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CONNECTICUT FORMS OF ORGANIZATION

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The most common legal form of organization utilized by the social sector is the nonprofit corporation although for-profit corporations, limited liability companies (LLCs), joint ventures and various kinds of partnerships, including limited partnerships, are increasingly being used--typically to accommodate plans to earn revenues or access capital markets. Each of these forms of organization has advantages and disadvantages and sometimes, with the help of experienced counsel, they are used in combination to maximize strengths and minimize weaknesses of a particular form. The following chart provides a high-level overview of various organizational forms that can be used in the social sector. More detailed descriptions of each form follow in the subsequent text.

	Formation	Management and Control	Liability	Tax Factors	Capital and Loans
Nonprofit 501(c)(3) Corporation	File articles or certificate of incorporation (containing specific info required by IRS) with state and pay filing fee. File application on Form 1023 for tax-exempt status unless below gross receipts threshold. Recruit directors, draft bylaws and hold organizational meeting. Take steps to comply with license, tax and employment law/regs.	Managed by directors who appoint officers to run day-to-day operations as specified in bylaws. Some nonprofit corporations have members (like shareholders) who elect directors.	Members, directors, officers and employees are generally not liable for debts and obligations of the corporation, including for unlawful acts of others involved in the affairs of the corporation. They can be held liable for injuries due to their own misconduct but some states provide limited immunity to such persons and also to volunteers.	Generally exempt from federal and state taxes if receive 501(c)(3) exemption. Liable for tax on unrelated business income, and other taxes such as property and sales (unless local and state exemptions apply). Donors can deduct contributions	Can accept charitable donations and grants. Eligible for program related investments (PRIs) by foundations. Can borrow money and issue debt instruments but cannot raise capital by issuing stock.
For-Profit Corporation	File articles or certificate of incorporation with state and pay filing fee. Decide on board of directors, draft bylaws, hold organizational meeting and issue stock. Take steps to comply with license, tax and employment laws/regs.	Managed by directors that are elected by shareholders. Directors appoint officers to run day-to-day operations as specified in bylaws.	Shareholders are generally not liable for debts and obligations of the corporation, including for unlawful acts of others involved in the business. Unless indemnified by the corporation, directors, officers and employees can be held liable for injuries caused by their own acts or failures to act.	A C Corporation is subject to corporate tax on net income. If net income is paid to shareholders as dividends, the individual shareholders are taxed. If a corporation elects to be a S corporation and meets several criteria, it can receive "pass through" taxation.	Can raise capital by issuing stock (equity) and by borrowing money through loans or other debt instruments. Corporation may be able to accept PRIs from foundations in the form of loans or equity.

	Formation	Management and Control	Liability	Tax Factors	Capital and Loans
B Corp (a for-profit corporation with a social mission that is licensed to use the trade name "B Corporation")	See for-profit corporation	See for-profit corporation. The B Corp license requires the corporation to incorporate specific socially beneficial performance standards into its governing documents and operating principles.	See for-profit corporation.	See for-profit corporation.	See for-profit corporation. A B Corp should be in a better position to attract PRIs from foundations in the form of loans or equity.
LLC	File articles of organization or certificate of formation with state and pay filing fee. Negotiate and execute operating agreement. Take steps to comply with license, tax and employment law/regs.	Flexible structure like a partnership with management responsibilities specified in operating agreement (usually management committee or single manager).	Same as a corporation.	Usually not taxed as an entity because most LLCs choose "pass through" treatment whereby the member/owners report profits and losses on personal tax returns. Tax-exempt member/owners treat their share of income as exempt or subject to unrelated business taxable income, depending on the character of the income.	Can raise capital through contributions by member/owner. Otherwise, same as for-profit corporation.
L3C (low-profit LLC)	Similar to LLC but must be formed for a charitable or educational purpose. Only permitted in certain states (e.g., VT, IL, MI, UT ,ME, WY and RI)	See LLC	Same as a corporation	See LLC.	Same as for-profit corporation except L3C enabling legislation is written to comply with program related investment ("PRI") regs and is thus intended to attract equity or debt investments by foundations.
Partnership	No filing requirements unless limited partnership (LP) or limited liability partnership (LLP), but	Partners have equal, full control unless otherwise specified in partnership agreement.	Partners are personally liable for the debts and obligations of the partnership, including for unlawful acts of	Generally not taxed as an entity. Partners report profits and losses on personal tax returns.	Can raise capital through contributions by partners and by borrowing money through loans or other

	Formation	Management and Control	Liability	Tax Factors	Capital and Loans
	partners should sign partnership agreement. Take steps to comply with name, license, tax and employment law/regs.		other partners and employees. Risk can be limited by creating an LP or LLP.		debt instruments.
Sole Proprietor	No filing requirements. Has no legal existence apart from owner. Take steps to comply with d/b/a name, license, tax and employment law/regs.	Owner has full control.	Owner is liable for all debts and obligations, including for unlawful acts of employees.	Not taxed as an entity. Owner reports business profits and losses on personal tax return.	Owner provides funds for capital investment and owner can borrow money through loans or other debt instruments.

1. Nonprofit Corporations

a. Overview

The Connecticut Revised Nonstock Corporation Act ("Chapter 602") governs the formation, operation and dissolution of nonprofit corporations in Connecticut. For purposes of the corporate formalities, Chapter 602 does not distinguish between nonprofit corporations and nonstock corporations that are operated for profit. A nonprofit corporation in Connecticut is managed by its board of directors and operated by its officers and employees. Instead of shareholders, a nonprofit corporation may, but is not required to, have members. Nonprofit corporations, of course, are specifically organized to not earn profits. No part of the income or surplus of a Connecticut nonprofit corporation may be distributed to its members, directors or officers; however, reasonable compensation may be paid for services rendered.

A nonprofit corporation has an existence of its own, independent of the terms of office or employment of members, directors or officers. It can sue or be sued in its own name and can own real estate in its own name. The Connecticut attorney general has the power to pursue derivative suits against nonprofit corporations.

b. Advantages of Incorporation: pros and cons of nonprofit vs for-profit

The principal advantage of incorporation is that it protects the shareholders or members from personal liability for the obligations and liabilities of the corporation, including unlawful actions of officers, directors and staff acting on its behalf. In addition, incorporation establishes continuity; corporations (both nonprofit and for-profit) are subject to a body of statutes that provide very specific guidance as to their formation and operation; and incorporation brings stature to the organization and implies stability.

Where profit is not a goal and the enterprise can be funded without the need for access to capital markets, the nonprofit corporation is the preferred vehicle for pursuing social objectives. Although nonprofit corporations are not prohibited from engaging in commercial activities, the directors of a nonprofit are duty-bound to devote primary attention to the promotion of the social mission of the corporation rather than the production of net income.

On the other hand, if access to capital markets is needed, a for-profit corporation (or limited liability company, discussed below) is likely to be the preferred option because nonprofit corporations cannot issue capital stock. The directors of a for-profit corporation, however, owe strict duties to the shareholders to maximize profits and value. Therefore, unless the directors and managers can tie the social mission of their for-profit corporation directly to its business purpose, they can be sued for breach of their duties to shareholders and for misuse of corporate assets if they focus too much on the social mission and forego profits. This problem can be avoided if all shareholders agree to pursue a social mission or devote a percentage of revenues to charitable causes, but such agreements may be temporary because a change in control—or a drop in earnings—can lead to amendment or abrogation of shareholder agreements.

c. Formation

A nonprofit corporation attains its separate legal status through the filing and approval by the Commercial Recording Division in the Connecticut Secretary of the State's Office of its certificate of incorporation. This document is in essence a contract between the state and the nonprofit corporation in which Connecticut grants individual legal status to the corporation in exchange for the corporation's commitment to follow its rules.

