HAND OUT #11

STATE OF MISSISSIPPI
SECRETARY OF STATE

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DUTIES AND RESPONSIBILITIES FOLLOWING THE FORMATION OF A MISSISSIPPI LLC

1. The Limited Liability Company ("LLC") may need to obtain a Federal Employer Identification Number from the Internal Revenue Service. You should check with the LLC's tax advisor as to whether the LLC is required to obtain this number.

2. The LLC may be required to register with the Mississippi State Tax Commission ("MSTC"). While the LLC may only be required to file an informational return for income tax purposes, the LLC should examine what other tax liabilities (such as sales taxes) the LLC or its members may have by visiting the MSTC website at http://www.mstc.state.ms.us. Professional tax advice can assist you in making these determinations. Please see the MSTC website for additional information.

3. If the LLC has employee(s), the LLC needs to register for unemployment insurance with the Mississippi Department of Employment Security. If you are not sure about the need for unemployment insurance, seek professional financial or legal advice. Additional information can be found online at: http://www.mdes.ms.gov.

4. Once the LLC is formed, the LLC is required to keep the following records: (1) a current list of the full name and last known address of each member and/or manager; (2) a copy of the certificate of formation and any amendments to it, along with any executed copies of powers of attorney granted; (3) a copy of the limited liability company agreement; and (4) unless the following items are contained in the certificate of formation or any operating agreement, a written record of: (a) the contributions of each member, along with a record of those contributions; (b) the times or events at which any member agreeing to make an additional contribution made that contribution; and (c) any event(s) that would cause the LLC to be dissolved and have its affairs wound up.

5. If you intend to sell on behalf of your LLC membership interests in the LLC to investors, or if you receive a fee for selling securities to investors or publicly advertise or solicit for the sale of securities, you may need to register with the Business Regulation and Enforcement Division of the Secretary of State's Office and/or the U.S. Securities and Exchange Commission. If any of these activities apply to you, the Secretary of State strongly recommends that you consult with an attorney knowledgeable in securities law to advise you on your ability to do so.

This list of duties and responsibilities does not show everything there is to know about the law relative to LLCs. Its main purpose is to give some basic requirements for organizing the LLC. Any legal assistance needed relative to the Mississippi Limited Liability Company Act should be obtained from your private attorney.

If we can be of further assistance to you please call us at (601) 359-1633 between the hours of 8:00 a.m. and 5:00 p.m. (Central Time) Monday through Friday.

RECOMMENDATIONS FOR THE MISSISSIPPI LLC

1. While it is not required, it is recommended that those forming an LLC in Mississippi seek legal advice in obtaining a **written operating agreement** that will govern the LLC. The purposes and membership interests of each LLC vary and generic operating agreement forms may not meet the needs of your LLC. If legal advice is not sought in the formation of the LLC, it is still recommended that the members obtain a written operating agreement to govern the LLC and the rights and duties of its members.

The following is a non-exhaustive list of terms that you may want to include in a written operating agreement:

- The LLC's state of formation and organization
- The duties and responsibilities of the LLC's members
- Delegations of responsibility to managers
- Voting rights and classes of members
- Indemnification of members or managers
- The contributions of each member
- How items such as profits, losses, deductions, distributions, and expenses are to be shared among the members
- How distributions are made and limitations on distributions
- Limitations of liability of members and managers
- Liability for contributions and obligations to make contributions
- How assets will be distributed upon winding up
- Restrictions on assignment of membership interest, if any, and the rights of members or the LLC to buy a member's membership interests upon the occurrence of certain events such as death, disability, or attempted transfers
- What is required to withdraw from membership
- What leads to the LLC being dissolved
- When member meetings are required
- Which members or managers have the ability to bind the LLC
- Records that must be kept, how they must be kept, and by whom
- Whether members have unlimited access to the records of the LLC, or any restrictions on access to such records

This is not an exhaustive list of items that may be contained in an LLC operating agreement, and does not intend to include everything that an operating agreement should, or must, contain. The Secretary of State strongly advises independent legal advice in the formation of your LLC, and in obtaining a written operating agreement.

2. If your LLC is for a professional services business (certified public accountants, dentists, architects, veterinarians, osteopaths, physicians, surgeons and attorneys-at-law), you may want to become a Professional Limited Liability Company by making an appropriate election with the Secretary of State's Office. Contact your private attorney or financial advisor for advice.

3. If the LLC will be selling products or services in Mississippi and will be using a mark to advertise them, you may want to register your trademark or service mark with the Mississippi Secretary of State or the U.S. Patent and Trademark Office. You can contact the Business Services Division of the Secretary of State at (601) 359-1633 for assistance; or additional information is available online at: http://www.sos.ms.gov under the "Business Services" icon. For registration with the U.S. Patent and Trademark Office, information is available at http://www.uspto.gov/ under the "Trademark" icon.

This guide only provides basic information on some of the legal and practical issues to consider when forming an LLC. The guide is not a substitute for professional advice. The Secretary of State strongly advises persons contemplating starting a business to engage the services of private legal, financial, and tax advisors.