



NEVIS

EDITORIAL BOARD

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NEW DEVELOPMENTS

- Seven of Nevis' international financial services laws will be amended, replaced or enacted in 2013, including the *Nevis Business Corporations Ordinance* (NBCO), the *Nevis Limited Liability Company Ordinance* (NLLCO), the *Nevis International Insurance Ordinance* (NIIO), the *Nevis International Exempt Trust Ordinance* (NIETO), the *Multiform Foundations Ordinance* (MFO). Nevis will also repeal and replace the *Nevis Offshore Banking Ordinance* with the *Nevis International Banking Ordinance* (NIBO) and will enact the *Nevis Registration of Charges Ordinance* (NRCO). The amendments to the NBCO, NLLCO and NIIO will allow for series entities and will modernise and simplify the legislation. The amendments to the NIETO will eliminate the 100-year limit on trusts and will update the statute. The amendments to the MFO will allow easier establishment and registration of multiform foundations. The enactment of the NIBO represents a first step that the Nevis government hopes will make the Island a viable and attractive commercial banking center for the Caribbean and the world. The NRCO will allow easier registration of charges against the assets of NBCs, and NLLCs, and states that once a charge has been registered, such action provides constructive notice to all persons of the existence of the charge.
- In June 2012, it was announced that St Kitts-Nevis will sign a tax information exchange agreement with the Republic of India, and was in discussions with Japan, the Seychelles and the United States.
- In December 2011, the costs for non-nationals of St Kitts-Nevis to become citizens increased. The cost to purchase a piece of property increased to USD400,000 from USD350,000 and the minimum donation was increased to USD250,000 from USD200,000.
- In September 2011, Sir Dennis Byron, a citizen of the Federation of St Kitts-Nevis, was appointed as the President of the Caribbean Court of Justice (CCJ).
- In May 2011, amendments were made to the NBCO, the NIETO, the NLLCO and the MFO. These amendments require the directors of Nevis business corporations, the trustees of Nevis trusts, the managers of Nevis limited liability corporations and the management board of Nevis multiform foundations to keep and maintain proper books of account, respectively. These proper books of account should correctly explain all transactions, enable the financial position to be determined and allow financial statements to be prepared.

1. INTRODUCTION

A. History and background

Nevis is a 36-square-mile island, located in the Caribbean, 250 miles southeast of Puerto Rico and two miles south of its sister island, St Kitts. The island is circular in shape with a 3,232-foot cloud-capped mountain rising in its centre called Nevis Peak. The island was sighted by Christopher Columbus on his second voyage, and was named '*Nuestra Senora de Las Nieves*', but has since been shortened to its current name.

In 1983, Nevis, along with St Kitts achieved independence from Britain, and the two islands constitute the Federation of St Kitts-Nevis (the Federation). English is both the official and spoken language in Nevis. As provided for by the Federation's Constitution, Nevis is permitted to legislate on certain specified matters, including commercial and corporate laws. Since independence, Nevis' legislature has enacted several laws to stimulate the development of business in the offshore financial services sector. The Federation has its own corporate, commercial and trusts laws and has developed its own financial services sector, separate and apart from Nevis. Tourism is the major source of revenue for Nevis, almost 250,000 visitors flock to its shores annually to the many resorts located on the island. A growing sector of the economy is offshore financial services, as several services providers have established offices on Nevis.

The official currency is the Eastern Caribbean Dollar (XCD), which is shared by eight other territories in the region. The stability of the XCD is maintained by the Eastern Caribbean Central Bank (the ECCB), which is headquartered on St Kitts. The XCD has been pegged to the US Dollar (USD) at a rate of XCD2.70 to USD1.00 since 1976. The USD is also widely accepted and exchangeable throughout the island.

B. Legal system

The legal system of Nevis is based on the common law of England, before 1983, as varied by local statutes. Nevis is part of the Federation, with certain national sovereign rights guaranteed to the island under the Federation's Constitution. While the federal government retains the rights to determine foreign policy for the Federation, Nevis is able to enact its own commercial, fiscal and corporate legislation.