Chapter 602 requires that the certificate of incorporation for a nonprofit corporation include: (i) the name of the entity; (ii) a statement that the corporation is nonprofit and shall not have or issue any shares of stock or make distributions; (iii) whether the corporation will have members and if so, designation of the class or classes of members and/or the fact members are not entitled to vote (if applicable); (iv) the name of the entity's registered agent and address of the entity's registered office; (v) the name and address of each incorporator; and (vi) the nature of the activities to be conducted or the purposes to be promoted or carried out. Generally, the name of the entity is required to contain the word "corporation", "incorporated", or "company" or the abbreviation "corp.", "inc." or "co.", or words or abbreviations of like import in another language. The name must also be distinguishable from other entity names. The entity's registered office may be the same as any of its places of business in the state and its registered agent may be (i) a natural person who is a resident of the state; (ii) a domestic corporation, limited liability company, registered limited liability partnership, statutory trust or business corporation; (iii) a foreign corporation with a certificate of authority to transact business or conduct its affairs in this state; (iv) a limited liability company, registered limited liability partnership or statutory trust not organized under the laws of this state which has a certificate of registration or authority to transact business or conduct its affairs in this state. The entity's corporate purpose may be as general as engaging in any lawful act or activity for which corporations may be formed.

The incorporators of the nonprofit corporation must execute and deliver the certificate of incorporation and a $50 filing fee to the Secretary of the State. The nonprofit corporation's corporate existence begins when the certificate of incorporation is filed (i.e., accepted as complete by the Secretary of the State). Chapter 602 allows for one or more persons to act as incorporators. Person includes individuals and entities, such as corporations, unincorporated associations, partnerships, limited liability companies, trusts, etc.

If the nonprofit corporation intends to obtain exemption from federal and state income taxation, the certificate of incorporation must conform with applicable statutes and regulations (discussed below in section g.).

While Chapter 602 sets forth general guidelines for powers of the board of directors of a corporation, it also provides a nonprofit entity with the option of altering some of these guidelines through its certificate of incorporation. The certificate of incorporation of a nonprofit corporation may provide that the business and affairs of the corporation shall be managed in a manner different from that provided in Part VII of Chapter 602. However, if it is not otherwise provided in the certificate of incorporation, the statutes contained in Part VII apply to nonprofit corporations.

A generic form of certificate of incorporation for a Connecticut nonstock corporation may be found in Marilyn J. Ward Ford "Connecticut Corporation Law & Practice" as Form 15 (2d. ed., 2012 Supplement). Some general forms of certificate of incorporation for nonprofit corporations may be found in "General Forms: Nonprofit Organizations: Forms for Creation, Operation and Dissolution" referenced in subparagraph i. of this Section.

d. Management and Control

If initial directors are named in the certificate of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting. If initial directors are not named in the certificate, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators: (A) to elect directors and complete the organization of the corporation; or (B) to elect a board of directors who shall complete the organization of the corporation.

Typically, the bylaws of a nonprofit corporation contain provisions governing member, director and officer qualifications, powers, and duties; voting; filling of vacancies; meetings; property holding and transfer; indemnification of directors and officers; committees; bank accounts; fiscal year audits and financial reports; conflicts of interest; and amendment and dissolution procedures.

Some general forms of bylaws for nonprofit corporations may be found in "General Forms: Nonprofit Organizations: Forms for Creation, Operation and Dissolution" referenced in subparagraph i. of this Section.

e. Liability of Members, Directors and Officers

The fiduciary duties of directors of nonprofit corporations are defined by principles of corporate law. Officers of the corporations also stand in a fiduciary relationship to the corporation. Directors and officers "shall discharge [their] duties as a director [or officer]: (1) In good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation." The standard used to determine whether a director of a for-profit corporation is personally liable for a breach of the duty of care to the for-profit corporation is called the "business judgment rule." The "business judgment rule" protects corporate directors from liability for business decisions within the power of the corporation for which the directors have exercised due care. Connecticut courts will likely apply this standard to nonprofit corporations as well.

Also, § 52-557(m) of the Connecticut General Statutes (CGS) provides immunity from liability for directors, officers and trustees of nonprofit organizations that are tax exempt under Section 501(c) of the Internal Revenue Code, who are not compensated for their services, if the person was acting in good faith and within the person's official functions and duties unless the damage was caused by the reckless, willful or wanton misconduct of such person.

Chapter 602 also sets forth specific liability provisions and remedies for unlawful distributions and loans made by directors.

Members of a nonprofit corporation are generally not personally liable for the corporation's debts. The bylaws may include a provision imposing liability on the members of the corporation, but otherwise the default rule is that members of a corporation shall not be personally liable for the corporation's debts except by reason of their own conduct.

Chapter 602 requires the indemnification of an individual who is made a party to a proceeding because the individual is a director of a corporation if the individual is wholly successful on the merits. This mandatory indemnification extends to officers, employees or agents that are not directors of the corporation and such individuals may apply to the court for indemnification or advance for expenses to the same extent to which a director may be entitled to indemnification or advance for expenses. Chapter 602 also permits a corporation to indemnify its directors and officers for attorneys' fees and other reasonable expenses incurred in their capacity as directors or officers (if their conduct was undertaken in good faith and, in the case of conduct in his or her official capacity, in a manner reasonably believed to be in the best interests of the corporation). Connecticut law does not, however, permit indemnification by a Connecticut corporation for judgments rendered against directors in actions brought by or in the right of the corporation (i.e., derivative actions). Since actions for breach of fiduciary duty are generally asserted derivatively, indemnification may not be available to directors for judgments rendered against them for breach of their fiduciary duties.

In addition, Chapter 602 permits a corporation to include in its certificate of incorporation a provision limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of duty as a director to an amount that is not less than the compensation received by the director for serving the corporation during the year of the violation. Such provision shall not, however, eliminate or limit the liability of a director for any breach: (i) that involves a knowing and culpable violation of law; (ii) enables the director (or an associate) to receive an improper personal economic gain; (iii) that shows a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his or her conduct or omission created an unjustifiable risk of serious injury to the corporation; or (iv) that constitutes a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation.

f. Mergers, Acquisitions and Dissolution

One or more corporations may merge with another corporation pursuant to a plan of merger, which must be adopted by the corporation's board of directors and approved by the corporation's members. If the corporation has no members or no members entitled to vote, the merger must be authorized by a resolution adopted by the board of directors. A domestic corporation may merge with a foreign corporation if the merger is permitted by the laws which govern such foreign corporation. After a plan of merger is adopted and approved, the certificate of merger must be executed and delivered to the Secretary of the State for filing by the survivor of the merger along with a $20 filing fee. A sale of substantially all the assets of a corporation requires approval of the corporation's voting members. Generally, dissolutions are proposed to the members of the corporation by the board of directors. The proposed dissolution must be approved by two-thirds of the members entitled to vote unless the certificate of incorporation or other Chapter 602 provisions requires otherwise. If the corporation has no members or no members entitled to vote, the dissolution must be authorized by a resolution adopted by the board of directors. At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of the State for filing a certificate of dissolution and a $20 filing fee. *See* Part XI of Chapter 602 for additional information governing the dissolution of corporations.

g. Recordkeeping, State Reports and State Taxes

Nonprofit corporations must keep permanent records of minutes of all meetings of and actions taken by members, if any, and the board of directors. Corporations must also keep, among other things, accounting records, records containing membership information and all corporate documents. Each nonprofit corporation must also file an annual report with the Secretary of the State in accordance with CGS § 33-1243 and the regulations of the Secretary of the State. Annual reports are due every year by the last business day of the month in which the corporation was formed. The annual report filing fee is $50 for nonprofit corporations.

