. Unemployment Insurance Tax

The Social Security Act also requires employers to pay unemployment insurance tax on behalf of their employees. These payments fund unemployment insurance benefits to former employees who have lost their jobs through no fault of their own.

New businesses in Maryland must apply for an unemployment insurance account number. Employers are assigned a new account tax rate until a rate can be established based on their own experience rating (which is based largely on the employer's layoff rate). The initial rate for new employers may not be less than 1% or more than 2.6% of the first $8,500 of wages paid to each employee. An exception is that the rate for new construction employers headquartered in another state is 3.6%.

To be eligible for unemployment benefits, a claimant must meet certain earnings requirements. In addition to those earnings requirements, claimants must meet non-monetary eligibility requirements. To be eligible for benefits, a claimant must:

- λ Be able to work;
- λ Be actively seeking work;
- λ Be available for full-time work;
- λ Not place any undue restriction on his/her availability for work or the work he/she will accept; and
- λ Not refuse suitable work.

For more information, please contact:

Division of Unemployment Insurance
Department of Labor, Licensing and Regulation
1100 North Eutaw Street
Baltimore, Maryland 21201
Toll Free: 1-800-492-5524
www.mdunemployment.com

H. EMPLOYEE CONCERTED ACTIVITY

The federal agency responsible for administration of employee concerted activity is the National Labor Relations Board (NLRB), which has two major functions. First, it supervises the secret ballot election process to certify or decertify a union. Second, it investigates and prosecutes unfair labor practice charges brought by employers or by unions. For more information, please contact:

National Labor Relations Board
103 South Gay Street
Baltimore, Maryland 21202
Telephone: (410) 962-2822

I. FRINGE BENEFITS

Fringe benefits typically include a health care plan, a retirement plan, paid vacation and paid holidays, a disability benefit plan, life insurance plan, etc. Fringe benefits are considered to be partial and deferred compensation for services already rendered. No federal law requires an employer to provide any fringe benefits as part of its employment agreement with its employees. If an employer does provide fringe benefits, however, those benefits may be regulated. For instance, if an employer offers disability fringe benefits, it must include pregnancy-related benefits. If it offers retirement benefits, they must be based on unisex actuarial tables.

An employer that provides fringe benefits is subject to regulation chiefly under two laws:

1. Consolidated Omnibus Budget Reform Act (COBRA)

COBRA requires employers who provide medical benefits to allow terminated employees to retain their benefits for up to eighteen months at the expense of the former employee.

2. Employee Retirement Income Security Act of 1974 (ERISA)

U.S. tax laws do not include fringe benefits for income tax purposes if they meet ERISA requirements, thus providing a significant benefit to employees. ERISA is jointly administered by the U.S. Department of Labor and the U.S. Department of the Treasury. These departments have issued comprehensive regulations detailing the rights of employees and the procedures that must be followed.

J. WORKFORCE SERVICES

1. The Maryland Job Service

Employers in Maryland may avail themselves, at no charge, of the services of the Maryland Job Service in placement of employees in job vacancies. Employers inform this agency of their openings and this agency attempts to match the employer's needs with persons seeking employment.

For more information, please contact:

Division of Workforce Development
Department of Labor, Licensing and Regulation
1100 N. Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 767-2999

2. Local Workforce Investment Areas

Maryland has 12 local Workforce Investment Areas across the State. Each area develops workforce development programs tailored to meet local employment training needs, including business services. Local workforce investment programs may be contacted through: www.dllr.state.md.us.

VII. BUSINESS ASSISTANCE AND FINANCING PROGRAMS

A. INTRODUCTION

The State of Maryland, through the Department of Business and Economic Development ("DBED"), funds and administers a variety of assistance and financing programs for Maryland businesses. The primary focus of these programs is the creation and retention of jobs.

This section presents an overview of some of the State, federal and local financing and assistance programs available to Maryland businesses. For details on Maryland's economic development programs, please contact:

Department of Business and Economic Development
Division of Business Development
217 East Redwood Street
Baltimore, Maryland 21202

Telephone: (410) 767-6870
Toll Free: (800) 811-0051
TDD/TTY: (410) 333-6926
Fax: (410) 333-6792

Or visit DBED's Web site, located at:

www.choosemaryland.org

B. BUSINESS LICENSE INFORMATION SYSTEM

Maryland's Business License Information System ("BLIS"), an interactive Internet-based program, offers business owners a single information source from which to determine many of the State permits and licenses that may be necessary to operate their businesses. The user enters in the type of business and BLIS will use the information supplied to generate a list of possible required permits and licenses. Through BLIS, a business owner may access the web sites of the various issuing agencies, including any electronic application forms so that the owner may apply for certain State licenses directly from the computer.

BLIS is administered by the Department of Business and Economic Development. It is available 24 hours per day, 7 days per

week. BLIS may be accessed through the Internet at the following address:

www.blis.choosemaryland.org

C. DOMESTIC BUSINESS ASSISTANCE PROGRAMS

1. DIVISION OF BUSINESS DEVELOPMENT

DBED's Division of Business Development is the direct arm of the State that is designed to attract, retain and expand business investment in Maryland. Businesses, associations, and their consultants should contact the Division to obtain help in identifying and securing a facility location that can best meet their needs.

For more information, please contact the Division of Business Development at the address, web site, and phone numbers listed above in the "Introduction" section.

2. DIVISION OF REGIONAL DEVELOPMENT

DBED's Division of Regional Development works together with regional and local economic development organizations to improve the competitiveness of businesses in their areas. For more information on the Division of Regional Development's programs, please contact:

Department of Business and Economic Development
Division of Regional Development
217 East Redwood Street, Suite 1035
Baltimore, Maryland 21202
Telephone: (410) 767-0095

or

www.choosemaryland.org

The Division's regional offices provide a decentralized, statewide service delivery system for the Division's business and economic development activities. The offices bring State resources into partnerships with local and regional initiatives to provide information, services, and financial investment.

Regional offices are located in the Greater Baltimore, Eastern Shore, Southern, Suburban, and Western Maryland regions.

The Division of Regional Development also administers the Maryland Industrial Training Program and the Partnership for Workforce Quality. The Maryland Industrial Training Program and the Partnership for Workforce Quality are discussed below in the Employee Training Programs section.

3. GOVERNOR'S OFFICE OF BUSINESS ADVOCACY AND SMALL BUSINESS ASSISTANCE

The Governor's Office of Business Advocacy and Small Business Assistance helps Maryland businesses navigate through the processes and regulations of local, State, and federal government and provides advice and coordination for small and minority-owned businesses. For more information on the Governor's Office of Business Advocacy and Small Business Assistance, please contact:

Department of Business and Economic Development
Division of Regional Development
217 East Redwood Street,
Baltimore, Maryland 21202
Telephone: (410) 767-0545

or

www.choosemaryland.org

D. DOMESTIC BUSINESS FINANCING PROGRAMS

1. INTRODUCTION

Some DBED programs provide direct financial assistance to businesses in the form of loans, grants, or equity investments. Other programs provide insurance or guarantees for commercial loans. The amount and availability of the insurance/guarantee financing is in part affected by the lending policies of participating private financial institutions.

2. MARYLAND SMALL BUSINESS DEVELOPMENT FINANCING AUTHORITY (MSBDFA)

MSBDFA is a program of the Maryland Department of Business and Economic Development. The Department has contracted the administration and management of MSBDFA's financing programs to a private business, Meridian Management Group, Inc. For more information on MSBDFA's programs, please contact:

Meridian Management Group, Inc.
826 East Baltimore Street
Baltimore, Maryland 21202
Telephone: (410) 333-4270

a. Contract Financing Program

MSBDFA provides loans, loan guaranties, and equity investment guaranties for working capital and equipment acquisition to eligible small businesses performing government or public utility contracts.

b. Long-Term Guaranty Program

MSBDFA provides loan guaranties and interest rate subsidies to financial institutions that make loans to eligible small businesses for working capital, equipment acquisition, real property acquisition or improvement, and the refinancing of existing debt.

c. Surety Bond Program

MSBDFA provides direct bonding, bond guaranties, and bonding lines of credit to eligible small businesses that require bid, performance, or payment bonds to perform government or public utility contracts or contracts funded by private entities.

d. Equity Participation Investment Program (EPIP)

MSBDFA provides equity investment or debt financing to eligible persons wishing to establish and develop franchises or technology-based businesses, to acquire existing successful businesses, or to establish and develop other businesses.