Her Majesty Queen Elizabeth II is still the putative head of state, represented on St Kitts by a Governor-General, and on Nevis by a Deputy Governor-General. Officially, no legislation is passed without the Governor-General's signature on behalf of the Crown. Decisions of Nevis' High Court, the local trial level court, can be appealed to the regional Court of Appeals of the Eastern Caribbean, which are in turn appealable to the Privy Council in London, England. Despite the ultimate authority of the Privy Council, their jurisdiction is limited to interpreting the laws of Nevis as enacted or determining whether the laws of Nevis are constitutional. The Privy Council's jurisdiction does not extend to overriding Nevis' laws.

2. SOURCES OF LAW

A. Trust creation and administration

In 1994, Nevis enacted the *Nevis International Exempt Trust Ordinance, 1994 as Amended* (NIETO), which provides comprehensive and thorough asset protection strategies. The NIETO, among other things, provides for

spendthrift trusts, overrides the rule against perpetuities, overrides forced heirship, repeals the Statute of Elizabeth and prohibits the enforcement of foreign judgments.

Prior to 1994, all trusts, both domestic and international, were subject to the *Trustee Ordinance of 1961*, which has been repealed by the *Trusts Act of 1996*. By its terms, the *Trusts Act* does not apply to trusts formed under the NIETO.

It has been proposed that the NIETO be amended in the early part of 2013.

B. Property, estate and probate

Non-nationals are permitted to buy land and houses in Nevis, but current government policy limits the amount that can be purchased to half an acre per person for new construction and existing homes that are more than half an acre and subdivisions with plots of more than half an acre. In order to purchase the real property, non-nationals must be granted an Alien Landholder's Licence, which is charged a fee of 10 per cent of the purchase price.

The Federation also offers foreign persons the opportunity to become citizens on the basis of the purchase of a piece of real property or upon the investment in a public charity. Citizenship can be obtained through the purchase of property valued at USD400,000 or more on the southern peninsula of St Kitts, in the northwest of Nevis or via a donation of USD250,000 to a fund for displaced sugar industry employees. The Application for Citizenship and accompanying passports must certify that all family members are free of infectious diseases, including HIV/AIDS, and do not have a criminal record.

The *Wills Act (Cap. 84) as Amended* governs the formal and essential validity of a will disposing of immovable property in St Kitts-Nevis, or movable property of a testator domiciled at death in the Federation. The *Intestates Estate Act (Cap. 36), as Amended* governs the administration and distribution of estates of persons dying intestate.

C. Company law

Corporate entities may be incorporated as Nevis business corporations under the NBCO or formed as Nevis limited liability companies under the NLLCO.

It has been proposed that the NBCO and NLLCO be amended in the early part of 2013.

D. Taxation

All Nevis trusts, Nevis business corporations, Nevis limited liability companies and multiform foundations are tax-exempt so long as they transact no business on the island.

Maintaining bank accounts in Nevis, holding board meetings in Nevis, maintaining corporate or financial records in Nevis, maintaining an administrative or managerial office in Nevis with respect to assets and activities outside of Nevis, being a partner in a Nevis partnership, or acquiring real property in certain industrial or tourist facilities in Nevis approved by Government will not constitute doing business in Nevis.

3. TRUSTS

A. Introduction

Trust law in Nevis is based on the general principles of English trust law as amended by the NIETO.

B. Most frequently used trusts

Trusts established under the NIETO can be either discretionary or fixed and may be used for a purpose or persons. Nevis trusts are used both for estate planning and also for tax avoidance.

C. Proper law of a trust

A trust will be governed by, the law expressed by the terms of the trust or intended by the Settlor to be the proper law. A trust may also be governed by the law with which the trust has its closest connection at the time of its creation. The 'closest connection' is determined by looking at the forum of administration, the status of the assets, the place of business of the trustee, and the objects of the trust and the places where they are to be fulfilled. A trust deed may also provide for a severable aspect of a trust may be governed by the law of another jurisdiction.