In general, an out-of-state nonprofit corporation that does not have the right to and is not carrying on or doing business within the state of Connecticut will not be subject to Connecticut taxes. Connecticut will tax domestic and out-of-state corporations that have the right to and/or are carrying on or doing business in Connecticut. However, even to the extent that a nonprofit corporation has assets or activities in Connecticut, a nonprofit corporation may be exempt from various Connecticut taxes. Corporations that are exempt from federal corporation net income taxation laws are exempt from the Connecticut Corporation Business Tax. Nevertheless, federal unrelated trade or business income that is attributable to Connecticut is subject to the Connecticut Corporation Business Tax. Corporations organized exclusively for scientific, educational, literary, historical, charitable or for open space preservation may be exempt from real and tangible property taxes if the property is exclusively used for such purposes. There are limited exemptions from the sales and use taxes for certain nonprofit corporations, such as those that are tax-exempt under § 501(c)(3) of the Internal Revenue Code.

h. Insurance

Nearly every type of activity by a nonprofit corporation can become the target of some kind of a claim by a firm or an individual that alleges damage or injury by the corporation or individuals responsible for it (i.e., directors, officers or employees). Even if the claim is without merit, the costs of defending against the claim can be very substantial.

To encourage qualified individuals to accept positions as directors and officers, many nonprofit corporations purchase insurance to cover director and officer (D&O) liability. In addition, most responsible nonprofit corporations purchase a basic comprehensive general liability policy that covers liability for accidents in the corporation's offices, at sponsored meetings and the like.

CGS § 33-1123 specifically allows a Connecticut corporation to purchase liability insurance on behalf of its directors, officers and employees and to insure against potential liability of such directors, officers or employees regardless of whether the corporation has the power to indemnify the particular litigant. Thus, Section 33-1123 theoretically permits the corporation to insure its directors against judgments or amounts paid in settlement of derivative suits and against expenses incurred by a director even in circumstances in which a director has been found to have acted unlawfully or in bad faith.

Liability insurance for nonprofit corporations is often a very complicated matter. Consultation with an experienced and knowledgeable agent or consultant is essential in order to obtain the right coverage at the lowest premium.

i. Resources

Oleck and Stewart, Nonprofit Corporations, Organizations & Associations (Prentice-Hall, 1994, Cum. Supp. 2002)

Jacobs, Jerald A., Association Law Handbook (ASAE & The Center for Association Leadership 4th ed., 2007)

Nonprofit Governance and Management (American Bar Association and American Society of Corporate Secretaries, 3rd ed., 2011)

Guide to Nonprofit Corporate Governance in the Wake of Sarbanes-Oxley (American Bar Association Section of Business Law, 2005)

Guidebook for Directors of Nonprofit Corporations (American Bar Association Section of Business Law 3d ed., 2012)

Corporate Governance of Connecticut Nonprofit Corporations, James Lotstein of Cummings & Lockwood (Connecticut Lawyer, March 2002).

Shielding Volunteers of Charitable Organizations from Liability (Connecticut Lawyer, March 2008).

Takagi, Gene. "Nonprofit Bylaws-Common Issues" Nonprofit Law Blog http://www.nonprofitlawblog.com/home/2009/09/nonprofit-bylaws-common-issues.html

General Forms: Nonprofit Organizations: Forms for Creation, Operation and Dissolution

2. For-profit Corporations

a. Using For-profit Corporations to Pursue Social Objectives

The for-profit form of organization can and frequently is used as a vehicle for conducting a business that also has a social mission or objective. Although for-profit corporations are usually formed for the purpose of making money and distributing it to managers and shareholders, there is no reason why a for-profit corporation cannot include a social mission in the purposes clause of its certificate of incorporation.

While such a provision would authorize the corporation to pursue social objectives, it would not require the corporation to do so—only the shareholder/ owners have this power. And unless all shareholders agree to pursue social aims, dissenters could sue the corporation's directors and managers for failing to operate the corporation in the best economic interests of the shareholders.

A shareholders' agreement is probably the best way to address this problem. Such an agreement, entered into by all shareholders and the corporation, would require the corporation to be managed and operated so as to pursue specified social objectives thereby overriding fiduciary duties and similar legal principles that govern "normal" behavior of for-profit corporations.

But even the most skillfully drafted shareholders' agreement is not a perfect solution because agreements can always be abrogated and amended and the owners of the shares can change via sale, gift or inheritance. Moreover, a tightly drafted shareholders' agreement which makes it difficult to respond to business changes over time would tend to render the for-profit corporation much less attractive to investors (potential new shareholders).

b. Formation

The Connecticut Business Corporation Act ("Chapter 601") governs the formation, operation and dissolution of for-profit stock corporations in Connecticut. "One or more persons [(individuals or entities)] may act as the incorporator or incorporators of a corporation by delivering a certificate of incorporation to the Secretary of the State for filing." The certificate of incorporation must include (i) a corporate name (which must contain the word "corporation", "incorporated", "company", "Societa per Azioni" or "limited", or the abbreviation "corp.", "inc.", "co.", "S.p.A." or "ltd.", or words or abbreviations of like import in another language and be distinguishable on the Secretary of the State's records from the names of each other corporation, partnership, limited partnership, limited liability company, etc.), (ii) the number of shares the corporation is authorized to issue, (iii) the name and street address of the corporation's initial registered agent and (iv) the name and address of each incorporator. Subject to certain exceptions set forth in CGS § 33-645, a corporation formed under Chapter 601 may be formed for the purpose of engaging in any lawful business activity. Connecticut has no residency requirements for shareholders, directors or officers and there is no requirement that meetings of directors and shareholders take place in Connecticut.

A Connecticut corporation is created by filing with the Secretary of the State a certificate of incorporation and an appointment of statutory agent for service signed by the incorporator, together with the initial filing fees. The minimum filing fee is $400, which covers the filing of the certificate of incorporation, the appointment of statutory agent, and the first organizational report, and the initial one-time franchise tax for 20,000 authorized shares. The franchise tax is based upon the number of shares of capital stock which the corporation will have the authority to issue. It begins at $.01 per share up to and including the first 10,000 authorized shares, $.005 per share for each authorized share in excess of 10,000 shares up to and including 100,000 shares, $.0025 per share for each authorized share in excess of 100,000 shares up to and including 1,000,000 shares and $.0020 per share for each authorized share in excess of 1,000,000 shares.