3. MARYLAND INDUSTRIAL DEVELOPMENT FINANCING AUTHORITY (MIDFA)

a. Conventional Program

MIDFA insures loans made to eligible industrial or commercial businesses to finance the acquisition of land, buildings, equipment, working capital, revolving credit lines, or government contracts.

b. Bond Program

MIDFA issues both tax-exempt and taxable revenue bonds for the benefit of eligible borrowers to finance the acquisition of land, new buildings (or substantial renovation of existing buildings), new equipment, and working capital. (Tax-exempt bonds are available only to manufacturers and 501(c)(3) organizations.) MIDFA also insures these bonds. The bonds are sold in the public market or privately placed.

c. Linked Deposit Program

MIDFA invests funds with eligible lenders at below-market rates; those lenders then make low-cost loans for the purchase of fixed assets to eligible businesses located in rural areas.

4. DIVISION OF FINANCING PROGRAMS

a. Maryland Economic Development Assistance Authority and Fund (MEDAAF)

DBED makes loans, grants, and equity investments to businesses and political jurisdictions. Eligible projects must fall within certain categories described below. In addition, an applicant must

operate a business in an eligible industry sector and the project must be located in a priority funding area. Assistance under MEDAAF is usually limited to 70 percent of the total project costs.

Significant Strategic Economic Development Opportunities – The Department may provide loans for a project that would have an economic impact on a statewide or regional level.

- λ Assistance is in the form of a loan
- λ An applicant may be a business or the Maryland Economic Development Corporation (MEDCO).
- λ Maximum assistance may not exceed the lesser of $10 million or 20 percent of the current fund balance

Local Economic Development Opportunity – The Department may provide financial assistance for a project that would have an economic impact on a more local level.

- λ Assistance may be in the form of a loan, equity investment, conditional grant, or grant
- λ The project must be a priority of, and be sponsored by, the local jurisdiction
- λ The local jurisdiction must participate in the financing, either by guaranteeing at least a portion of the State's financial assistance or making a loan or grant for the project in an amount equal to at least 10 percent of the State's financial assistance
- λ Loans may be up to $5 million, while conditional loans and grants may be up to $2 million

Direct Assistance to local jurisdictions or MEDCO - The Department may provide financial assistance to a local jurisdiction for local economic development needs.

- λ Assistance may be in the form of a loan, equity investment, conditional grant, or grant
- λ The local jurisdiction or MEDCO may use the assistance to aid one or more specific businesses
- λ The total amount of assistance may not exceed $3 million

Smart Growth Economic Development-Infrastructure Fund ("One Maryland") – The Department may provide financial assistance to qualified distressed counties to fund the development of industrial parks and the development of shell buildings and other infrastructure projects.

- λ Assistance may be in the form of a loan, equity investment, conditional grant, or grant.
- λ The qualified distressed counties may use the assistance to aid one or more specific businesses.

Specialized Financing Areas – The Department may also make financial assistance available for projects in the following specialized areas:

- λ Brownfield Revitalization Incentive—provides loans and grants to assess and revitalize qualified brownfields sites
- λ Aquaculture—provides loans, grants, and equity investments to businesses involved in seafood processing and aquaculture
- λ Animal Waste—provides loans, grants, and equity investments to

fund research, development, implementation, or marketing of technology related to the use, reduction, or management of animal waste.

- λ Child Care Centers—provides loans, grants, and equity investments to fund the construction or expansion of child care facilities
- λ Arts and Entertainment—provides loans, grants, and equity investments to entities involved in the visual or performing arts and located in an arts and entertainment district and financing for projects that promote or enhance the development of arts and entertainment districts

Regional or Local Revolving Loan Fund – The Department also assists local governments in capitalizing local or regional economic development loan funds.

b. Community Development Block Grant Program (CDBG)

DBED makes conditional grants to eligible local governments, which either use the funds directly or to make loans to assist businesses. The funds may be used for the acquisition of land and equipment, the acquisition or construction of buildings, the rehabilitation of real property, or infrastructure and downtown revitalization. This program focuses upon the creation and retention of employment opportunities primarily for low- and moderate-income persons, and the elimination of slum and blight conditions in communities.

c. Economic Development Opportunities Program Fund ("Sunny Day" Fund)

The Sunny Day Fund provides financing for extraordinary economic development opportunities where assistance from other sources is limited. Through this fund, the State may offer tailored, high-level incentives to companies in order to encourage the attraction and retention of private business in Maryland.

d. Smart Growth Economic Development Infrastructure Fund ("One Maryland")

The One Maryland Program provides financing to qualified distressed counties to fund the development of industrial parks and the development of shell buildings and other infrastructure projects.

5. INVESTMENT FINANCING PROGRAMS

a. Challenge Investment Program

DBED makes contingent royalty repayment investments in small, start-up high-technology companies.

b. Enterprise Fund

DBED makes equity investments in and provides debt financing for "early stage" high-technology companies and venture capital limited partnerships.

6. MARYLAND ECONOMIC ADJUSTMENT FUND (MEAF)

DBED lends money to companies in areas affected by defense adjustments in order to help modernize operations, develop commercial applications for technology, and compete in new economic markets. DBED may also provide grants to local revolving loan funds.

7. MARYLAND TECHNOLOGY DEVELOPMENT CORPORATION (TEDCO)

a. The Corporation:

The Maryland Technology Development Corporation (TEDCO), an independent entity, was established by the Maryland General Assembly in 1998. TEDCO facilities the creation of businesses by connecting emerging technology companies with federal laboratories, research universities, business incubators and specialized technical assistance. Governed by a 15-member Board, appointed by the Governor with advice and consent of the Senate, the Board is comprised of leaders in the State's technology community and contains representatives from these sectors: private, university, nonprofit and public.

b. TEDCO Funding Programs:

λ **University Technology Development Fund (UTDF):** Provides up to $50,000 for proof-of-principle studies on Maryland university-owned or -originating technologies. The objective is to demonstrate the ability of university technologies to meet identified market needs in addition to making the technologies more attractive to potential licensees.

λ **TechStart Program:** Provides up to $15,000 to fund university-based teams to determine whether specific technologies proposed by the universities would have the potential to be commercialized through a startup company. The objective is to increase the number of university start-ups annually, elevating Maryland's national ranking to the top tier of States.

λ **Maryland Technology Transfer Fund (MTTF):** Provides up to $75,000 for initiation of technology transfer projects that involve collaborations between a Maryland company and any federal laboratory or university in Maryland. Funds should be used to defray direct costs of developing early stage technology.

λ **Fort Detrick Technology Transfer Initiative (FDTTI):** Provides a small business up to $50,000 for transfer of medical technology related to the U.S. Army Medical Research and Materiel Command. Both spin-in and spin-out projects are eligible. Funds should be used to defray direct costs of developing early stage technology.

c. TEDCO Entrepreneurial Innovation Programs:

TEDCO provides a variety of assistance programs for entrepreneurial development including the Maryland Rural Business Innovation Program (RBI), the Maryland Minority R&D Initiative, Achieving the Commercialization of Technology in Ventures through Applied Training for Entrepreneurs (ACTiVATE), Business Assistance for Incubator Companies, and the Working Capital Loan Fund.

d. Maryland Stem Cell Research Fund (MSCRF):

In 2006, the MSCRF was established for the purpose of promoting state-funded stem cell research and cures through grants and loans to public and private entities in the State. TEDCO administers the Fund. The Maryland Stem Cell Commission is an independent commission that functions in TEDCO. The Commission develops criteria, standards and requirements for applications to the Fund.

