Doing business in United States: Iowa

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OVERVIEW

1. What are the key recent developments affecting doing business in your jurisdiction?

Property tax reform law
The Iowa General Assembly (General Assembly) is vested with all state legislative authority. In 2013, the General Assembly significantly changed the landscape for companies doing business in Iowa by enacting a commercial property tax reform. The property tax reform law SF295 (the Bill) has six divisions and was signed by the Governor on 12 June, 2013.

Division I: Division I of the Bill creates a business property tax credit. The credit is weighted to benefit small businesses and the credit is applied to only the first US$145,000 of valuation on commercial, industrial or railroad property. The credit treats the first US$145,000 of valuation as if it were residential property, applying the residential rollback (an assessment limitation enacted by the Legislature to lessen the increase of residential property taxes).

In 2013, US$50 million is assigned for credit on taxes due in October 2014. This will be distributed between the different tax districts. It is likely that in the first year, applicants will not receive the full value of the credit. Owners of property must apply to the county assessor by 15 January 2014 to be eligible to receive the credit in the first year. For the subsequent financial years:

- 2015: US$100 million will be assigned.
- 2016: US$125 million will be assigned.

If the state does not fund the credits, local government are not obliged to fund the remainder.

Division II: Division II of the Bill restricts the growth in assessed values. For each assessment year starting in January 2013 and for every subsequent year, the legislation reduces the amount of taxable valuation growth from 4% to 3% or whatever class is lower, agricultural or residential.

Division II also rolls back the percentage of commercial and industrial property that was previously taxed at 100% of its valuation. The rollback is phased in by 5% for financial years 2014 and 2015. This will result in reduced taxable valuations of 90% on commercial or industrial property. This decrease in tax will impact local governments. This is due to a measure introduced by the Bill to backfill some of the costs and actual losses caused by the commercial and industrial rollback to local government. This will begin in the 2015 financial year and the amount for all subsequent years will be capped at the level established in 2017.

Division III: Division III of the Bill establishes a new multi-residential property classification that includes:

- Mobile home parks.
- Manufactured home communities.
- Land-leased communities.
- Assisted living facilities.
- An area of a building mainly used or intended for human occupancy that contains three or more separate living quarters. The building's primary use must not be intended or used for human occupancy, regardless of the number of dwelling units located in the building. It must also not be classified as residential property.

The following rollback percentages will apply to the new multi-residential property classification, and will be phased in over eight years, beginning in 2015. The projected loss to local government will not be backfilled.

- January 1, 2015: 86.25%.
- January 1, 2016: 82.5%.
- January 1, 2017: 78.75%.
- January 1, 2018: 75%.
- January 1, 2019: 71.25%.
- January 1, 2020: 67.5%.
- January 1, 2021: 63.75%.
- January 1, 2022 onwards: Same rate as for residential property.

Division IV: Division IV of the Bill provides a partial exemption for telecommunications property on a graduated percentage scale based on the value of the property. The exemption is phased in, with 50% in assessment year 2013 (fiscal year 2015), and the remainder added in assessment year 2014 (fiscal year 2016) as follows: The projected loss to local governments will not be backfilled.

- 40% of the actual value of the property exceeding US$0 and up to US$20 million.
- 35% of the actual value of the property exceeding US$20 million and up to US$55 million.
- 25% of the actual value of the property exceeding US$55 million and up to US$500 million.
- 20% of the actual value of the property exceeding US$500 million.

A report is also commissioned to study the current system of assessing telecommunications company property and levying property tax against companies that provide telecommunications services in Iowa and make recommendations for changes.

Division V: Division V creates the Iowa Taxpayers Trust Fund tax credit which transfers the balance of the taxpayer's trust fund that equals or exceeds US$30 million to the newly created Iowa Taxpayers Trust Fund tax credit fund. Taxpayers who file an individual income tax return may then be eligible for a tax credit.
Division VI: Division VI extends the sunset provision of the Property Assessment Appeal Board (PAAB) to 1 July, 2018. The Board provides an alternative for taxpayers to challenge their property tax assessments without going to the district court first. This division includes changes that were advocated by the county assessors which include:

- The addition of another certified real property appraiser.
- A salary set by general assembly.
- An informal review process.
- A move towards electronic filing.