A generic form of certificate of incorporation for a Connecticut stock corporation may be found in "Connecticut Corporation Law & Practice" as Form 2. *See* Marilyn J. Ward Ford, *Connecticut Corporation Law & Practice* Form 2 (2d. ed., 2012 Supplement).

c. Management and Control

A for-profit corporation has a hierarchical control structure. It is managed by or under the direction of a board of directors and its officers, although its shareholders vote on important corporate issues, such as the election of directors, mergers, sale of all or substantially all of the company's assets and dissolution. The board of directors shall consist of one or more individuals, with the number specified or fixed in the certificate of incorporation or bylaws. Chapter 601 does not specify qualifications for directors, but provides that qualification may be included in the certificate of incorporation or bylaws. Each director holds office until his or her successor is elected and qualified or until such director's earlier resignation or removal. Generally, directors are elected each year at the annual meeting of shareholders, but their terms may be staggered so that only a portion of the directors are elected each year.

A for-profit corporation may have officers as prescribed in its bylaws. Chapter 601 does not require any particular officers, but does require that one officer has responsibility for preparing minutes and maintaining the corporate records. Officers may be removed by the board of directors any time with or without cause, but without prejudice to their contract rights, if any.

If initial directors are named in the certificate of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting. If initial directors are not named in the certificate, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators: (A) To elect directors and complete the organization of the corporation; or (B) to elect a board of directors who shall complete the organization of the corporation.

The bylaws typically contain provisions for the governance of the corporation such as the manner of calling and holding shareholders' and directors' meetings, quorum and voting requirements, the number of directors, the election, removal and filling of vacancies for directors and officers, the titles and duties of officers, the manner of amending the bylaws, and other routine corporate matters. Connecticut has no residency requirements for shareholders, directors or officers and there is no requirement that meetings of directors and shareholders take place in Connecticut.

d. Liability of Shareholders, Directors and Officers

In fulfilling their managerial responsibilities, directors are charged with an unyielding fiduciary duty to protect the interests of the corporation and to act in the best interests of the corporation's shareholders. In recognition of the managerial prerogatives granted to directors of Connecticut corporations under Chapter 601, Connecticut law generally presumes that, in making business decisions, the directors of a corporation are disinterested and act on an informed basis, in good faith, with due care and in the honest belief that the action taken is in the best interests of the corporation and its shareholders. Under the business judgment rule, a court will not second-guess a business decision of the board, nor impose liability on directors for a decision that in hindsight appears to have been wrong, if the decision was made in good faith for a rational business purpose. This presumption will be rebutted, however, if the directors are shown to have breached their fiduciary duty of loyalty or their fiduciary duty of due care, and in such an event, the directors will bear the burden of demonstrating that their decisions were entirely fair to the corporation and its shareholders. The duty of care essentially requires that the corporate fiduciary be attentive and inform himself of all material facts regarding a decision before taking action. The duty of loyalty generally requires that the corporate fiduciary's actions be motivated solely by the best interests of the corporation and its shareholders. For directors to fulfill their fiduciary duties they must also act in good faith. Directors are also charged with a duty of disclosure to the shareholders and to other directors, as well as a duty to maintain the confidentiality of corporate information.

Officers of the corporations also stand in a fiduciary relationship to the corporation. Directors and officers "shall discharge his duties as a director [or officer]: (1) In good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interests of the corporation." Chapter 601 also sets forth specific liability provisions and remedies for unlawful distributions made by directors.

Chapter 601 requires the indemnification of an individual who is made a party to a proceeding because the individual is a director of a corporation if the individual is wholly successful on the merits. This mandatory indemnification extends to officers, employees or agents that are not directors of the corporation and such individuals may apply to the court for indemnification or advance for expenses to the same extent to which a director may be entitled to indemnification or advance for expenses. Chapter 601 also permits a corporation to indemnify its directors and officers for attorneys' fees and other reasonable expenses incurred in their capacity as directors or officers (if their conduct was undertaken in good faith and in a manner reasonably believed to be in the best interests of the corporation). Connecticut law does not, however, permit indemnification by a Connecticut corporation for judgments rendered against directors in actions brought by or in the right of the corporation (i.e., derivative actions). Since actions for breach of fiduciary duty are generally asserted derivatively, indemnification may not be available to directors for judgments rendered against them for breach of their fiduciary duties.

In addition, Connecticut law permits a corporation to include in its certificate of incorporation a provision limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of duty as a director to an amount that is not less than the compensation received by the director for serving the corporation during the year of the violation. Such provision shall not, however, eliminate or limit the liability of a director for any breach: (i) that involves a knowing and culpable violation of law; (ii) enables the director (or an associate) to receive an improper personal economic gain; (iii) that shows a lack of good faith and a conscious disregard for the duty of the director to the corporation; (iv) that constitutes a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation; or (v) that creates liability under CGS § 33-757.

Because a Connecticut corporation is generally considered to be a distinct legal entity that is separate and apart from its shareholders, the shareholders of a Connecticut corporation are generally not personally liable for the actions, liabilities or obligations of the corporation. In fact, Chapter 601 specifically contemplates that the shareholders of a corporation are not personally liable for the debts of the corporation unless such liability specifically is imposed by a provision of the corporation's certificate of incorporation. However, there are instances where a Connecticut court may disregard the separate legal existence of a corporation and hold the corporation's shareholders (rather than the corporation itself) liable for the corporation's actions (i.e., piercing the corporate veil).

For example, the Connecticut Supreme Court has recognized two rules by which to apply the alter ego theory to pierce the corporate veil in the context of a corporation and its wholly owned subsidiary: the instrumentality rule and the identity rule. While these theories provide general rules, courts decide veil-piercing cases primarily on the facts and circumstances of each case. A Connecticut court may hold a shareholder liable for the acts (or failure to act) of a corporation where (i) the corporation is a sham and exists for no other purpose than as a vehicle for fraud, (ii) the shareholder is exercising complete domination and control over the corporation, or (iii) the corporate existence is disregarded by a controlling shareholder who essentially treats the assets of the corporation as his, her or its own.

e. Raising Capital

For-profit corporations offer a great deal of flexibility in raising capital, ranging from various kinds of equity (e.g., common stock, preferred stock, options, warrants) to numerous types of debt instruments (e.g., convertible notes, subordinated notes, bonds, commercial paper).

f. Recordkeeping and State Reports

For-profit corporations must keep permanent records of minutes of all meetings of and actions taken by its shareholders and the board of directors. Corporations must also keep, among other things, accounting records, records containing shareholder information and all corporate documents. Each for-profit corporation must file an annual report with the Secretary of the State in accordance with CGS § 33-953 and the regulations of the Secretary of the State. Annual reports are due every year by the last business day of the month in which the corporation was formed. The annual report filing fee is $150.

g. Taxation

Out-of-state corporations that do not have the right to and are not carrying on or doing business within the State of Connecticut are not subject to Connecticut corporate income taxation. Any Connecticut or out-of-state corporation that has the right to and/or conducts business in Connecticut is subject to the Connecticut Corporate Business Tax and the additional capital stock based tax. Generally, the amount of tax due will be the greater of the amount due under the Corporate Business Tax, the amount due under the capital stock based tax or a minimum of at least $250.