For more information on TEDCO and its programs and resources, visit www.MarylandTEDCO.org.

8. MARYLAND AGRICULTURAL AND RESOURCE-BASED INDUSTRY DEVELOPMENT CORPORATION (MARBIDCO)

The Maryland Agricultural and Resource-Based Industry Development Corporation, (MARBIDCO) is a State-sponsored independent economic development entity that brings together public and private partners to focus on delivering enhanced financing and business development services to the State's

agriculture, forestry and seafood industries. MARBIDCO has also been charged by the Maryland General Assembly with assisting State and local rural land conservation agencies with their farmland and forestland preservation efforts.

MARBIDCO currently offers three direct loan programs and an equity financing program, all of which require some level of participation by commercial lenders or public sector funders:

λ The Maryland Resource-Based Industry Financing Fund offers low-interest loans to purchase land and capital equipment for food and fiber production and processing activities.

λ The Rural Business Working Capital Loan Fund offers loans for working capital and equipment purchases at 1% below the prevailing prime rate; while the Forestry Equipment and Working Capital Loan Fund offers flexibly-priced loans to Maryland's forest products businesses for working capital and equipment purchases.

λ The Agricultural Cooperatives Equity Investment Program provides capital investment needed by agricultural cooperatives when business operations are beginning or significantly expanding.

In addition, MARBIDCO offers four grant programs:

λ The Rural Business Energy Efficiency Grant and Loan Interest Rate Buy-Down Program helps established firms and producers purchase equipment or technology that lowers energy consumption. Grants of up to 10% of a project's cost are available, contingent on a third-party energy audit report.

λ The Maryland Farm and Producer Viability Program helps early stage enterprises with operational and market risk assessment and with specialized business plan development.

λ The Maryland Value Added Producer Grant program provides a portion of the federally-required matching funds for Maryland applicants to USDA's highly competitive Value Added Producer Grant Program.

λ The Local Government Agricultural/Resource-Based Industry Project Cost Share Program supports local and regional rural business development efforts by offering matching cost share assistance for agribusiness development projects with units of local government.

Beginning in 2008, MARBIDCO also offers "Installment Purchase Agreements" to sellers of rural land conservation easements using a tax advantaged arrangement that benefits both landowners and the State. Another new offering, the Next Generation Farmland Acquisition Program, enables MARBIDCO to help young or beginning farmers to both purchase and permanently preserve farmland.

For further information on MARBIDCO, please contact:

Stephen McHenry, Executive Director
1410 Forest Drive, Suite 28
Annapolis, Maryland 21403
Telephone: 410-267-6807

E. INTERNATIONAL BUSINESS ASSISTANCE AND FINANCING PROGRAMS

1. EXPORT DEVELOPMENT ASSISTANCE PROGRAMS

DBED's Division of International Investment and Trade ("DIIT") offers export assistance through all stages of the export process to small and medium-sized companies with internationally competitive products and services. Some of DIIT's assistance programs include:

a. Trade Development Program

DIIT trade specialists assist Maryland exporters in developing new foreign markets and expanding sales in existing markets. DIIT also coordinates the participation of Maryland firms in selected foreign trade and catalog shows. Some companies may qualify for Export MD grants to assist with these endeavors.

b. Pathfinder Program

Through the Pathfinder Program, Maryland companies are represented at foreign trade shows through a DIIT specialist, for a nominal fee. For a fraction of the cost of physically attending a show, Maryland companies can: identify potential partners, suppliers, distributors, and customers; promote new products; gather important materials; and generate publicity. Companies interested in a particular overseas trade show should contact the DIIT representative covering the appropriate export region.

c. Foreign Offices and Representatives

Maryland's foreign offices and representatives provide exporters with in-country assistance around the globe, including:

- λ agent/distributor searches and business appointments;
- λ credit reports, competitor analysis, and regulatory information;
- λ marketing and logistical support at trade shows; and
- λ market research and analysis.

Maryland contracts with foreign offices in Shanghai, China; Paris, France; Taipei, Taiwan and Singapore. There is also a Maryland representative in Tel Aviv, Israel. A Maryland company is entitled to 20 free hours of assistance per office, per year.

For further information on assistance offered by the Division of International Investment and Trade, please contact the following:

FOREIGN OFFICES		Contact in Maryland
CHINA Maryland Center China Mr. Ning Shao, Director	Suite A4011-A410 Tomorrow Square 399 West Nanjing Road Shanghai 200040 China	Brad Gillenwater, Division of International Investment and Trade 217 E. Redwood St., 12th Fl Baltimore, Maryland 21202 Phone: 410-767-0688 Fax: 410-333-4302 E-mail: *bgillenwater@choosemaryland.org*
EUROPE VIP Euro Services, Inc. Tom Lyons, Director	50, rue de Berri 75008 Paris France	Patrick Tonui or Signe Pringle, Division of International Investment and Trade 217 E. Redwood St., 12th Fl Baltimore, Maryland 21202 Phone: 410-767-3592 or 3542 Fax: 410-333-4302 E-mail: *ptonui@choosemaryland.org* *springle@choosemaryland.org*
TAIWAN Maryland Center-Taiwan Mary Ann Wo, Director	Taipei World Trade Center 7G13, 5 Hsin-Yi Road, Section 5 Taipei, Taiwan, R.O.C.	Cathleen Hamel, Division of International Investment and Trade 217 E. Redwood St., 12th Fl Baltimore, Maryland 21202 Phone: 410-767-1427 Fax: 410-333-4302 E-mail: *chamel@choosemaryland.org*
SINGAPORE Susan McKinney	US-ASEAN Business Council 100 Beach Road, #22-04/05 Shaw Tower Singapore 189702	Signe Pringle, Division of International Investment and Trade 217 E. Redwood Street, 12th Fl Baltimore, Maryland 21202 Phone: 410-767-3542 Fax: 410-333-4302 E-mail: *springle@choosemaryland.org*

FOREIGN REPRESENTATIVES		Contact in Maryland
ISRAEL Maryland-Israel Development Center Barry Bogage, Director	217 E. Redwood Street, 12th Fl Baltimore, Maryland 21202	Barry Bogage Phone: 410-767-0681 Fax: 410-333-4302 E-mail:

		bbogage@choosemaryland.org

MARYLAND EXPORT ASSISTANCE NETWORK		
World Trade Center Institute Deborah M. Kielty, President & Executive Director	The World Trade Center —Baltimore 401 E. Pratt Street, Suite 232 Baltimore, MD 21202	Phone: 410-576-0022 Fax: 410-576-0751 E-mail: *kiety@wtci.org* Website: *www.wtci.org*

d. Representative Program

Maryland's Representative Program provides exporters with a proactive bilingual sales and marketing presence in targeted overseas markets. Foreign office representatives can answer phone inquiries in the native language, host meetings, participate in trade shows, facilitate travel arrangements, evaluate the effectiveness of international marketing efforts, and provide sales leads.

e. Foreign Trade Zones

A foreign trade zone ("FTZ") is an area that, for customs law purposes, is legally treated as if it were outside the United States. Inside an FTZ, foreign and domestic merchandise may be bought duty-free for purposes such as storage, repacking, display, assembly, or manufacturing. Imports may be landed and stored quickly without full customs formalities. Maryland has four FTZs:

- **Baltimore Foreign Trade Zone #74**
  Consists of a total of 1,727 acres divided among fourteen sites throughout the greater Baltimore region.

- **BWI Foreign Trade Zone #73**
  Consists of five sites and two sub-zones, totaling over 37 acres, on or near the Baltimore/Washington International Airport.

- **Prince George's County Foreign Trade Zone #63**

  Consists of 77 acres on two sites: Steeplechase and Collington Business Center.

- **Washington County Foreign Trade Zone #225**

  Consists of 1,866 acres on seven sites throughout Washington County.

