

Corporate Migration to Nevis

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The Caribbean island of Nevis is located approximately 2,055 kilometres southeast of Miami, 875 kilometres north of Caracas and three kilometers south of its sister island of Saint Kitts. The island is a constituent part of the Federation of Saint Kitts-Nevis (the Federation), a two-island nation which received its independence from the United Kingdom in 1983. As provided for under the Federation's Constitution, Nevis is entitled to have its own legislative and executive branches of government and is permitted to legislate on certain specified matters, including commercial and corporate laws.¹ Since independence, Nevis' legislature has enacted several laws to stimulate the development of business in the offshore financial services sector. A very popular vacation destination, over 200,000 people annually flock to its shores for its scenery, sand and sunshine. Nevis is an equally popular jurisdiction for the registration of companies, and is consistently ranked in the top ten of offshore corporate domiciles.

Nevis' international corporate entities

International business companies (NBCs) may be incorporated under the Nevis Business Corporation Ordinance, 1984, as amended (NBCO). Nevis Limited Liability Companies (NLLCs) may be formed under the Nevis Limited Liability Company Ordinance, 1995, as amended (NLLCO). Neither NBCs nor NLLCs are required to make mandatory filings or undergo annual audits. Both of these kinds of corporate entities are tax-exempt on income earned outside

of the Federation and are forbidden from "doing business" in Saint Kitts-Nevis, outside of certain limited exemptions.²

Entities which have been incorporated in Nevis can utilise the jurisdiction's low incorporation and annual maintenance fees, flexible legislation and excellent reputation in the offshore financial services arena. A company which is registered in another jurisdiction may also take full advantage of Nevis' laws by migrating from its home territory and continuing in Nevis as a NBC or NLLC.

Nevis Business Companies

A NBC is a standard international business company and can be used for any activity from a simple asset holding vehicle, to a private trust company, to a mutual fund and complex international financing transactions. Under the NBCO, any corporation which was incorporated, created or formed in any jurisdiction other than Nevis which does not derive any income from operations on island may transfer its domicile to Nevis provided the laws of its home jurisdiction does not prohibit such transfer.³

The transfer is initiated by filing an Application to Transfer Domicile with the Registrar of Companies (Registrar).⁴ The document is then signed on behalf of the company by an officer, directors, agent, trustee, manager, partner or any other person performing functions equivalent to those of any corporate officials.⁵ The document must be accompanied by a certificate from the other jurisdiction evidencing the corporation's existence and a certified copy of the Articles of Incorporation or equivalent documents from its home jurisdiction.⁶ If any of the documents are not in English, a translation under the oath of the translator must be provided. In the event of any discrepancies between the two versions, the English language version would control.⁷

Upon approval, the Registrar shall issue a Certificate of Transfer of Domicile, and the company shall be deemed to have commenced its existence in Nevis from the date of its initial incorporation.⁸ The transfer of domicile into Nevis shall not affect any obligations or liabilities that the company may have incurred prior to such transfer.⁹ If the company is engaged in a lawsuit or has engaged in activities which may lead to litigation, any potential creditors would not be prevented from continuing or bringing an action.

Nevis Limited Liability Companies

The NLLCO borrows from United States' limited liability company law offering corporate benefits, protections and concepts which are familiar to American attorneys. The NLLCO provides that if a member has incurred a debt independent of the activities of the NLLC, a creditor of the debtor-member may apply to a court of competent jurisdiction to charge the member's interest for payment of the judgment.¹⁰ This means that the creditor is entitled only to the distributions that might otherwise be distributed to the debtor-member. Depending on the facts of a particular case, if the NLLC makes no distributions, the creditor receives nothing.

Any Foreign Limited Liability Company (Foreign LLC) may transfer its domicile into Nevis as long as the law of its home jurisdiction does not expressly prohibit such transfer.¹¹ The Foreign LLC may apply for permission to transfer by filing an Application to Transfer Domicile which should be accompanied by a Certificate of Good Standing from the foreign territory which was issued within the last sixty days, a certified copy of the Foreign LLC governing documents, with an English language translation if it is in another language.¹² Any application shall also be accompanied with a certification from the foreign jurisdiction that states that the Foreign LLC will cease operation in its home jurisdiction upon registration in Nevis.¹³ The application may also be accompanied by a corporate resolution stating that the company will cease operations if the home jurisdiction will not issue such a certificate.¹⁴