Unlike sole proprietorships and partnerships, income earned by Connecticut for-profit corporations doing business in the state may be subject to double taxation. That is, the corporation pays federal and state taxes on the income it earns and the shareholders are taxed at their personal income tax rate on any profits that are distributed to them by the corporation as dividends. A corporation may, however, elect to be governed by

Subchapter S of the Internal Revenue Code to avoid double taxation. Generally, Subchapter S corporations are not taxed at the corporation level. Rather, the income and losses of a Subchapter S corporation are passed through to the shareholders in relation to their ownership interests. To be eligible for this tax treatment, S corporations must meet certain requirements including, but not limited to, having only one class of stock and no more than 100 shareholders.

h. Resources

Connecticut Commercial Recording Division
Office of the Secretary of the State
30 Trinity Street, PO Box 150470
Hartford, CT 06115-0470
Phone: (860) 509-6200
E-mail: crd@ct.gov
Website: http://www.ct.gov/sots

Connecticut Department of Revenue Services - Services for the Business Taxpayer
http://www.ct.gov/drs/cwp/view.asp?a=1454&Q=469598&pm=1

IRS publication discussing general tax laws that apply to ordinary domestic corporations
http://www.irs.gov/pub/irs-pdf/p542.pdf

IRS publication discussing Subchapter S corporations
http://www.irs.gov/businesses/small/article/0,,id=98263,00.html

Marilyn J. Ward Ford, Connecticut Corporation Law & Practice (2d. ed., 2012 Supplement)

3. Limited Liability Companies (LLCs)

a. Using LLCs to Pursue Social Change

Combining certain characteristics of both partnerships and corporations, LLCs are legal entities that can be formed for the purpose of earning profits, pursuing a social mission, or both, although some states require an LLC to be formed only for a “business purpose.” LLCs differ from for-profit stock corporations because they are formed and owned by members rather than shareholders; however, similar to S corporations and partnerships, LLCs are eligible for pass-through income tax treatment. This means that income and expenses are reported as though the members incurred them directly, and profits or losses are taxed at the ownership (member) level, rather than the entity (company) level.

Members of LLCs may be individual investors as well as for-profit corporations and tax-exempt nonprofit corporations or other legal entities. For this reason and also because of pass-through taxation which eliminates "double taxation" (the effect of taxing income at the entity level and again when it is included in the owner's income), LLCs are preferred over for-profit corporations as vehicles for social enterprise, especially for joint ventures between a tax-exempt nonprofit with a social change mission and a for-profit business.

LLCs are akin to partnerships because the members have broad discretion to allocate profit and loss and management powers among themselves in a limited liability company or operating agreement (an "LLC Agreement"). As with the shareholders of corporations, the members of an LLC may be divided into classes, each with its own economic or voting rights, and members have limited personal liability (discussed below).

The Connecticut Limited Liability Company Act, CGS § 34-100 *et seq.* ("LLC Act"), governs the formation, operation and dissolution of LLCs in Connecticut.

Two states, Tennessee and Kentucky, specifically authorize the formation of nonprofit limited liability companies (nonprofit LLCs). The statutes of numerous states have language that permits nonprofit LLCs to exist. Connecticut LLCs may be formed for the promotion of any purpose which may be lawfully carried on by an LLC, including nonprofit purposes. Assuming state laws permit formation of nonprofit LLCs, the IRS will recognize such an LLC as exempt under Section 501(c)(3) if it elects to be treated as a separate legal entity for tax purposes, its organizational documents include the language mandated by the organizational test (purposes, distribution of assets upon dissolution, etc.), and it meets numerous requirements largely designed to guard against inurement and private benefit. These conditions are discussed in the Nonprofit Taxation section.

b. Formation

Under the LLC Act, a Connecticut LLC is formed when the articles of organization are signed by one or more organizers and filed with and endorsed by the Secretary of the State. Subject to certain exceptions, a Connecticut LLC may engage in any type of lawful business, purpose or activity. The organizers of the LLC do not have to be members of the LLC. The articles of organization must include (i) the company's name (which must contain the words "Limited Liability Company" or the abbreviation "L.L.C." or "LLC" and be distinguishable on the records of the Secretary of the State from the names of other entities existing under Connecticut laws or transacting business in Connecticut); (ii) if manager managed, a statement to that effect; (iii) the nature of the business and the purpose to be promoted; (iv) the principal office address; (v) an appointment of statutory agent; and (vi) any other matter the organizer wishes to include. In addition, the organizer must file with the Secretary of the State the name and address of a member or manager. The articles of organization must be filed with a $120 filing fee.

A generic form of articles of organization for a Connecticut LLC may be found in Section 2.4.1 of "Connecticut Limited Liability Company: Forms and Practice Manual" by Richard G. Convincer and Louis B. Schatz or in "Connecticut Corporation Law & Practice" as Form 34.

c. Management and Control

A Connecticut LLC may be managed by its members or its managers. If the articles of organization do not state that the LLC is managed by a manager or members, it is member managed. If the LLC is member managed, every member is an agent of the LLC for the purpose of its business or affairs. As such, the act of any member apparently carrying on in the normal business or affairs of the LLC effectively binds the LLC, except if the member has no actual authority and the person with whom he is dealing has knowledge of that lack of authority. If the articles of organization so provided, the LLC's management can be vested in a manger or managers. If so provided, the operating agreement may specify the number of managers, their responsibilities, necessary qualifications, and the manner in which they are both elected and removed. If management is vested in a manger or managers, then no member, solely through his or her status as member, is an agent of the LLC, and every manager is an agent of the LLC for the purpose of its business or affairs. As such, the act of any manager apparently carrying on in the normal business or affairs of the company effectively binds the company, except if the manager has no actual authority and the person with whom he is dealing has knowledge of that lack of authority.

A Connecticut LLC is governed by the terms of its LLC Agreement. The LLC Act was drafted in a way which provides flexibility in establishing the management and structure of a LLC. In most cases, the rules set forth in the LLC Act are default rules that may be modified in the LLC Agreement and are otherwise only applicable when the LLC Agreement is silent on the issue.

If the LLC is member managed, except as otherwise provided in the articles of organization or LLC Agreement, the affirmative vote, approval or consent of a majority in interest of the members is required to decide any matter connected with the business or affairs of the LLC. If the LLC is manager managed, except as otherwise provided in the articles of organization or LLC Agreement, the affirmative vote, approval or consent of more than one-half by number of the managers is required to decide any matter connected with the business or affairs of the LLC. To amend a written LLC Agreement, or authorize a person to perform any act on behalf of the LLC that contravenes the LLC Agreement requires the affirmative vote, approval or consent of at least two-thirds in interest of the members, unless the articles of organization or LLC Agreement provide to the contrary.

Under the LLC Act, an interest in an LLC is freely assignable, in whole or in part, except as otherwise provided by the LLC Agreement. An assignee of an interest in an LLC shall not be admitted as a member or have any right to participate in the management of the business and affairs of the LLC except upon the approval of a majority interest of the members of the LLC other than the assignor or in compliance with any procedures provided for in the LLC Agreement.

The LLC Act provides certain default rules regarding allocations of profits and losses and distributions of assets, but members are free to contract with respect to such economic rights in the LLC Agreement. Absent a provision in the LLC Agreement, the profits and losses of an LLC shall be allocated and distributions of cash or assets shall be made on the basis of the value of the contributions made by each member to the extent they have been received by the LLC and have not been returned.