2. INTERNATIONAL BUSINESS FINANCING PROGRAMS

a. Trade Finance Program

Through the Trade Finance Program, the Maryland Industrial Development Financing Authority (MIDFA) provides insurance of commercial loans to service providers to the overseas market and to businesses that are engaged in the export and import of goods through Maryland seaports and airports.

In addition, MIDFA may arrange specialized financing for exports through the Export-Import Bank of the United States (Ex-Im Bank). Ex-Im Bank provides businesses with export financing through a variety of loan, guarantee, and foreign credit insurance programs.

b. ExportMD Program

Eligible Maryland companies can apply for grants of up to $5,000 to reimburse one-half of the costs necessary to enter a new foreign market via participation in export-related foreign activities such as a trade show or mission. Grantees also receive 80 free hours of assistance from any foreign office or combination of foreign offices of their choice.

3. ASSISTANCE FOR FOREIGN DIRECT INVESTORS

Due to Maryland's outstanding location and transportation infrastructure, exceptional workforce, and business-friendly environment, the State is truly the **premier global gateway** for any company entering the U.S. market. Understanding Maryland's strategic advantages, DIIT Investment and Trade Executives work side-by-side with international business as they evaluate the many variables that go into making a successful site location decision. Services provided include:

a. **Market Research** on labor availability, wage rates, taxes, and duty costs;

b. **Building and Site Selection Assistance** to meet each company's expansion requirements;

c. **Incentives** that are coordinated and packaged to provide the highest possible level of financial support;

d. **Liaison Service** between each company and government / regulatory agencies to ensure a smooth and timely relocation process;

e. **Cultural Assimilation** to provide information on international schools, and community / cultural organizations that can help relocated employees feel more at home;

f. **Referrals** to local attorneys, accountants, and banks with expertise in areas such as immigration, incorporation or financial services; and

g. **Supplier Contacts** to connect foreign business with potential vendors and service providers in Maryland.

F. EMPLOYEE TRAINING PROGRAMS

1. Partnership for Workforce Quality (PWQ)

DBED provides matching grants to reimburse eligible Maryland businesses for up to 50% of the direct costs related to training needed to upgrade the job-specific skills of current employees.

The PWQ program is administered by DBED's Division of Regional Development.

2. Maryland Industrial Training Program (MITP)

DBED provides grant assistance to reimburse grantees for the costs associated with new workforce development and training activities in start-up and expanding operations.

MITP is administered by DBED's Division of Regional Development.

G. TAX CREDIT INCENTIVE PROGRAMS

1. Enterprise Zones

Eligible businesses that locate their operations in designated Enterprise Zones receive various State tax credits and special consideration for financial assistance under DBED's programs, discussed above in the Domestic Business Financing Programs section. For more information contact DBED's Tax Incentive Group 410-767-6438 or 410-767-4980.

2. Empowerment Zones (federal)

A federal Empowerment Zone, one of only six in the nation, encompasses 6.8 square miles in three separate areas of Baltimore City, two of which are zoned for heavy industrial use. Eligible businesses that locate their operations in the Empowerment Zone receive various federal and State tax credits and other financial incentives.

3. One Maryland Economic Development Tax Credit

Businesses that establish or expand a business facility in a priority funding area or as part of a project approved by the Maryland Board of Public Works, and that are located in certain "distressed" Maryland counties, may be entitled to a tax credit for costs related to the new or expanded facility. The credit may be taken against corporate income tax, personal income tax, or insurance premiums tax, but may not be applied to more than one tax type. For more information contact the Maryland Comptroller's office at the address or telephone number listed in part V or visit the Comptroller's web site at www.marylandtaxes.com.

4. Job Creation Tax Credit

Businesses that expand or establish a facility in Maryland resulting in the creation of new positions in the State may be entitled to a tax credit. The amount of the tax credit is based upon the number of positions created or on the wages paid to the new employees. The credit may be taken against corporate income tax, personal income tax, or insurance premiums tax, but may not be applied to more than one tax type. For more information contact the Maryland Comptroller's office at the address or telephone number listed in part V or visit the Comptroller's web site at www.marylandtaxes.com.

5. Research and Development Tax Credit

Businesses that incur qualified research and development expenses in Maryland are entitled to a tax credit. The total credits for all businesses may not exceed $6,000,000 per year. The credit may be taken against corporate income tax, personal income tax, or insurance premiums tax, but may not be applied to more than one tax type. For more information contact the Maryland Comptroller's office at the address or telephone number listed in part V or visit the Comptroller's web site at www.marylandtaxes.com.

VIII. ASSISTANCE TO AGRICULTURE BUSINESSES

A. MARYLAND AGRICULTURE

Agriculture, along with agriculture-dependent businesses, is Maryland's number one industry, with more than $11 billion in revenue and employing 350,000 people -- 14% of the Maryland work force. The agriculture of the state is extremely diverse, and its poultry, nursery products, dairy, grains, soybeans, cattle, hogs, seafood aquaculture, fruits, and vegetables are in demand throughout the nation and around the globe.

B. SELLING MARYLAND AGRICULTURE

1. Introduction

The Maryland Department of Agriculture's Marketing Services uses an aggressive and dynamic marketing strategy to expand economic opportunities for Maryland farmers and food businesses. Following are some of the activities and programs of Marketing Services:

2. Domestic Marketing

- λ Establish and promote regional producer-only **farmers' markets** for both retail and wholesale customers.
- λ Establish customer identification with Maryland food and agricultural products through the **Maryland's Best Program** and logo. The Web site is http://www.marylandsbest.net.
- λ Promote organic farming through an **Organic Certification Program** to expand sales and reach new customers.
- λ Organize Maryland food companies to **participate at trade shows** and exhibit food and agricultural products.
- λ Organize **retail promotions and special events** to showcase Maryland agriculture and food businesses.
- λ **Survey consumer buying habits** to help agricultural producers meet market demand and plan for alternative crop production.

- λ Promote individual agricultural and food commodities through the production of **flyers, brochures, guides, recipe books, and directories**.

- λ Develop, prepare, and implement **proposals for grant activities** funded by the United States Department of Agriculture Federal State Marketing Improvement Program.

- λ Assist and support the establishment and expansion of agribusinesses through the **Agribusiness Development Program.**

3. International Marketing

- λ Assist Maryland farmers and agribusinesses to enter the **global marketplace.**

- λ Assess the export readiness of businesses and **assess the export potential** of products.

- λ Organize the participation of Maryland companies at **international trade shows** and exhibitions.

- λ Organize **trade missions** in foreign markets for Maryland businesses.

- λ Provide businesses with information on **phytosanitary requirements for product export** and assist in obtaining any needed inspection documentation or certificates.

- λ Identify **foreign buyers, agents and distributors.**

- λ Develop, prepare and implement **proposals for grant activities** funded by the United States Department of Agriculture Foreign Agriculture Service and other trade development organizations.

- λ Work closely with **U.S. Embassies and Agricultural Trade Offices** in over 70 countries and regions to promote the export of Maryland products and coordinate trade development activities.

- λ Present information and **analysis of trade research data** and studies to international business groups, companies, associations and organizations.

- λ Develop and disseminate **trade leads.**

- λ Assist exporters to obtain the services of **freight forwarders, marketing intermediaries, banks** and other financial institutions.

- λ Conduct **export training seminars.**

C. PROTECTING MARYLAND AGRICULTURE

The Department of Agriculture also operates many programs that protect the quality of Maryland's agriculture and foods, including:

- λ Plant Protection and Weed Management
- λ Apiary Inspections
- λ Nursery Inspections and Plant Quarantine
- λ Turf and Seed Oversight
- λ The State Chemist
- λ Agricultural Products Grading Services
- λ Egg Inspections
- λ Grain Dealers Licensing
- λ Weights and Measures Inspection
- λ Board of Veterinary Medicine Examiners
- λ The Horse Industry Board

For more information on these and the many other programs available to assist Maryland agriculture, please contact:

Maryland Department of Agriculture
Marketing Services Section
Telephone: (410) 841-5770

Or through the Department's web site at:

www.mda.state.md.us

Expanding Economic Opportunities for Maryland Agriculture is Our Business!