Iowa Reinvestment Act
In addition, the General Assembly enacted the Iowa Reinvestment Act (Iowa Code Chapter 151), which essentially created a sales tax and hotel/motel tax increment financing vehicle. This was to complement Iowa’s existing property tax increment financing system.

LEGAL SYSTEM

2. What is the legal system based on (for example, civil law, common law or a mixture of both)?

Iowa has a common law legal system, with a state constitution, statutory laws and administrative regulations. Businesses are subject to US federal law and the Iowa laws.

FOREIGN INVESTMENT

3. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Before doing business in Iowa, foreign business entities must both:

- File an Application for a Certificate of Authority with the Iowa Secretary of State.
- Continuously maintain a registered office address and registered agent in the Secretary of State’s records.

The following entities cannot own agricultural land in Iowa (Iowa Code Section 91.3 and Chapter 9H):

- Non-resident foreign persons.
- Foreign business entities.
- US business entities, with exceptions such as general partnerships, family-owned entities and (subject to a 1,500 acre limit) certain authorised entities.

Co-operative housing associations (Iowa Code, Chapter 499A) require a majority of the incorporators to be residents of Iowa. Each incorporator must be a natural person or a corporation. The law is silent as to whether other entities or non-residents can be owners, or have controlling interests, after incorporation.

There are also restrictions imposed by federal law. In addition, local zoning ordinances and permits or licences may be required for particular activities. Examples of this include building codes and permits, restaurant and food handler regulations and permits, and professional licences.

4. Are there any restrictions on doing business with certain countries or jurisdictions?

There are no restrictions on doing business with other countries or jurisdictions, other than those imposed at federal level.

5. Are there any exchange control or currency regulations?

There are no exchange control or currency regulations.

6. What grants or incentives are available to investors?

There is a wide variety of innovative business and economic development programmes, including financial assistance, tax incentives and job training programmes. These are available to foreign and domestic companies.

For example, the High Quality Jobs Program can provide businesses with tax credits designed to offset the cost incurred by a business locating, expanding or modernising a facility in Iowa. Cities, counties or community colleges file applications for the High Quality Jobs Program on behalf of eligible businesses. A qualifying business must be a non-retail or non-service business and must meet certain wage requirements. Tax incentives can include a local property tax exemption, an investment tax credit, a refund of state sales, service or use taxes.

Other financial assistance and tax incentive programmes include the EB-5 Iowa Regional Center, Enterprise Zones, New Jobs Tax Credit, Research Activities Credit and Target Jobs Withholding Tax Credit Pilot Program. Further information about these and other programmes can be found at www.iowaeconomicdevelopment.com/finance/hqj.

The Iowa Economic Development Authority (info@iowa.gov) can be contacted for more information.

BUSINESS VEHICLES

7. What are the most common forms of business vehicle used in your jurisdiction?

The most common form of business entity used is a limited liability company.

Foreign companies usually use a corporation, although they may use a general limited partnership, or a limited liability company.

8. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, what are the main registration and reporting requirements?

Registration and formation
A corporation is formed by filing Articles of Incorporation with the Iowa Secretary of State. Unless the Articles of Incorporation specify a delayed effective date or time, the corporate existence begins on the date of filing.

Further information is available at http://sos.iowa.gov.

Reporting requirements
An Iowa domestic corporation must continuously maintain a registered office address and registered agent on the Iowa Secretary of State’s records. On even-numbered years, business corporations must file a biennial report with the Iowa Secretary of State.

Fees and forms are available at http://sos.iowa.gov/business/FormsAndFees.html.
Share capital
There is no maximum or minimum share capital for an Iowa corporation. The Articles of Incorporation must state the number of shares the corporation is authorised to issue.

Non-cash consideration
Shares in a corporation can be issued for non-cash consideration.

Rights attaching to shares
Restrictions on rights attaching to shares. A corporation’s Articles of Incorporation, by-law, or a shareholders’ agreement can impose restrictions on rights attaching to equity. A restriction on transfer of equity is valid and enforceable if approved by all persons who were shareholders on the date such restrictions were adopted.

Automatic rights attaching to shares. Shareholders of a corporation can share in distributions on dissolution, subject to the terms of any governing document or shareholders’ agreement. Distributions before dissolutions are generally also subject to company discretion.

9. In relation to the most common form of corporate business vehicle used by foreign companies in your jurisdiction, outline the management structure and key liability issues.