General forms of LLC Agreement for a Connecticut LLC may be found in Section 3.7 of "Connecticut Limited Liability Company: Forms and Practice Manual" referencing Appendices A, A-1, B and C of the same.

d. Limited Liability of Members and Managers

A member or manager must discharge his or her duties under CGS § 34-140 and the LLC Agreement in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in the manner he or she reasonably believes to be in the best interests of the LLC. The member or manager will not be liable for any action taken as a member or manager, or any failure to take such action, if he or she performs such duties in compliance with CGS § 34-141.

A member or manager of an LLC (not formed to render professional services) is not liable solely by reason of his or her member or manager status for a debt, obligation, or liability of the LLC. Section 34-143 of the LLC Act provides that an LLC Agreement may eliminate or limit the personal liability of a member or manager for monetary damages for breach of any duty provided for in CGS § 34-141 and provide for indemnification of a member or manager for judgments, settlements, penalties, fines or expenses incurred in a proceeding to which an individual is a party because such individual is or was a member or manager.

A member is liable to make its contributions to the LLC and other payment obligations that are provided in an LLC Agreement.

e. Merger, Dissolution and Term of Existence

An LLC may merge with another LLC or any other domestic or foreign entity "Other entity" is defined to include a corporation, general partnership, limited partnership, limited liability partnership, joint venture, joint stock company, business trust, statutory trust, real estate investment trust and any other association or legal entity. To merge or consolidate, an LLC must enter into a plan of merger or consolidation and file articles of merger or consolidation with the Secretary of the State. Unless the LLC Agreement requires a different vote or consent, such merger or consolidation must be approved by an affirmative vote of at least two-thirds in interest of the members. It should be noted that the LLC Act also provides for the conversion of domestic general partnerships or domestic limited partnerships into a domestic LLC.

The LLC Act provides that an LLC is dissolved and winding up should begin upon the happening of the first of the following: (i) the occurrence of an indentified time or events described in the articles of organization or LLC Agreement as causing dissolution; (ii) upon the affirmative vote, approval, or consent of a majority in interest of the members, unless the articles of organization or operating agreement state to the contrary; or (iii) a judicial decree of dissolutions.

Those winding up the LLC may, on the LLC's behalf: (i) prosecute and defend law suits; (ii) settle and close the LLC's business; (iii) dispose of and transfer the LLC's property; (iv) discharge the LLC's obligations; and (v) distribute to the members any remaining assets.

f. Raising Capital

An LLC offers the same flexibility in raising capital as a for-profit corporation.

g. Recordkeeping and State Reports

The LLC must keep at its principal place of business, (i) a current and past list of members and mangers in alphabetical order including full name and last known mailing address; (ii) a copy of the LLC's articles of organization and any amendments thereto; (iii) copies of LLC's federal, state and local income tax returns and financial statements for the three most recent years; (iv) copies on any effective written operating agreement, all amendments thereto and any written operating agreements no longer in effect; and (v) other writings prepared pursuant to the operating agreement.

The LLC must file an annual report with the Secretary of the State in accordance with CGS § 34-106 on the anniversary of the filing of the LLC's articles of organization. Foreign LLCs are also required to file annual reports with the Secretary of the State. Annual reports are due every year by the last business day of the month in which a domestic LLC was formed or a foreign LLC registered with the state. The filing fee for the annual report in each case is $20.

h. Taxation

For Federal income tax purposes, LLCs may be classified as a partnership if they have more than one (1) member or may be disregarded as a separate entity if they have only a single member. Federal treasury regulations permit LLCs to elect their desired U.S. federal tax classification as a partnership or as a corporation. Under these regulations, an LLC will be classified as a partnership for federal tax purposes absent an affirmative election to the contrary. If the LLC has only one member, the LLC will be classified as a sole proprietorship, branch or division of the member that may be ignored for federal tax purposes absent an affirmative election to the contrary. For purposes of any income tax imposed by the State of Connecticut, an LLC shall be classified in the same manner as it is classified for federal income tax purposes.

Unless it elects to be treated for federal and state purposes as a corporation, an LLC is generally not subject to separate entity-level taxation of its income under state and federal tax laws, although it is required to file an informational return. Unless a member is exempt from income taxation and its distributive share of membership income is not unrelated trade or business income subject to income taxation, usually its distributive share of membership income and loss is treated as taxable income or loss to the member and reported on his/her/its return, regardless of whether the member actually receives the income. Connecticut LLCs that have one owner are generally disregarded as entities separate from their owners for Connecticut income tax purposes, but as separate entities for Connecticut property and sales and use taxes. Connecticut imposes a Business Entity Tax on S corporations, limited liability companies, limited liability partnerships and limited partnerships at the rate of $250.

Connecticut law allows the formation of nonprofit LLCs. A Connecticut LLC may be formed for the promotion of any purpose that may be lawfully carried on by an LLC and nonprofit purposes are not precluded by Connecticut law. Tax-exempt treatment of such LLCs is discussed in the section on Nonprofit Taxation.

i. Resources

Transactional Lawyer’s Deskbook: Advising Business Entities (Arthur Norman Field & Morton Moskin eds.)

Richard G. Convincer and Louis B. Schatz, Connecticut Limited Liability Company: Forms and Practice Manual (1995 ed., as supplemented, 2007)

4. Low-profit Limited Liability Companies (L3Cs)

a. Overview

The L3C, or Low-Profit Limited Liability Company, is a new type of corporate entity that is a cross between a nonprofit and a for-profit corporation. L3Cs are not eligible for tax-exempt treatment by the IRS. Rather, they are intended to be profit-generating entities with charitable and educational (including positive social change) missions as their primary objectives. Building upon the LLC structure, the L3C has thus far been enacted in Vermont (May 2008), Michigan (January 2009), Utah (March 2009), Wyoming (July 2009), Illinois (Jan 2010), Louisiana (2010), North Carolina (2010), Maine (July 2011) and Rhode Island (Feb 2011). L3C legislation is also being considered in several other states, including Connecticut, Georgia, Missouri and North Dakota. For more information about the status of L3C legislation please visit:
http://www.americansforcommunitydevelopment.org/legislation/legislation.htm

Connecticut has, proposed but not yet, not yet passed legislation to authorize the formation of L3Cs. However, all states must recognize LLCs formed in other states and the L3C is a variant form of an LLC.

L3Cs are similar to LLCs in that they have the liability protection of a corporation, the flexibility of a partnership and membership shares can be sold to raise capital just like common stock. However, unlike the LLC, the L3C must be formed for a charitable or educational purpose, it cannot have a significant goal of producing income or capital appreciation and it may not accomplish political or legislative objectives.

L3Cs are intended to be vehicles which can both attract capital investment from for-profit enterprises and investment by foundations. Nontraditional for-profit investors who are willing to sacrifice market-level returns in exchange for social impact are prime candidates to provide capital investments or loans to L3Cs. Similarly, private foundations that wish to provide support in the form of a loan or equity rather than a grant may find an L3C to be attractive because the enabling legislation is written in such a way as to comply with the IRS "program related investment" or "PRI" regulations, thus eliminating the need for private letter rulings or legal opinions for such investments. PRIs can be attractive to foundations because they count toward its 5% minimum payout requirement, just as if they were grants. But if the investment is successful, the foundation could recapture the full amount of the investment, plus a reasonable rate of return, which it then must pay out again in the form of grants or more PRIs.