IX. NATURAL RESOURCES LAW

From the Atlantic seaboard to the Appalachian mountains, Maryland is blessed with a wealth of natural resources. The state has over 2,300 miles of inland waterways, including the Chesapeake Bay -- the world's most productive estuary. Forests cover 2.8 million acres, or 44% of the state's total land area and provide habitat to a myriad of species, including white-tailed deer, bobwhite quail, and, during winter, Canadian geese. This diversity has helped earn Maryland the title of "America in Miniature."

The Department of Natural Resources protects, preserves, enhances and restores the State's natural resources for the wise use and enjoyment of all citizens. The Department regulates business use of these resources in three areas: (1) shoreline development, (2) forest development, and (3) commercial use of natural resources – boating, fishing, and wildlife.

A. SHORELINE DEVELOPMENT

In 1984, Maryland enacted the Chesapeake Bay Critical Area Protection Program, which limits development in areas 1,000 feet landward of the Bay and its tributaries (the "Critical Area"). In 2002, the General Assembly extended the program to protect the Atlantic Coastal Bays. The Critical Area program is locally administered and subject to oversight by a state Commission. An application for a building permit in a Critical Area must meet the requirements of the local jurisdiction's Critical Area program. For more information, go to www.dnr.state.md.us/criticalarea.

B. FOREST DEVELOPMENT

In 1991, Maryland enacted the Forest Conservation Act, which sets forth planting and reforestation requirements for project site development. The law applies to parcels of land one acre or larger and generally requires replacement of trees where trees are removed, or planting of trees where there are none. This law is also locally administered. An application for a grading or sediment control permit or subdivision plan triggers the requirements of the local jurisdiction's forest conservation program. For detailed information about the Act and its requirements, go to www.dnr.state.md.us/forests/programapps/newFCA.asp.

C. LICENSES

The Department of Natural Resources issues a variety of business licenses to commercial users of state natural resources. The licenses and license requirements are described in the table below. Four units in the Department issue the licenses. The issuers and their contact numbers are as follows:

Licensing and Registration Service (LRS)	(410) 260-3220[1]
Fisheries Service	(410) 260-8280
Forest Service	(410) 260-8531
Wildlife and Heritage Service (WHS)	(410) 260-8540

In addition to the summary below, information about business licenses issued by the Department may be found at *www.dnr.state.md.us*. Under the Program Directory link, click on Fisheries, Forestry, or Wildlife & Heritage, as applicable.

License or Permit	General Requirements	Issuer
Boating		
Boat manufacturers and dealers	Surety bond or other security, $25 annual fee	LRS
Fisheries		
Tidal fish (commercial) license	Limited by law to a specific number of participants; $37.50 to $300 fee, depending upon landing authorization (finfish, crabs, clams, oysters)	LRS
Tidal fishing guide	A federal license to operate a vessel carrying passengers for hire; $50 fee for residents, $150 fee for nonresidents	LRS

[1] The Department, which is located in Annapolis, also has service centers in Belair (410/836-4550), Centreville (410/819-4100), Cumberland (301/777-2134), Dundalk (410/284-1654), Prince Frederick (410/535-3382), and Salisbury (410/713-3840).

Freshwater fishing guide	Possession of any necessary fishing licenses and stamps; $20 to $100 fee	Fisheries Service
Aquaculture	Application and site inspection of proposed facility	Fisheries Service
Forestry		
Forest product operator (for the harvest, manufacture, or sale of forest products)	Application and $20 fee	Forest Service
Tree expert (pruning and treatment of trees)	Two years approved college education in forestry or forestry-related fields and one year experience with a licensed tree expert; or five years experience with a licensed tree expert; examination; $30 fee; insurance	Forest Service
Qualified conservation professional (to prepare plans under the Forest Conservation Act)	Licensed forester or landscape architect, or four-year degree in natural resource sciences or equivalent and completion of training program	Forest Service
Wildlife		
Waterfowl outfitter	Application; 20 days of experience per season for two seasons as a licensed waterfowl hunting guide or performing the duties of a waterfowl hunting guide; $300 fee	WHS
Waterfoul hunting guide	Application; valid Maryland hunting license; $50 fee	WHS

Commercial regulated shooting area (to raise, release, and shoot pen-reared birds)	Application; copy of tax map showing land tract of at least 50 to 100 acres; $150 fee	WHS
Wildlife control cooperator (control of wildlife injurious to agricultural or other interests or care and treatment of sick or injured wildlife)	Examination; adequate training as an apprentice in the capture and handling of wildlife; continuing education; facilities sufficient to maintain permitted wildlife in captivity;	WHS
Game husbandry (raising, breeding, protecting or selling game birds or mammals)	Fencing or other requirements necessary to keep apart captive and native animals; inspection; $10 fee	WHS
Captive reptile and amphibian permit (possession, breeding, and sale)	Adequate animal housing and shelter; inspection; $25 fee	WHS
Fur dealer	Application; $50 fee ($100 fee for nonresidents)	WHS
Taxidermist and fur tanner	Application; examination; submission of work samples meeting minimum professional standards; $50 fee	WHS

X. ENVIRONMENTAL LAW

A. INTRODUCTION

The principal environmental laws in Maryland focus upon a facility's operations as they affect the quality of the air, water and land. Both the United States Environmental Protection Agency (EPA) and the Maryland Department of Environment (MDE) regulate business activities that contribute to air pollution, water pollution, and solid and hazardous waste pollution. Most Maryland environmental laws enforce standards that are equivalent to those provided under federal law. Although state and federal jurisdiction sometimes overlap, MDE is the regulator of first resort for the implementation and enforcement of environmental laws in Maryland. EPA will step in only if it believes that the actions taken by Maryland were insufficient to achieve compliance with the applicable laws.

As the lead state agency involved in environmental protection, MDE is organized to deal with various types of pollution using a media-based approach. The three primary administrations that implement MDE's environmental programs are the Air and Radiation Management Administration, the Waste Management Administration and the Water Management Administration.

B. AIR AND RADIATION MANAGEMENT ADMINISTRATION

The mission of the Air and Radiation Management Administration (ARMA) is to improve and maintain air quality and control sources of radiation in order to protect the health and welfare of the people and the environment of Maryland, while providing for enhanced community service and economic development.

ARMA administers seven programs:

- λ Air Quality Planning
- λ Air Monitoring and Information Systems
- λ Air Quality Permits
- λ Air Quality Compliance Program
- λ Mobile Sources Control
- λ Radiological Health

ARMA has several functions:

- λ Operate a statewide network of air quality monitors that continuously measure air quality
- λ Provide information to the public about the quality of the air and the nature and extent of both regional and local air pollution problems
- λ Assist businesses in understanding and meeting requirements of state and federal air quality and radiological health laws and regulations
- λ Investigate and resolve complaints about air pollution and radiation, make inspections of equipment and activities that discharge air emissions or radiation, and pursue enforcement actions when necessary
- λ Issue permits and licenses for medical, industrial commercial, and institutional radiation uses or air pollution sources, ensuring that these activities do not create air pollution or unauthorized exposure to radiation; provide opportunities for the public to understand and comment on permit activities
- λ Reduce air pollution from motor vehicles in the State by developing, implementing and evaluating mobile source requirements of the Clean Air Act and other mobile source programs
- λ Approve training courses for asbestos workers and supervisors, and provide technical support on industrial hygiene and asbestos management to state agencies, school systems, and county health departments
- λ Develop coordinated plans, programs, and standards to prevent and reduce air pollution and control sources of radiation to protect public health while minimizing costs to the public and Maryland business

C. WASTE MANAGEMENT ADMINISTRATION

MDE's Waste Management Administration (WAS) protects human health and preserves and restores our land and water resources by reducing the quantity and toxicity of generated wastes through recycling and source reduction, ensuring the control and proper disposal of waste, managing lead paint compliance, assuring that oil is handled in an environmentally safe manner, and overseeing the remediation of contaminated sites for viable economic development.