Management structure
A corporation is generally managed by its board of directors, which is generally elected by the shareholders. The board of directors appoints officers who are responsible for day-to-day management of the corporation.

Management restrictions
There are no general restrictions on foreign managers, directors, or officers.

Directors’ and officers’ liability
A director of a corporation generally owes fiduciary duties to the corporation and its shareholders. A manager or a director can be held personally liable for breach of those duties. The Articles of Incorporation or operating agreement can both:
• Define and limit the extent of those duties.
• Limit personal liability.
Managers (or directors) and companies may also enter into indemnification agreements and purchase officers’ and directors’ insurance.

Parent company liability
Generally, a parent company is not liable for its subsidiaries’ obligations. However, piercing the corporate veil can apply in parent-subsidiary relationships.

EMPLOYMENT
Laws, contracts and permits

10. What are the main laws regulating employment relationships?

As a general rule, Iowa is an employment at-will state. In addition to applicable federal laws, the main state laws governing employment relationship are:

• Iowa Civil Rights Act of 1965 (Iowa Code Chapter 216.6).
  This applies to employers with four or more employees. It prohibits employment discrimination on the basis of:
  - race;
  - creed;
  - colour;
  - sex;
  - national origin;
  - religion;
  - disability;
  - sexual orientation; or
  - gender identity
• Child Labor (Iowa Code Chapter 92). Generally, this prohibits those under the age of 16 from working without a permit. It also limits the hours and types of employment permitted for children under the age of 16.
• Iowa Wage Payment Collection Law (Iowa Code Chapter 91A). This requires employers to:
  - pay their employees a minimum wage;
  - pay all wages due to their employees less lawful deductions; and
  - maintain wage records.
Liquidated damages and attorney’s fees are available if an employee fails to comply with Chapter 91A.

There are no general laws regulating hours of work in Iowa other than those that the Federal government imposes.

• Workers’ Compensation (Iowa Code Chapter 85). This provides workers’ compensation insurance coverage for work-related injuries. Employees are subject to Chapter 85 regardless of any contract, rule, or device (Iowa Code § 85.018).
• Iowa Employment Security Law (Iowa Code Chapter 96). This provides unemployment insurance to workers and requires employers to contribute funds to an unemployment insurance account.
• Occupational Safety and Health (Iowa Code Chapter 88). This requires employers to both:
  - provide a place of employment free from recognised hazards;
  - comply with occupational health and safety standards.
These laws apply to all employers and employees within Iowa, including foreign employees working in Iowa (subject to qualifications and restrictions set out in the statute). These laws do not apply to Iowan residents working abroad.

11. Is a written contract of employment required? If so, what main terms must be included in it? Do any implied terms and/or collective agreements apply to the employment relationship?

No written contract is required.
12. Do foreign employees require work permits and/or residency permits?

Employment of foreign nationals is regulated at federal level. With the globalisation of world markets, employers in the US often employ foreign nationals. Various permanent and temporary visas are available depending on:

- The proposed job.
- The foreign national’s qualifications.
- The relationship between the US employer and the overseas employer.

**Permanent residents**

Permanent residents can work where and for whoever they choose.

**Permanent Residency: The Green Card.** Permanent residency is most commonly based on family relationships, such as marriage to a US citizen, or an offer of employment.

Permanent residence acquired through employment often involves a time consuming process that can take several years to obtain. Employers considering permanent residence for a foreign employee must determine the immigration requirements before the employee arrives in the US.

**Temporary residents**

Temporary visa holders can remain in the US for a temporary time and often the employment is limited to specific employers, jobs, and even work sites.

The following are the most commonly used temporary visas:

- **E-1 Treaty Trader and E-2 Treaty Investor Visas:** These are temporary visas for individuals in managerial, executive or essential skills capacities who qualify individually or are employed by companies that engage in substantial trade with or investment in the US. E visas are commonly used to transfer managers, executives or technicians with specialised knowledge about the processes and practices of a foreign company to assist at its US location. E visas are limited to nationals of certain countries that have treaties with the US, and the sponsoring company must also be able to claim the same nationality through at least 50% ownership by nationals of that country.

- **E-3 (Australia only):** This special visa for Australian nationals is similar to the H-1B visa (see below), and is the result of a US-Australian agreement.

- **H-1B Specialty Occupation Visa:** H-1B visas are for individuals in occupations that require at least a bachelor degree in a professional field. For example:
  - engineers;
  - scientists;
  - IT professionals;
  - architects;
  - accountants.

Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years (with additional time available in certain circumstances). H-1B visas are employer and job-specific. Special allowances are made for nationals of Chile and Singapore based on agreements made with those countries.

- **L-1 Intracompany Transferee Visas:** Executives, managers or individuals with specialised knowledge may be transferred from international companies to a US affiliate if the foreign national has worked for the company abroad for at least one year. L-1 visas provide employer-specific work authorisation for an initial three-year period with possible extensions of up to five years (specialised knowledge employees) or seven years (managers or executives). Some L managers or executives may qualify for a shortcut to permanent residence.

  - **B-1 Business Visitors:** These visas are commonly used for brief visits to the US of six months or less. The visa does not authorise employment in the US. B-1 business visitors are often sent by their overseas employers to:
    - negotiate contracts;
    - attend business conferences or board meetings;
    - perform contractual obligations such as repairing equipment in the US.

B-1 visitors cannot be on a US payroll or receive US-source remuneration.

- **TN Professionals:** Under the North American Free Trade Agreement, certain Canadians and Mexicans who fill specific professional positions can qualify for TN status. Such professions include:
  - certain scientists;
  - medical/health professionals;
  - engineers;
  - computer systems analysts;
  - management consultants.

TN holders are granted stay for specific employers. No visa is required for Canadian TNs, who can apply for TN entry at the border or airport.

- **F-1 & M-1 Academic Student Visas including Practical Training:** Often foreign students come to the US with F-1 status for academic training or M-1 status for vocational training. Students with F-1 status can often engage, with certain constraints, in on-campus employment and/or off-campus curricular or optional practical training for limited periods of time. Vocational students cannot obtain curricular work authorisation but may receive some post-completion practical training in limited situations. F-1 students in STEM fields 26 (science, technology, engineering or mathematics) may work for up to 29 months for a company that uses E-Verify with an optional practical training approval.

- **J Exchange Visitor Visas:** These visas are for individuals travelling to the US to participate in an approved exchange program. Training is authorised but not employment. Potential employers should note that some J exchange visitors and their dependents are subject to a two-year foreign residence requirement abroad before being allowed to change status and remain or return to the US.

- **O-1 and O-2 Visas for Extraordinary Ability Persons:** O-1 and O-2 visas are for individuals who have achieved national or international acclaim, through their extraordinary abilities in:
  - science;
  - art;
  - education;
  - business;
  - athletics.

This category also includes individuals who assist in such performances.
• P-1 Athletes/Group Entertainers, P-2 Reciprocal Exchange Visitor and P-3 Culturally Unique Visas: These temporary visas allow certain individuals in these categories to participate in an event or performance in the US.

A number of other non-immigrant visas categories exist and may apply for other entry routes. When planning to bring foreign workers to the US, US based employers need to allow several months for processing by the US Citizenship & Immigration Service, as well as the Department of State and, in some cases, the Department of Labor.

In addition, employers should be aware that certain corporate changes, may dramatically affect (if not invalidate) the employment authorization of foreign employees. These include:

• Stock or asset sales.
• Job position restructuring.
• Changes in job duties.

**Termination and redundancy**

13. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Unless there is an agreement to the contrary, employees are not entitled to management representation or to be consulted in relation to corporate transactions.

14. How is the termination of individual employment contracts regulated?

In general, employment in Iowa is at-will. However:

• There are Iowa laws that limit an employer's right to terminate an employee for discriminatory reasons.

• Iowa common law prohibits terminations in violation of public policy. Terminations in violation of public policy include terminations in response to filing a worker’s compensation claim.

15. Are redundancies and mass layoffs regulated?

Iowa employers are subject to the:

• Federal Worker Adjustment and Retraining Notification Act (WARN).

• Iowa Layoff Notification Act. Under this, employers must give 30 days’ advance notice of covered plant closings and covered mass layoffs. Notice is required before a permanent or temporary shutdown, or mass layoff of 25 or more employees, for a period exceeding six months.

**TAX**

16. In what circumstances is an employee taxed in your jurisdiction and what criteria are used?

An employee may be subject to Iowa income tax if he earns wages from services provided within Iowa or is a tax resident of Iowa. A tax resident is any individual who either:

• Is domiciled in Iowa.