D. Creation of a trust

i. *Validly constituted trusts*

A trust settled under the NIETO will be valid provided it meets the common law requirement of the three certainties of intention, subject-matter and objects. It shall be invalid and unenforceable if it purports to do anything, confers any rights or imposes any obligations which are contrary to the laws of the Federation. It shall also be invalid and unenforceable if the corpus of the trust constitutes the proceeds of a crime which the Settlor was convicted.

ii. *Duration and termination of a trust*

The NIETO abolished the rule against perpetuities, the maximum duration of an international trust that is not a charitable trust or purpose trust is 100 years. One of the proposed amendments to the NIETO would allow Nevis trusts to exist in perpetuity.

iii. *Beneficiaries*

A beneficiary must be identifiable by name or ascertainable by reference to a person or class of persons. The terms of a trust may provide for the addition of a person as a beneficiary or the exclusion of a beneficiary from benefit. A settlor or trustee of a trust may also be a beneficiary of the trust.

One of the proposed amendments to the NIETO would allow the terms of the trust to impose restrictions on the rights of a beneficiary, including fundamental rights, as a pre-condition to receiving benefits.

iv. *Trustees*

A trustee must either be a licensed trust operator on Nevis or a NBC. There need be no more than one trustee, but in no case more than four, except for charitable trusts.

v. *Protectors*

The NIETO recognises the office of protector, to have limited authority over the trustee. In the exercise of their powers, a protector owes a fiduciary duty to the beneficiaries or to the purpose for which the trust was created. The protector is not counted or regarded as a trustee.

vi. *Role of courts*

The High Court of St Kitts-Nevis has jurisdiction over a trust is the trustee is located in Nevis, the trust is governed by the NIETO or administration is conducted in Nevis. Foreign judgments against a trust, trustee, protector, beneficiary or trust assets shall not be enforced if that judgment is based on an aspect governed by the laws of the Federation.

E. Confidentiality and disclosure

All trusts need to be registered, however, this information is maintained in a non-public registry. The only information that is maintained is the name of the trust and the name of its registered office. The *Confidential Relationships Act of 1985 (CRA)* applies to all those in the financial community, and provides that anyone disclosing banking, financial and trust documents without court order is subject to criminal penalties, including fines or imprisonment.

F. Rights of creditors

i. *Transfers into trust funds*

A creditor who seeks to set aside a trust or any transfer thereto, has to establish two burdens of proof, both 'beyond reasonable doubt'. The creditor must first prove that the trust was established or the transfer was made with the principal intent to defraud. The creditor must also prove that the trust's establishment or funding left the settlor insolvent or without property by which that creditor's claim, if successful could have been satisfied.

ii. *Limitation period*

Any settlement of funds on a trust shall not be regarded as an act of fraud against a creditor, if the settlement takes place more than two years from the date on which the creditor's cause of action accrue. A settlement shall not be regarded as fraudulent if the settlement takes place before the expiration of two years from the date on which the creditor's cause of action accrued, and the creditor fails to commence an action before the expiration of one year from the date of establishment or disposition.

Before any creditor may commence an action, he must deposit with the Nevis Ministry of Finance, a USD100,000 bond from a Nevis financial institution, in order to cover costs.

G. Provisions for private trust companies

The NIETO states that any person or company operating as a trustee from Nevis must be licenced, however an NBC may also act as trustee, provided that it does not maintain a physical presence in Nevis. One of the proposed amendments to the NLLCO would allow NLLCs to act as trustees.

4. OTHER FORMS AND ENTITIES

A. Commonly used legal entities

i. Corporations and companies

Corporate entities can be either be incorporated as corporations or NBCs under the NBCO or formed as companies or NLLCs under the NLLCO.

ii. Foundations

Multiform Foundations may also be established under the MFO.