This is achieved by maintaining a highly visible presence in the regulated community, providing assistance to stakeholders and developing long-term strategies for waste management needs.

WAS is organized into several programs and one office. These include:

- λ Solid Waste Program
- λ Hazardous Waste Program
- λ Oil Control Program
- λ Land Restoration Program
- λ Lead Poisoning Prevention Program
  Recycling and Operations Program

WAS has several functions:

- λ Permitting facilities and conducting compliance inspections to assure the proper management of solid waste, hazardous waste, sewage sludge, petroleum products, medical waste, scrap tires, and natural wood waste
- λ Administering the remediation of leaking underground storage tank (UST) sites and the laws relating to the proper installation and operation of tanks at over 15,000 sites statewide
- λ Administering a "Superfund" program that assesses suspected hazardous waste sites, including federal facilities, to control and remove environmental and public health threats through site cleanups and remedial actions

- λ Implementing a voluntary cleanup program for sites with environmental contamination to encourage cleanups and the reuse or redevelopment of abandoned industrial and commercial properties
- λ Registering and inspecting vehicles that transport hazardous materials to ensure that wastes are properly and safely handled during transportation
- λ Facilitating local and regional planning for solid waste and low level radioactive waste management
- λ Accrediting and overseeing lead abatement contractors and inspectors
- λ Registering rental properties and maintaining a data base of risk reduction and lead-free certificates
- λ Maintaining the childhood lead poisoning registry and tracking the incidence of lead poisoning in the State.

As part of the Waste Management Administration's commitment to improved customer service while protecting the environment, the Administration has developed general permits for oil facilities with wastewater discharges. These permits improve efficiency and service to stakeholders by reducing the time necessary to obtain required permits and approvals. General permits are being developed for oil operations and are already available for natural wood waste recycling facilities.

D. WATER MANAGEMENT ADMINISTRATION

The mission of the Department's Water Management Administration (WMA) is to restore and maintain the quality of the State's ground and surface waters, and to plan for and supervise the development and conservation of the State's waters. WMA manages a broad range of activities, including regulating and financing municipal wastewater treatment systems; regulating the use and development of the State's water resources, public water supplies and on-site residential sanitation systems; regulating well-drilling and industrial pretreatment; providing technical assistance

for water and wastewater utilities; financing small creek and estuary restoration; approving erosion/sediment control and storm water management plans; storm water permitting; dam permitting and inspection; protection and management of tidal and nontidal wetlands and waters; and regulating mining activities and mitigation problems associated with abandoned mines. These protection, financing, and regulatory activities help WMA ensure that state waters are safe for drinking, recreation, and wildlife.

WMA has nine support units:

- λ Office of Administrative Services
- λ Water Quality Infrastructure Program
- λ Nonpoint Source Program
- λ Water/Wastewater Permits Program
- λ Wetlands & Waterways Program
- λ Compliance Program
- λ Mining Program
- λ Water Supply Program

These programs have many functions:

- λ Create a focal point for outreach and assistance activities that can address cross-functional issues involving water regulatory programs
- λ Manage water, wastewater, and nonpoint source pollution control capital projects that are funded through grants and loans from the Department
- λ Permit and inspect water and sewerage construction facilities
- λ Review and approve erosion/sediment control and storm water management plans for state and federal construction projects
- λ Inspect dams for safety, issue new dam permits, and approve downstream warning plans for high hazard dams
- λ Issue water appropriation permits for use of surface and ground waters

- λ Issue permits for discharges to surface and ground water from both industrial and municipal facilities as required by the Federal Clean Water Act
- λ Oversee programs delegated by MDE to local health departments. Activities range from MDE's regional consultants, who provide technical assistance to local health authorities for on-site water and wastewater systems, to MDE's development and testing of new innovative or alternative septic system designs
- λ Regulate activities conducted in nontidal wetlands and their buffers, and nontidal waterways, including the 100-year floodplain; regulate activities conducted in tidal wetlands
- λ Create, restore, and enhance nontidal wetlands and streams; provide training and technical assistance and assist in the development of watershed management plans
- λ Inspect industrial and municipal wastewater discharges, coal and surface mining operations, agriculture sites, and construction activities involving sediment control, stormwater management, wetlands, and waterways
- λ Regulate active mines and mitigate environmental problems associated with abandoned mines; regulate oil and gas exploration, production, and storage
- λ Ensure safe drinking water in Maryland by administering the federal Safe Drinking Water Act, developing the State's comprehensive ground water protection program, and responding to local water supply emergencies; conduct performance evaluations of surface water filtration plants to assist systems in optimizing treatment and reducing the risk of passing cryptosporidium (a protozoan parasite that can infect humans) into the finished water
- λ Offer training to public water and wastewater treatment operators and provide on-site

technical assistance to support the State's operator certification program and achieve compliance and pollution prevention goals

- λ Finance stormwater management practices, and small creek and estuary restoration projects
- λ Implement the federally mandated stormwater permitting program

Three State licensing boards, established by the General Assembly, are also located within the Water Management Administration. The Boards were created to license and certify individuals as:

- λ Environmental sanitarians
- λ Superintendents and operators of waterworks, wastewater works, industrial wastewater works, wastewater collection systems, and waste water distribution systems
- λ Well drillers, and water conditioner and water pump installers

The Environmental Boards screen applicants who want to enter the professions, administer competency examinations, evaluate continuing education as a prerequisite for license renewal, and take disciplinary action against those licensees found guilty of violating the law.

MDE, in conjunction with the Department of Business and Economic Development, has developed a Business Guide to Environmental Permits and Approvals. This guide sets forth, on a permit-by-permit basis, important and relevant information for facilities interested in complying with the applicable environmental laws. The guide can be found on our website (www.mde.state.md.us), or please contact us for more information about the guide at:

Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

XI. CONSUMER PROTECTION LAW

A. CONSUMER PROTECTION ACT

Businesses and consumers alike benefit when information about available goods and services is both complete and accurate. Like its sister states, Maryland has a Consumer Protection Act that is designed to promote honesty and fair dealing. The Act generally prohibits businesses from engaging in unfair or deceptive practices in connection with the offer or sale of consumer goods, consumer realty, consumer services, or consumer credit. It also prohibits the making of false or misleading statements, including misrepresentations made in advertising or at the point of sale.

B. UNIFORM COMMERCIAL CODE

To ensure the high quality of products sold in the state, Maryland's Uniform Commercial Code imposes upon sellers an implied warranty of merchantability and a warranty that the goods are fit for the ordinary purpose for which they are intended. In general, any language used by a seller which attempts to exclude or modify the implied warranties, or to exclude or modify remedies for breach of those warranties, is unenforceable in transactions involving consumer goods.

C. SERVICES OF THE CONSUMER PROTECTION DIVISION

1. Mediation

The Consumer Protection Division of the Attorney General's Office works closely with the business community to establish a positive dialogue that will help consumers and businesses throughout the State. For the convenience of consumers and businesses, the Division has established a Mediation Unit to assist in the informal resolution of consumer complaints.

2. Health Education and Advocacy Unit

The Division's Health Education and Advocacy Unit (HEAU) assists health care consumers who have a dispute with their health care provider or have received an adverse

coverage decision by their HMO or health insurance carrier. HEAU guides the consumer through the carrier's internal appeals and grievances process.

3. Arbitration

Over 1,000 businesses have committed to arbitrate disputes through the Division's Arbitration Program if mediation fails to resolve a consumer complaint. The Arbitration Program is an effective alternative to litigation and has proven over the years to be a speedy, fair, simple, and conclusive means of resolving customer complaints. Businesses interested in participating in the Arbitration Program are encouraged to contact the Consumer Protection Division. Businesses interested in learning more about the Arbitration Program may call 410-576-6593.