17. What income tax and social security contributions must be paid by the employee and the employer during the employment relationship?

**Tax resident employees**

Income tax rates for individuals range from 0.36% to 8.98%, and tax brackets are adjusted annually for inflation. The basis of income tax is the federal adjusted gross income minus the net operating loss deduction. Adjustments or deductions may apply, as set out in Iowa Code §§ 422.7 and 422.9. An alternative minimum tax applies to the extent it exceeds the taxpayer's regular income liability.

Iowa school districts and counties can, on voter approval, levy individual income surtaxes. These are reported, paid and collected with the state personal income tax.

**Non-tax resident employees**

Net income received from a business, trade profession or occupation in Iowa must be reported if it satisfies certain income thresholds and other requirements listed in Iowa Administrative Code §§ 701-39.1 (2)-(3), 39.5 (10) and 40.16. If income is derived both within and outside of Iowa, that income is generally apportioned based on time, sales or mileage in Iowa. Non-tax resident employees’ Iowa-source income is taxed at the rate which corresponds to the aggregate income earned from all sources.

**Employers**

Employers must withhold in each payroll period an amount which reflects an approximation of the employee’s annual tax liability.

**Business vehicles**

18. When is a business vehicle subject to tax in your jurisdiction?

**Tax resident business**

All corporations doing business in Iowa or deriving income from sources within Iowa are subject to Iowa corporate tax. Doing business means engaging in any activity for the purpose of deriving gain or profit. Every corporation organised for profit and carrying out any of its authorised purposes is conclusively presumed to be doing business. A corporation is taxed only on the portion of the corporation’s net income reasonably attributable to the trade or business sources in Iowa.

**Non-tax resident business**

Non-resident corporations must have a nexus (that is, sufficient contacts) with the state to be taxed. The corporation’s business income is apportioned according to the level of business activity carried on in Iowa (Iowa Administrative Code § 701-54.8). Other entities, such as limited liability companies and partnerships, are taxed at the member and partner level.

Iowa recently enacted legislation that created ties between certain online retailers. This is provided that they maintain a physical location in the state through direct or indirect ownership and sell the same or substantially the same products as are available online.
19. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction (including tax rates)?

Corporate income tax
This is levied at a rate of 6% for taxable income of less than US$25,000 to 12% for taxable income above US$250,000.

Franchise tax
Financial institutions are generally exempt from Iowa's corporate income tax. Instead, financial institutions (except credit unions, which are excluded from both) are subject to a franchise tax at the rate of 5% of net income. Special additions and subtractions are set out in Iowa Code § 422.61(3) and an alternative minimum tax is set out in Iowa Code § 422.60. Federal income taxes are not allowed as a deduction for the Iowa franchise tax.

Sales and use tax
Iowa sales and use taxes are imposed at a state rate of 6%, except for a few exceptions for certain qualifying property. There are no school local option sales (SILO) taxes. However, the local option sales tax (LOST) will still be assessed locally, on voter approval, not to exceed 1%. The state collects this local tax. The sales tax rate in Iowa varies currently from 6.5% to 7%. Iowa is a full member state of the Streamlined Sales Tax Project.

Real property tax
County and city assessors value and assess property in Iowa based on its actual value (fair and reasonable market value) as of 1 January of the year in which the assessment is made. In general, new valuations are made in odd numbered years. Valuations must be protested to the county board of review by 5 May of the valuation year.

Real estate transfer tax
The real estate transfer tax is an excise tax imposed on all conveyances of Iowa real property, unless specifically exempted. The rate of tax is US$0.80 per US$500 of consideration attributable to real property.

Dividends, interest and IP royalties

20. How are the following taxed:
- Dividends paid to foreign corporate shareholders?
- Dividends received from foreign companies?
- Interest paid to foreign corporate shareholders?
- Intellectual property (IP) royalties paid to foreign corporate shareholders?

Dividends paid
Dividends paid to foreign corporate shareholders are allocated to Iowa only to the extent to which they are derived from a business carried on within this state.

Dividends received
The amount of income tax paid to another state by a resident taxpayer on income derived from sources outside of Iowa is allowed as a credit, except that the credit must not exceed what the amount of the Iowa tax would have been on the same income.

Interest paid
Interest paid to foreign corporate shareholders is allocated to Iowa only to the extent to which it is derived from a business carried on within this state.