Existing nonprofit corporations can utilize the L3C structure in at least two ways. First, if the nonprofit generates enough earned income to qualify as "low profit," it could reincorporate as a stand-alone L3C. Second, it could establish a subsidiary as an L3C to conduct low-profit earned income activities.

It is too early to tell whether L3Cs will proliferate and whether they will attract significant investments from non-traditional investors and foundations. Some experts have predicted that since PRIs comprise a relatively small amount of foundation grants and capital, the L3C will not succeed in attracting significant funds from foundations and thus this form of organization will not become the preferred vehicle.

b. Resources

Lang, Robert. "Overview." Americans for Community Development. http://www.americansforcommunitydevelopment.org

Peeler, Heather, "The L3C: A New Tool for Social Enterprise, "Community Wealth Vanguard, Aug. 2007, http://www.communitywealth.com/Newsletter/August%202007/L3C.html

Tozzi, John, "Turning Nonprofits into For-Profits," *Business Week: Small Business Financing* (June 15, 2009), http://www.businessweek.com/smallbiz/content/jun2009/sb20090615_940089.htm

"How-to: An Insider's Look at the LC3 and What it Could Mean for You and Your Social Enterprise." Social Earth.http://www.socialearth.org/how-to-an-insider's-look-at-the-l3c-and –what-it-could-mean-for-you-and-your-social-enterprise

Chang, Emily, L3C-Developments & Resource, Nonprofit Law Blog, available at http://www.nonprofitlawblog.com/home/2009/03/13c-developments-resources.html#more

5. Joint Ventures

A joint venture is not considered a separate entity in Connecticut. Rather, it is a contractual arrangement whereby more than one person or entity join forces to undertake a single transaction or a series of related transactions. The type of entity used to carry out the joint venture will depend on the business needs of the parties or entities involved. When liability protection and maximum flexibility are required and the number of participant/investors is small, the LLC is considered by many to be the preferred entity/vehicle for the joint venture. However, if the joint venture is not incorporated, the relations and obligations of the parties to the joint venture are governed by the principles of common-law partnership. Thus, if the joint venture is not incorporated, the joint venturers will be taxed as partners and will owe fiduciary duties to each other concerning matters within the scope of the joint venture.

Thus, for example, a tax-exempt nonprofit corporation pursuing a social mission and a for-profit corporation operating a business can join together and form a joint venture using an LLC as the vehicle for the enterprise. The operating agreement would spell out the rights and obligations of each member. However, each member would be bound by the laws and rules governing its own existence, so that the nonprofit may not confer an undue economic benefit on the for-profit coventurer, nor may the business corporation use the joint venture to do something that it could not do directly.

The IRS has addressed the circumstances in which tax-exempt social and charitable enterprises may engage in joint ventures with for-profit entities, and has adopted rules that govern the kinds of benefits that tax-exempt enterprises can confer on for-profit entities in the context of joint ventures. The IRS rules are extremely complicated. A tax-exempt social enterprise should not enter into a joint venture with a for-profit entity without first seeking advice from expert counsel.

Sanders, Michael I., Joint Ventures Involving Tax-Exempt Organizations (John Wiley & Sons, 3d revised ed. 2007)

6. Partnerships and Limited Partnerships

a. Overview

Partnerships, limited partnerships and limited liability partnerships are forms of organization that can be used to pursue social objectives and are recognized as statutory entities under Connecticut law. Until the advent of LLCs in 1993, partnerships were the most often-used alternative to a nonprofit corporation.

Partnerships provide almost unlimited flexibility in governance and management. Profits and losses are allocated according to the capital contributions of each partner but unlike LLCs and nonprofit corporations, the total assets of each partner in a general partnership are at risk, not just the capital that has been put into the enterprise. Limited partnerships changed this by permitting the creation of a special class of partners, known as "limited" partners, who provide capital but do not participate in management. In limited partnerships, the limited partners are shielded from liability beyond their capital contributions, but the general partner—who manages the affairs of the limited partnership—does not have this liability protection. Limited partnerships are often used as financing vehicles and are most useful when investors are to have no role in management and a simple or flexible governance structure is needed.

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

b. General Partnerships

The Connecticut Uniform Partnership Act, CGS § 34-300 *et seq.* ("UPA"), regulates the organization and operation of general partnerships. It provides considerable freedom for partners to agree among themselves on the terms which will govern their partnership. Unlike other entities discussed herein, no certificate or other document need be filed with the Secretary of the State or any other governmental entity to establish a general partnership. A general partnership may even be based on an oral agreement between partners, although a written agreement is prudent. Connecticut places no legal restriction on having a corporation, partnership, or LLC as a general partner. The partnership agreement may grant to all or certain identified general partners the right to vote on any basis agreed to, separately or with all or any class of partners, on any matter. There are certain governance provisions that may not be eliminated by a partnership agreement.

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

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

c. Limited Partnerships

The Uniform Limited Partnership Act, CGS § 34-9 *et seq.* ("ULPA"), governs Connecticut limited partnerships. A limited partnership ("LP") must consist of at least one general partner and at least one limited partner. To form an LP, all the general partners of an LP must execute and file with the Secretary of the State a certificate of limited partnership. The certificate of limited partnership must set forth: (i) the name of the LP and the address of the office in Connecticut where it maintains records that it is required to maintain; (ii) the name and address of the agent for service of process; (iii) the name and business address of each general partner; (iv) the latest date upon which the LP is to dissolve; and (v) any other matters the partners determine to include therein. The name of the LP must contain the words "limited partnership", must not contain the name of the limited partner except as permitted in CGS § 34-13 and must be distinguishable upon the records of the Secretary of the State from the name of any other entity on the Secretary of the State's records. An LP is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of the State or at any later time specified in the certificate. The filing fee for the certificate is $120.

The LP must keep at its principal place of business, (i) a current list of each partner in alphabetical order including full name and last known business address; (ii) a copy of the certificate of limited partnership and any amendments thereto; (iii) copies of the LP's federal, state and local income tax returns and reports for the three most recent years; (iv) copies of any effective written partnership agreement and financial statements of the LP for the three most recent years; and (v) an additional writing in accordance with CGS § 34-13c(5). LPs must also file an annual report with the Secretary of the State. Annual reports are due every year by the last business day of the month in which the LP was formed. The filing fee for the annual report in each case is $20.

In an LP, general partners are personally liable for the debts of the partnership and the acts of other partners. Limited partners are afforded limited liability in much the same manner as shareholders of a corporation. A limited partner is not liable for the obligations of the partnership beyond the amount of his or her capital contribution so long as the limited partner does not participate in the control of the business of the partnership. Thus limited partners are usually passive investors and general partners manage and control the business of the LP. Nonetheless, Connecticut law enumerates various powers that a limited partner may exercise which do not constitute participation in the control of the business of the partnership, and therefore do not subject the partner to liability for partnership debts.

The partnership agreement may specify the manner in which distributions of cash or assets of an LP are allocated among partners and classes of partners. The partnership agreement may also specify the manner in which the profits and losses of an LP are allocated among partners and classes of partners. If the partnership agreement fails to address distributions, profits, and losses, they are allocated on the basis of the value of each member's contributions to the extent that the company received and has not returned them.

d. Limited Liability Partnerships (LLPs)

A limited liability partnership is a form of general partnership which exists in Connecticut by virtue of an amendment to Connecticut's general partnership statutes. A partner of an LLP is statutorily relieved of personal liability for liability of the partnership and any other partner much in the same way that corporate shareholders are shielded from liability for the liabilities of the corporation and any other shareholder and members of LLCs are shielded from liability for liabilities of the company and any other member.