4. Registration of Businesses

The Consumer Protection Division has several registration programs. Each builder of new homes, custom homes or condominiums in Maryland must register with the Home Builder Registration Unit. If you need information about the home builder program, please call 410-576-6573 or, toll-free in Maryland, 877-259-4525. As of October 1, 2008, sales representatives for home builders must also be registered with the Home Builder Registration Unit. New Home Warranty Security Plans offered in connection with the sale of a new home must be registered with the Home Builder Registration Unit. Additionally, the Division's Health Club Registration Unit registers all businesses selling health club services, including health spas, figure salons, weight reduction centers, and self-defense schools. For more information about the health club program, please call 410-576-6350. Vehicle Protection Product Warranty Programs must also be registered with the Consumer Protection Division. For more information about the vehicle protection product warranty registration program, please call 410-576-6350. Information about these programs is available at www.oag.state.md.us/consumer/index.

5. Identity Theft Unit

Businesses that collect personal information from consumers are required to protect that information. If a breach occurs that results in personal information being released or lost, the business is required to notify affected consumers and send notice of the breach to the Consumer Protection Division's Identity Theft Unit. For more information, please contact the Identity Theft Unit at (410) 576-6491, or visit www.oag.state.md.us/idtheft/index.

For general information about any of the Consumer Protection Division's programs, please contact:

Consumer Protection Division
200 Saint Paul Place, 16th Floor
Baltimore, Maryland 21202
Telephone: (410) 576-6557

or

www.oag.state.md.us/consumer

XII. FRANCHISE LAW

A. INTRODUCTION

The basic purpose of the Maryland Franchise Law is to ensure that a prospective franchisee has all material information about the franchise before signing the franchise agreement. The law recognizes that full disclosure is helpful to both franchisees and the franchisor, and it encourages a better franchise relationship because the parties are informed about their respective rights and obligations.

The Maryland Franchise Law applies to the offer and sale of franchises in the State. This law has two principal requirements:

- λ Any franchise offered in Maryland or to a Maryland resident must be registered with the Maryland Securities Division, unless the offering or the seller ("franchisor") is exempt under the law.

- The franchisor must provide a disclosure document to a prospective franchisee at least ten business days before the franchisee pays any money for the franchise or signs a franchise agreement. Federal law also requires this pre-sale disclosure about the franchise.

In contrast to the laws of some states, the Maryland Franchise Law does not govern the ongoing contractual relationship between a franchisor and its franchisees and does not require that a franchisor include any specific provisions in its franchise agreement. (Note, however, that other Maryland laws may govern certain aspects of the contractual relationship in specific industries, such as gasoline distributors, alcoholic beverage distributors, motor vehicle dealers and dealers in farm, industrial or construction equipment.)

The Maryland Franchise Law makes it unlawful for any person to commit fraud in the offer and sale of a franchise, or to fail to disclose to a prospective franchisee all material information about the franchise offering. The law contains a private right of action, so that individual franchisees may sue a franchisor for violations of the law.

B. REGISTRATION AND DISCLOSURE

To register a franchise offering in Maryland, the franchisor files a copy of a franchise disclosure document with the Division. Maryland allows the franchisor to submit this document in a format that all other franchise registration states and the federal government have adopted. That document is called a "Uniform Franchise Offering Circular," and it requires information about the franchisor, its experience, the initial and ongoing fees it charges, the initial investment a franchisee is expected to make, the names of existing franchisees and a recent audited financial statement. The Securities Division reviews the document and advises the franchisor whether it contains all necessary information. If the document contains all of the required disclosures, the Securities Division registers the franchisor to offer and sell franchises for one year. A franchisor may renew its registration annually by filing an updated disclosure document and paying the required registration fee.

The Securities Division staff is available to answer questions about the Maryland Franchise Law and the Uniform Franchise

Offering Circular guidelines. The Division also has published information about the requirements of the law and what a prospective franchisee should consider before investing in a franchise. To obtain this information, please contact:

Maryland Securities Division
200 St. Paul Place
Baltimore, Maryland 21202-2020
Telephone: (410) 576-7042

or

www.oag.state.md.us

XIII. "BUSINESS OPPORTUNITY" LAW

A. INTRODUCTION

Maryland is one of about 25 states with a specific law dealing with "business opportunities." That law is the Maryland Business Opportunity Sales Act. "Business opportunities" are prepackaged small business deals offered mainly to novice entrepreneurs through telemarketing, classified ads, home seminars and business opportunity expos. Typical business opportunity transactions involve the sale of vending machines, pay telephones, amusement devices, greeting card display racks and 900 telephone lines.

Both federal and Maryland authorities have noted the growing problem of business opportunity fraud. The Federal Trade Commission estimated that consumers lost at least $100 million in 1994 on worthless business opportunities. In 1996, Maryland passed amendments to the Maryland Business Opportunity Sales Act to provide for stronger penalties against sellers that commit fraud or deceptive practices in the sale of business opportunities in this State. Under the law, the Maryland Securities Division can take more effective enforcement action against those fraudulent business opportunity sellers, allowing legitimate sellers a better environment in which to transact their business.

B. REGISTRATION AND DISCLOSURE

A seller of business opportunities must register with the Securities Division before advertising or soliciting in Maryland. The

seller also must provide a copy of an approved disclosure statement to the buyer at least ten business days before the buyer signs an agreement or pays any money to the seller.

The seller must file a copy of its disclosure statement with the Securities Division. Maryland allows a seller the option of using the same form of disclosure statement that is often required by comparable federal law. That document must contain information about the seller, its business, its financial condition, any previous bankruptcies, and the names of any previous buyers who have demanded a refund. The Securities Division reviews the seller's proposed disclosure statement and advises the seller whether the document complies with the law. A seller may renew its registration annually by filing with the Division an updated disclosure statement and paying the required filing fee.

The Division has published a pamphlet for persons who may be considering the purchase of a business opportunity. To obtain a copy of this pamphlet, or for more information about the new Business Opportunity Act, please contact:

Maryland Securities Division
200 St. Paul Place
Baltimore, Maryland 21202-2020
Telephone: (410) 576-7042

XIV. ANTITRUST LAW

A. INTRODUCTION

Federal and state antitrust laws exist to assure that consumers enjoy the economic benefits of competitive markets and, therefore, to identify and correct business activities that diminish or eliminate those benefits. The goal is to protect and encourage open and vigorously competitive markets, with all firms competing on a level playing field and enjoying equal business opportunities. Businesses with superior products or more efficient methods will benefit from these competitive markets. Thus, the antitrust laws are both pro-consumer and pro-business.

B. ENFORCEMENT

1. Federal Law

The Sherman Act (1890), the Clayton Act (1914), and the Federal Trade Commission Act (1914) are the primary federal antitrust laws. The Sherman Act, which is the only antitrust law that carries both criminal and civil penalties, is enforced by the Antitrust Division of the U.S. Department of Justice. The Clayton Act (civil penalties only) is enforced by both the Antitrust Division and the Federal Trade Commission. The Federal Trade Commission Act is enforced by the Federal Trade Commission.

In addition, the attorney general of each state is authorized by federal law under certain circumstances to bring antitrust cases on behalf of the citizens of the state.

However, most antitrust lawsuits are not brought by a government; they are civil cases brought by private parties who claim that the defendant's misconduct has injured their business. In such a private civil case, a successful plaintiff is automatically entitled to treble compensatory damages, plus attorneys' fees, court costs, and litigation expenses.

2. State Law

Maryland, like every state except Pennsylvania and Vermont, has a state antitrust act that is similar to federal antitrust laws. The Maryland Antitrust Act permits the state Attorney General to bring enforcement actions seeking civil penalties, restitution, and treble damages on behalf of the state, state citizens and political subdivisions. Willful violations of the Maryland Antitrust Act are misdemeanors.