IP royalties paid
IP royalties are treated in the same fashion as other intangible personal property.

Groups, affiliates and related parties

21. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Iowa does not have thin capitalisation rules, apart from those applicable under federal law.

22. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Iowa has no controlled foreign company rules.

23. Are there any transfer pricing rules?

Iowa has no specific rules relating to taxation of imports and exports.

Customs duties

24. How are imports and exports taxed?

Iowa has no import or export taxes separate from those imposed at federal level.

Double tax treaties

25. Is there a wide network of double tax treaties?

Iowa allows a tax credit equal to taxes paid on wages in other states to avoid double taxation.

COMPETITION

26. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Competition authority
The Iowa Competition Law (Iowa Code Chapter 553) generally prohibits contracts, combinations or conspiracies that restrain trade or create monopolies. Violators are subject to both civil and criminal penalties. The law, which is modelled after the Sherman Antitrust Act (15 USC § 1), is construed to complement and harmonise with applicable federal law.

Restrictive agreements and practices
Iowa law generally permits covenants not to compete, if they are necessary for business purposes and reasonable in scope. The applicable scope includes both duration and geographic area.

Unilateral conduct
A person must not establish (or attempt to establish), maintain or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or controlling, fixing or maintaining prices (Iowa Code §553.9).
This closely resembles the Sherman Antitrust Act’s prohibition. Therefore, in interpreting Iowa statute, the Iowa courts can give the federal court cases construing the Sherman Antitrust Act’s prohibition considerable weight [Davies v Genesis Medical Center Anesthesia & Analgesia, P.C., 994 F.Supp. 1078 (S.D. Iowa 1998)]. This act also precludes impermissible tying arrangements (Southard v Visa U.S.A. Inc., 734 N.W.2d 192 (Iowa 2007)).

27. Are mergers and acquisitions subject to merger control?

Iowa has no laws relating to merger control.

INTELLECTUAL PROPERTY

28. Outline the main IP rights in your jurisdiction.

Patents
Definition and legal requirements. A US patent is a legal grant from the federal government giving an inventor the right to exclude others from making, using, selling, offering to sell or importing their invention for the duration of the patent. Patents are used to protect applications of ideas and a wide variety of inventions, compositions of matter, plant varieties, computer software, microorganisms and business methods. There are three types of patents:

- Utility patents for processes, machines, articles of manufacture, compositions of matter, or any new and useful improvements.
- Plant patents for distinct and new varieties of plants that are reproduced asexually.
- Design patents for new, original and ornamental designs for an article of manufacture.

Registration. A patent application must be filed with the US Patent and Trademark Office (PTO) within one year of the first date the invention is:

- Disclosed in a printed publication.
- Used in public.
- Offered for sale or otherwise available to the public.

Such disclosure must be made by an inventor or whoever obtained the subject matter directly or indirectly from the inventor. There is no one-year grace period for any third party disclosures.

The PTO’s website (www.uspto.gov) provides guidance on the application procedure.

Enforcement and remedies. Once a patent is issued, the patentee can enforce the patent by suing in a federal court. Remedies include:

- Injunctions.
- Damages.
- Lawyer’s fees and costs.

Length of protection. New utility or plant patents have a 20-year term from the date the application is filed. Design patents have a 14-year term from the date the design patent is granted.

Trade marks
Definition and legal requirements. Trade marks protect business and product names. A trade mark is usually a word, phrase, symbol or logo used by a manufacturer or merchant to identify its goods or services and distinguish them from those of its competitors.

Protection. Trade marks can be protected by:

- Federal trade mark registration. The US has a federal statutory scheme of trade mark protection known as the Lanham Act, which provides for trade marks to be registered under the PTO’s authority. Under the Lanham Act, an owner of a federal trade mark is presumed to own a valid mark and to have the exclusive right to use the trade mark in interstate, territorial and foreign commerce. The PTO’s website (www.uspto.gov) provides guidance on the application procedure.
- State trade mark registration. Trade marks may also be registered with the state of Iowa (Code Chapter 540).
- Common law trade mark rights. In addition to the statutory trade mark protection, Iowa has a history of enforcing common law trade mark rights.

Enforcement and remedies. Trade mark rights can be enforced by the trade mark owner through litigation in both state and federal courts. Remedies in both state and federal courts include:

- Injunctions.
- Damages, including treble damages in Iowa.
- Seizure and/or destruction of infringing goods.