A multiform foundation is a malleable entity that operates as a foundation but may take the underlying form for administrative and legal purposes of a trust, an NBC, a NLLC or as a partnership. A multiform foundation shall have any purpose or object whatsoever that is permissible under Nevis law.

iii. Banking

The *Nevis Offshore Banking Ordinance, 1996* (NOBO) permits private offshore banking. Licencees must either be licensed and regulated by their home jurisdiction or must be regulated by the ECCB. Presently only one bank is licensed to do offshore banking under NOBO. It has been proposed that the NOBO be repealed and replaced in 2013 by the draft Nevis International Banking Ordinance.

B. Directorial and managerial requirements

The number of directors constituting the entire board shall not be less than three, except that where all the shares of an NBC are held by fewer than three shareholders, the number of directors may be fewer than three, but not fewer than the number of shareholders. Every NBC shall have a president and treasurer or managing director and a secretary. The responsibility of each director of an NBC is equal to that of other directors.

The members of an NLLC are the entity's managers unless otherwise provided for in the Operating Agreement. The responsibility of each manager is equal to that of other managers. The NLLCO does not distinguish between individual duties for the managers and does not require a minimum amount of managers.

C. Disclosure and other requirements

There is no public filing requirement for any of NBCs, NLLCs, mutual funds or Multiform Foundations. These entities need not provide any

information regarding beneficial ownership or beneficial interest to the Registrar.

The CRA provides that anyone disclosing any financial, trust or banking information without an order issued by the High Court of Nevis is subject to criminal fines or imprisonment.

5. TAXATION

A. Taxes

A trust created under the NIETO is exempt from all taxes; including income tax, estate, inheritance, succession and gift tax, stamp duty and exchange controls.

B. Tax information exchange agreements (TIEAs)

The Federation of St Kitts-Nevis has entered into TIEAs with Aruba, Australia, Belgium, Canada, Curacao, Denmark, the Faroe Islands, Finland, France, Germany, Greenland, Iceland, Liechtenstein, Monaco, the Netherlands, New Zealand, Norway, Portugal, Sint Maarten, Sweden and the United Kingdom.

C. Double taxation conventions (DTCs)

The Federation of St Kitts-Nevis has entered DTCs with Canada, Denmark, Monaco, New Zealand, Norway, San Marino, Sweden, Switzerland, United Kingdom and United States. The Federation is a signatory to the multi-lateral Caribbean Community Double Tax Agreement. The other signatories include Antigua-Barbuda, Barbados, Belize, the Commonwealth of Dominica, Grenada, Guyana, Jamaica, St Lucia, St Vincent and the Grenadines, and Trinidad-Tobago.

6. OTHER RELEVANT MATTERS

A. Anti-money laundering

In November, 2000, the Government of the Federation enacted three pieces of legislation in an effort to combat money laundering: the *Financial Services Commission Act, 2000*; the *Proceeds of Crime Act, 2000*; and the *Financial Intelligence Unit Act, 2000*. Laws enacted by the federal government are applicable to Nevis. These laws require offshore financial service providers to keep written terms of business with introducers of business such that the identity of the applicant for business can be ascertained. Service providers are also required to establish certain identification, record-keeping, internal reporting and training procedures for the purpose of forestalling and preventing money laundering.

B. Visa waiver

Federation citizens can visit the Schengen member countries (Schengen) of the European Union (EU) without obtaining a visa, and stay for three months, within a six-month period. Schengen includes Iceland, Norway and Switzerland, which have adopted the treaty. Due to their open borders with Schengen members; Liechtenstein, Monaco, San Marino and Vatican City are considered to be *de-facto* Schengen members. Kittitians-Nevisians do not need visas to visit the United Kingdom and the Republic of Ireland, and can stay for six months in the United Kingdom and three months in Ireland.

This jurisdiction forms part of the Caribbean and Latin America region for STEP electoral purposes. for details on the Caribbean and Latin America Regional Committee please go to page XX