C. CONCEPTS OF ANTITRUST LAW

The core principle of antitrust law is simply stated: competitors should compete. Competitors should not agree, formally or informally, that they will not compete with one another, either directly or indirectly. To apply this principle to business operations, it is helpful to understand several concepts of antitrust law:

1. Horizontal Agreement

An agreement among competitors at the same level of the distribution or manufacturing process (e.g. Ford and Chrysler).

2. Vertical Agreement

An agreement among parties in a buyer-seller relationship at different levels of the distribution or manufacturing process (e.g. Ford and a Ford dealer).

3. Per Se Violation

An activity that has been recognized as nearly always harmful to competition. A plaintiff who claims that the defendant committed a per se violation need not prove that the defendant's activity has adversely affected competition; the adverse effect is conclusively presumed. The only defense to a charge of a per se violation is that the challenged activity did not occur.

4. Rule of Reason Violation

If a challenged activity is not a per se violation of the antitrust laws, then the plaintiff must prove that the activity had an adverse effect on competition. This proof requires a detailed economic scrutiny of the anticompetitive and procompetitive effects of the challenged activity.

Antitrust counsel should be consulted whenever there is a question about the legitimacy of particular activities.

D. PROHIBITED ACTIVITIES

1. Horizontal Price Fixing (per se violation)

Competitors may not agree on any element of price: they may not agree to set price floors or ceilings, to raise or lower or stabilize prices, or to refrain from bidding against one another or to submit bids at specific prices.

2. Horizontal Market Allocation (per se violation)

Competitors may not agree to divide territories or customers among themselves.

3. Horizontal Joint Boycotts (per se violation)

Competitors may not agree to "gang up" on or boycott either a common supplier or a common distributor. It is perfectly legitimate for a business firm to make an independent, unilateral decision not to purchase from a certain supplier or not to sell to a certain distributor, but it is a per se antitrust violation for two or more competitors to agree among themselves not to do so.

4. Horizontal Mergers and Acquisitions (rule of reason)

Some foreign firms begin to do business in Maryland by acquiring or merging with an existing U.S. firm. Others enter the market in a joint venture with a U.S. firm, either through an equity share in a new U.S. corporation or through a partnership structure. If the merging entities or co-venturers are actual or potential horizontal competitors, the antitrust concerns include whether the merger might eliminate a healthy competitor from the market or reduce the number of competitors so as to facilitate collusion among the remaining firms, raise barriers to entry by potential competitors, or give the surviving firm monopoly power to control prices in the market.

However, a horizontal merger or a horizontal joint venture is not illegal unless it constitutes an unreasonable restraint of trade or is likely to reduce competition by a significant amount. Both the Justice Department and the National Association of Attorneys General publish guidelines for determining the legality of acquisitions, mergers, and joint ventures. These guidelines primarily rely on the market shares of the participants. Generally, the higher the combined market shares of the acquiring and acquired firm, the more likely the merger will be found to be illegal.

5. Horizontal Joint Venture (rule of reason)

While a merger eliminates one firm from the market, the horizontal joint venture adds a new market entrant. There is an antitrust concern that a joint venture may create a potential for price-fixing or production reduction between the co-venturers who compete against each other in other

markets. For example, U.S. and foreign automobile manufacturers have been allowed to enter into joint ventures for the purpose of producing a specific automotive product although both firms compete in the U.S. and foreign automobile markets with regard to other automotive products.

The criteria for determining whether a specific horizontal joint venture is legal are basically the same as those for a merger. A proposed joint venture will probably be lawful if neither venturer would have independently entered the market. In those circumstances, the new entry would increase competition.

6. Vertical Mergers and Acquisitions (rule of reason)

A business firm vertically integrates "upstream" to assure its source of vital supplies and "downstream" to control its retail outlets. Instead of developing its own sources of supply or its own company controlled outlets, under certain circumstances a firm may find it advantageous to acquire already existing ones. An antitrust concern arises here if a firm's competitors are foreclosed from competing with it either for the supply or at the outlet. Vertical mergers are normally lawful unless a merger results in a substantial foreclosure of the relevant market.

(Note that antitrust enforcement agencies rarely challenge vertical joint ventures between firms at different levels in the distribution chain because these ventures normally enhance competition.)

7. Vertical Non-Price Agreements (rule of reason)

Because manufacturers have a legitimate interest in maximizing distribution efficiencies and in determining the manner in which dealers sell their products to consumers, they are permitted to enter into agreements to control various aspects of distribution. Manufacturers and dealers may have agreements specifying, for example, territories, classes of customers, minimum levels of promotional activity, or service requirements. These vertical non-price agreements are judged by a rule of reason, involving a detailed look at

the impact of the agreement upon the market in which the restraint occurs, and are not per se illegal.

8. Vertical Resale Price Maintenance Agreements

A product manufacturer may announce unilaterally to its distributors the minimum or maximum resale price that the distributors may charge, and may enforce this mandate by terminating the distribution arrangement. Price agreements between manufacturers and distributors are more problematic, however. Federal law permits a manufacturer and its distributors, in some circumstances, to agree to maintain a resale price for the manufacturer's products under the following rationale. Although resale price maintenance undermines competition between retail sellers of the same brand product and harms consumers by not allowing sale of the product at a discount price, such agreements may enhance interbrand competition. For this reason, federal law requires a rule of reason analysis of agreements directly or indirectly mandating resale price maintenance. Under some states' laws, however, resale price maintenance is per se illegal. This matter has not been decided under Maryland law.

9. Price Discrimination (rule of reason)

The Robinson-Patman Act (Section 2 of the Clayton Act) was enacted in 1936 primarily to stabilize prices. The Act makes it a civil violation for a manufacturer to charge competing distributors different prices for goods of similar grade or quality where the effect of that sale would be to adversely affect competition. It is also a violation of the Act for a seller to charge a sustained, below-cost price for its products in one region of the country while supported by profits from other sales regions, if the seller does this with the aim of causing local competitors in the first region to lose significant market share or go out of business. A disfavored distributor must establish not only injury to its own business but also a substantial lessening of competition in the market as a whole.

10. Monopolization

A business may unlawfully injure competition by so dominating a relevant product and geographic market that the business has the power to control prices or exclude competition without fear of competitive response. This is known as possession of monopoly power. Factors considered to determine whether a firm possesses monopoly power include: the firm's market share; the number, size, and vigor of competitors; the history and ease of entry and exit in the industry; and the level of profits or rates of return over a period of time.

Possession of monopoly power alone, however, is not a violation of antitrust laws. The plaintiff must establish also that the firm wrongfully or willfully acquired or maintained its monopoly power, that the firm's possession or exercise of its monopoly power injured the plaintiff in its business, and the amount of damages attributable to the firm's possession or exercise of its monopoly power.

E. TRADE ASSOCIATIONS

Competitors may jointly undertake most industry trade association activities without violating the antitrust laws.

F. CONCLUSION

If a firm focuses on the basic antitrust principles expressed here and seeks, when necessary, the advice of counsel, it can be confident that the Maryland market will reward its vigorous competitive efforts. The basic principles apply throughout the United States and include the following: (1) competitors are to compete and are not to agree to refrain from competing; (2) restrictive vertical non-price arrangements are generally lawful when their effect is to strengthen interbrand competition and they do not foreclose a substantial share of the market; (3) competing customers should not be charged different prices without justification; (4) horizontal mergers and joint ventures are likely to be lawful unless they tend to substantially lessen competition; and (5) monopolization is illegal.

G. BUSINESS REVIEW PROCEDURE

As a service to the Maryland business community, the Antitrust Division of the Attorney General's Office has a business review procedure whereby a firm may request that the Antitrust Division review a proposed business arrangement under state and federal antitrust laws. The Division will express its enforcement intentions based upon the information given, market conditions and the current state of the law.

For more information, please contact:

Antitrust Division
Attorney General's Office
200 St. Paul Place
Baltimore, Maryland 21202
Telephone: (410) 576-6470