Length of protection and renewability. State trade mark registrations last for ten years and are renewable for successive ten-year terms. Under the common law, marks can be protected for as long as they are continuously used in commerce.

Registered designs
Definition. See above, Patents, Definition.
Registration. See above, Patents, Registration.

Enforcement and remedies. See above, Patents, Enforcement and remedies.

Length of protection and Renewability. See above, Patents, Length of protection and renewability.

Unregistered designs
Definition and legal requirements. There is no protection for unregistered designs beyond copyright or trade mark protection for some types of designs (see above, Trade marks and below, Copyright).

Copyright
Definition and legal requirements. Copyrights are used to protect an original work of authorship that is fixed in a physical medium. Copyrights cover:

- Art.
- Music.
- Technical and architectural drawings.
- Books.
- Computer programs and software.
- Certain aspects of websites.
- Advertising materials.
- Brochures.

Protection. Copyright protection subsists from the time the work is created and immediately becomes the property of the author of the work. Copyrights can be registered with the US Copyright Office of the Library of Congress.

Enforcement and remedies. Registered copyright owners can file a claim in federal court. Remedies for infringement include:

- Injunctions.
- Impoundment and destruction.
•Damages.
•Costs and lawyer's fees.
•Seizure and forfeiture.

Length of protection and renewability. For works created after 1 January 1978, the copyright grant lasts for the life of the author plus 70 years after the author's death. If the work was created for an employer within the scope of an employee's employment, the copyright grant lasts for 95 years from the date of first publication, or 120 years from the date of creation, whichever is shorter.

Confidential information

Nature of right. A trade secret is any information that has economic value because it is kept secret. Trade secret information includes, but is not limited to the following:
•Customer lists.
•Manufacturing methods.
•Chemical formulas.

Protection. Iowa has adopted in substantial form the Uniform Trade Secrets Act (Iowa Code Chapter 550). The Act defines a trade secret as information of nearly any kind that derives economic value from not being generally known or readily ascertainable by proper means, and is the subject of reasonable efforts to maintain its secrecy.

Enforcement. Disclosure of a trade secret obtained by improper means or in violation of a duty of confidence is also an offence. Injunctive relief and damages, including double damages, may be awarded. The Iowa Trade Secrets Act does not pre-empt common law trade secrets.

Length of protection. Generally, protection lasts as long as the information is maintained in confidence and not generally known in the industry.

MARKETING AGREEMENTS

29. Are marketing agreements regulated?

Agency

Common law principles govern agency relationships, including their creation and termination, scope, and the duties of the agent and principal toward the other and third parties. Iowa has no statute that specifically covers sales agents or representatives. The Iowa Wage Collection Law (Iowa Code Chapter 91A) covers employees and commissioned sales people who take orders and are paid on the basis of commission. It does not include individuals who purchase for resale. As such, an independent sales agent may be covered by this statute.

Distribution.

Iowa does not have a statute of general applicability (that is a statute designed to protect the interests of anyone purchasing from a supplier in order to resell). However, numerous industry specific statutes have been passed to protect the interest of certain distributors and dealers. These laws typically:
•Require good cause for terminating or failing to renew a distributor.
•Ensure that the covered party has the right to cure a default of an agreement.
•Ensure the right of succession of a qualified family member.
•Require the repurchase of parts and inventory at the end of an arrangement.

These special industry laws cover, among others:
•Motor fuels and special fuels.
•Motor vehicles.
•Motorcycles.
•Snowmobiles.
•Farm implements.
•All-terrain vehicles.
•Construction and industrial equipment.

In general, distribution agreements may be affected by the Uniform Commercial Code (Iowa Code Chapter 554), the Iowa Competition Law (Iowa Code Chapter 553) and Iowa franchising statutes (see below).

Franchising

Iowa does not have a franchise registration statute, but it has enacted two statutes that govern the relationship between franchisors and franchisees. Franchise agreements entered into or renewed after 1 July 1992 but before 1 July 2000 are governed by Iowa Code Chapter 523H. Those entered into or renewed on or after 1 July 2000 are governed by Iowa Code Section 537A.10. The statutes provide protection for franchisees physically located in Iowa. The termination of a franchise by the franchisor prior to the expiration of the franchise term is unlawful, unless the termination is for good cause. Determining “good cause” is based on a legitimate business reason, including failure of the franchisee to comply with any material lawful requirement of the franchise agreement. However, the franchisor's actions cannot be arbitrary or capricious.