To form an LLP, a partnership must file a certificate of limited liability partnership with the Secretary of the State, along with a $120 filing fee. The certificate must state (i) the name of the partnership, the address of its principal office or registered office, and the name and address of a registered agent for service of process in Connecticut; (ii) a statement of the character of its business; and (iii) any other matters the partnership may determine to include. The name of the LLP must contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name. The name of the LLP must also be distinguishable upon the records of the Secretary of the State from other entities existing under the laws of or transacting business in Connecticut. The LLP must have a statutory agent for service if it is not located in Connecticut. LLPs must also file an annual report with the Secretary of the State on the anniversary of the formation of the LLP. Foreign LLPs are also required to file an annual report with the Secretary of the State. Annual reports are due every year by the last business day of the month in which the domestic LLP was formed or the foreign LLP received its certificate of authority in Connecticut. The filing fee for annual reports is $20.

Assuming compliance with the statutory requirements, a Connecticut LLP grants all partners the full range of limited liability afforded corporate shareholders and members in an LLC. Therefore, a partner in an LLP is not liable directly or indirectly, including by way of indemnification, contribution or otherwise for the debts, obligations and liabilities of the partnership or another partner, whether arising in contract or tort. However, this shield of personal liability does not alter the partnership's liability for its own debts or liabilities or protect the partnership's assets from the claims of the partnership's creditors. LLPs do not affect the liability of a partner for his own negligence, wrongful acts or misconduct, or that of any person under his direct supervision or control.

7. Sole Proprietorships

Persons conducting a social enterprise alone in Connecticut without the protections afforded by incorporation are called sole proprietors. A sole proprietorship has no legal existence apart from its owner and may be formed without any expense or formality. Profits and losses are borne directly by the proprietor. The proprietor may operate under a trade name that is registered with the town clerk in the town where his or her business is being conducted. In fact, if the sole proprietor is conducting business under any name other than his or her real name, the sole proprietor must file with the town clerk in the town where he or she is conducting business a certificate stating the name under which the person is conducting his/her business and the sole proprietor's full name and mailing address. Procedures and filing fees for registering a trade name may vary by town. Such registration provides limited protection for exclusive use of the name, absent trademark or service mark registrations.

The main disadvantage of forming a sole proprietorship is that the owner is wholly liable for all debts and obligations of the enterprise. All of the personal assets and assets devoted to the social enterprise can be seized to make payments. A sole proprietorship itself cannot be sold since there is complete unity between the enterprise and its owner, but the assets used in the enterprise can be sold. A sole proprietorship terminates upon the death of its owner.

8. New Forms of "Hybrid" Organizations

Leading thinkers in business, philanthropy and academia are studying the rapid growth of social enterprise that is taking root in the space between the for-profit corporate world, which is constrained by the duty to generate profits for shareholders, and the nonprofit world, which lacks the market efficiencies of commercial enterprise and does not have ready access to invested capital. A major legal question that has emerged from these studies is whether new laws and tax regulations are needed in order to nurture and support the growth of this new generation of "hybrid" organizations.

Starting with a meeting in 2007 titled "Exploring New Legal Forms and Tax Structures for Social Enterprise Organizations," the Aspen Institute's Nonprofit Sector and Philanthropy Program has been bringing legal scholars and practitioners together to grapple with this question and related issues. Under the auspices of the Fourth Sector Network, many of the same individuals are also working on this question.

As of this writing, these groups have not achieved a consensus as to whether new or revised organizational and tax laws are needed to encourage and incentivize the growth of social enterprise. Indeed, some participants have suggested that existing legal and tax regimes already allow nonprofit social enterprises to operate broadly at the intersection of philanthropy and business and they express skepticism that any legal reform is needed. On the other hand, many participants advocate broad change, including revisions in federal tax and state corporate laws to accommodate new forms of social enterprise such as the "Charitable LLC," "B Corporations" and the "Socially Responsible Corporation."

9. Benefit Corporations

A new type of organization is a "Benefit Corporation." Benefit corporations allow for-profit companies to have greater societal goals that are similar to those of non-profits. Under the statute, a benefit corporation must create a general public benefit and may create one or more specific public benefits. A general public benefit is something that impacts society or the environment, and, when assessed against a third party standard, provides a material positive impact. Some examples of specific public benefits include: promoting the arts and sciences, protecting the environment, improving health, providing low-income housing, or promoting economic opportunity in communities.

A benefit corporation has three characteristics that distinguish it from other business corporations. First, its corporate purpose must include a purpose that will create a material positive impact on society and the environment while also conducting its chosen business activities.[1] Second, the directors have a duty to consider the effects of their decisions on all of the corporation's constituencies including: shareholders, employees, customers, community and society, local and global environment, short and long term interest of the benefit corporation, and ability to accomplish general and specific public benefits.[2] Third, the corporation must report annually on its creation of a general public benefit.[3] It is important to note that benefit corporations are not considered a "hybrid" entity that combines a business purpose with that of a non-profit mission.

Benefit corporations are becoming increasingly popular. As of July 2013, twenty jurisdictions have adopted a benefit corporation statute. These jurisdictions are: Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and Washington, D.C. Jurisdictions that have introduced legislation include Alabama, Connecticut, Florida, Iowa, Montana, North Carolina, Texas, and West Virginia.

Specifically in Connecticut, a statute for benefit corporations was introduced in February 2013 and died on the Senate calendar in June 2013. CT's version of the bill is substantially the same as the Model Legislation, however, it also includes the concept of a "legacy preservation provision" that benefit corporations can adopt in its certificate of incorporation (with unanimous shareholder approval) that generally (1) blocks the benefit corporation from engaging in certain corporate transactions and (2) requires the benefit corporation to distribute its assets to another benefit corporation that has enacted such a provision or

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[1] Model Benefit Corporation Legislation § 201(a).
[2] Model Benefit Corporation Legislation § 301(a)(1)(i)-(vii).
[3] Model Benefit Corporation Legislation § 401(a).

charitable organization when it dissolves. A reappearance of the bill is expected in the next term.

LawForChange will continue to follow these groups and report significant developments as they emerge.

10. Resources

Austin, James E., et. al., “Capitalizing on Convergence,” Stanford Social Innovation Review, Winter 2007. http://www.Ssireview.org/images/articles/2007Wl_feature_autstinetal.pdf

Billiteri, Thomas J., “Mixing Mission and Business: Does Social Enterprise Need a New Legal Approach?” The Aspen Institute, January 2007. http://www.nonprofitresearch.org/usr_doc/New_Legal_Forms_Report_FINAL.pdf

Searing, Jane M., “Capital With a Conscience,” Journal of Accountancy Online, July 2008. http://www.aicpa.org/PUBS/jofa/jul2008/capital_conscience.htm

Wolk, Andrew, “Social Entrepreneurship & Government: A New Breed of Entrepreneurs Developing Solutions to Social Problems,” Root Cause, 2007. http://www.rootcause.org/assets/files/SE_and_Gov_Wolk.pdf

“Structures at the Seam: The Architecture of Charities’ Commercial Activities,” New York University School of Law and National Center on Philanthropy and the Law, conference materials, October 2008.