The application must also detail the company's name, the name of its registered agent in Nevis, the date and jurisdiction of its formation, declaration that the transfer has been approved by its manager and that the transfer will not hinder, defraud or delay any existing members or creditors.¹⁵ Upon approval, the Registrar shall issue a Certificate of Transfer of Domicile and the Foreign LLC shall be subject to all of the provisions of the NLLCO. The new NLLC shall promptly adapt its operating agreement, its registration, management and records to comply with the laws of Nevis.¹⁶ The transfer of domicile shall not affect any pre-existing obligations or liabilities of the Foreign LLC.¹⁷

Emergency Transfers

In the event of a war in a foreign country or a revolution, invasion and occupation by alien military forces, nationalisation or confiscation of the assets or any other similar activity or the threat of such action (an Emergency Action), a NBC or NLLC may transfer its domicile to Nevis.¹⁸ Documents and certificates similar to those required for a standard transfer shall be filed with the Registrar along with a certificate from a corporate official which details the emergency condition.¹⁹ Upon request, the Registrar may waive receipt of such documents for 30 days or until such time as the Emergency Action ceases to exist.²⁰

Conversion or merger

A NBC may be converted into a NLLC, by submitting a plan of conversion with the Registrar of Companies (the Registrar).²¹ A foreign or domestic business entity may merge into an existing NLLC or may consolidate with an existing NLLC to form a new NLLC.²² While foreign and domestic companies may merge or consolidate with a NBC, there is no provision to allow a NLLC to become a NBC.²³

Migration from Nevis

A NBC or NLLC incorporated or formed under or subject to the laws of Nevis may transfer its domicile out of Nevis.²⁴ The company must file, with the Registrar, a Certificate of Departure setting forth the names and addresses of all creditors and the amounts of its claims, that the intended departure from Nevis is unlikely to be detrimental to the creditors, that the company is not in breach of any statutory duty or obligation, that the transfer will not hinder, delay or defraud shareholders or others, and that the Registrar may accept process of service for all claims against the company arising out of actions occurring prior to departure.²⁵

Conclusion

If an offshore company has become too difficult or expensive to maintain or its home jurisdiction is no longer suitable for a client's business purposes, migration of the entity to Nevis may provide a solution. The island of Nevis is a popular offshore destination with a sterling reputation and affordable establishment and annual fees. While incorporation of a NBC or formation of a NLLC can be accomplished within one day, the re-domiciliation into Nevis on a standard or emergency basis, as an entity

licensed under the NBCO or NLLCO, can be achieved within a similarly rapid timeframe.

END NOTES:

1. *The Constitution of Saint Christopher and Nevis*, Sec. 103.
2. *Nevis Business Corporation Ordinance, 1984, as Amended*, Sec. 123 (2).
3. *Nevis Business Corporation Ordinance, 1984, as Amended*, Sec. 103 (1).
4. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 104.
5. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 107.
6. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 106.
7. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 4 (2).
8. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 108.
9. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 109.
10. *Nevis Limited Liability Company Ordinance, 1995 as Amended*, Sec. 43 (1).
11. *Nevis Limited Liability Company Ordinance, 1996 as Amended* Sec. 65 (1).
12. *Nevis Limited Liability Company Ordinance, as Amended* Sec. 66 (a), (b).
13. *Nevis Limited Liability Company Ordinance, as Amended*, Sec. 66 (c).
14. *Nevis Limited Liability Company Ordinance, as Amended* Sec. 66 (d).
15. *Nevis Limited Liability Company Ordinance, as Amended* Sec. 67.
16. *Nevis Limited Liability Company Ordinance, as Amended* Sec. 69.
17. *Nevis Limited Liability Company Ordinance, as Amended* Sec. 70.
18. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 115; *Nevis Limited Liability Company Ordinance, 1995 as Amended* Sec. 76.
19. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 117 (1); *Nevis Limited Liability Company Ordinance, 1995 as Amended* Sec. 78 (1).
20. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 117 (2); *Nevis Limited Liability Company Ordinance, 1995 as Amended* Sec. 78 (2).
21. *Nevis Limited Liability Company Ordinance, 1995, as Amended*, Sec. 59.
22. *Nevis Limited Liability Company Ordinance, 1995, as Amended*, Sec. 61.
23. *Nevis Business Corporation Ordinance, 1984, as Amended*, Sec. 89.
24. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 111.
25. *Nevis Business Corporation Ordinance, 1984, as Amended* Sec. 112.



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