Under both acts, the franchisor must provide the franchisee with reasonable notice and opportunity to cure any defaults under the franchise agreement prior to termination for good cause. Reasonable notice is defined as no less than thirty days and no more than ninety days. However, if the termination is due to non-payment of money under the franchise, the notice period need not be greater than thirty days. Under certain circumstances specified in the statutes, the franchisor may terminate the franchise without the need to provide notice and an opportunity to cure.

E-COMMERCE

30. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?

The Uniform Electronic Transactions Act (Iowa Code Chapter 554D) applies to electronic records and signatures in most transactions. Provisions in computer information agreements that adopt the Uniform Computer Information Transactions Act as governing law are voidable when enforcement is sought against an Iowa resident whose principal place of business is in Iowa. Restrictions on the use of spyware and spam are found in Iowa Code Chapters 715 and 716A.

ADVERTISING

31. Outline the regulation of advertising in your jurisdiction.

In some circumstances, a consumer may have a private right of action to recover damages resulting from deception, misrepresentation or other unfair selling or advertising practices. The Consumer Protection Division of the Iowa Attorney General's Office enforces a number of consumer laws designed to protect the public from misrepresentations and deception, including the Iowa Consumer Fraud Act and the Iowa Consumer Credit Code.
In addition, Iowa has passed statutes that relate to the advertising and/or labelling of specific goods such as agricultural seeds, dairy products, organic agricultural products, animal feed and fertilisers.

**DATA PROTECTION**

32. Are there specific statutory data protection laws? If not, are there laws providing equivalent protection?

Iowa Code Chapter 715A addresses forgery and related fraudulent criminal acts, including identity and credit card theft. The Computer Spyware Protection Act (Iowa Code Chapter 715) criminalises, among other things, collection of personal information through deceptive computer programs or software.

**PRODUCT LIABILITY**

33. How is product liability and product safety regulated?

Product liability under Iowa law is set out and extensively discussed in the case of *Wright v Brooke Group Ltd*, 652 NW2d 159 (Iowa 2002). Anyone engaged in the business of selling or otherwise distributing products is liable for harm caused by manufacturing defects, defective designs, and inadequate instructions or warnings. Essentially, a strict liability standard is imposed for manufacturing defects and a negligence standard for defective designs and inadequate warnings. Failure to disclose material information that would prevent a statement of facts from being misleading may constitute fraud. Liability may also arise for breach of express or implied warranty.

Iowa statutes address various defences including (Iowa Code 668.12):
- State of the art.
- No duty to warn of obvious risks or risk avoidance measures.
- No liability for failure to warn if the product description includes reasonable warning and it is followed.

However, a statutory duty to warn exists concerning any subsequently acquired knowledge of a defect or danger in the product (Iowa Code 668.13).

Iowa statutes also provide certain immunities to non-manufacturers and non-designers of products. (Iowa Code 613.18).

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### MAIN BUSINESS ORGANISATIONS

**Iowa Secretary of State**

[http://sos.iowa.gov](http://sos.iowa.gov)

Main activities. Company organisation, registration and reporting matters, as well as lien searches.

**Iowa Department of Revenue**

[www.iowa.gov/tax](http://www.iowa.gov/tax)

Main activities. Iowa tax issues.

**Iowa Department of Commerce**

[http://commerce.iowa.gov](http://commerce.iowa.gov)

Main activities. Professional licensing, utilities, securities, banking and insurance regulation.

**Iowa Economic Development Authority**

[www.iowaeconomicdevelopment.com](http://www.iowaeconomicdevelopment.com)

Main activities. Economic development.

**Office of the Attorney General**

[www.iowaattorneygeneral.org](http://www.iowaattorneygeneral.org)

Main activities. Professional licensing, utilities, securities, banking and insurance regulation.

### ONLINE RESOURCES

**The Iowa Legislature**


Description. This website is maintained by the Iowa legislature. Sections of the Iowa Code can be found by clicking the “Search the Iowa Code” link on this website.

**Iowa Judicial Branch**

[www.iowacourts.gov](http://www.iowacourts.gov)

Description. Decisions of the Iowa Supreme Court can be found on this website, which is maintained by the Iowa Judicial Branch.
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