



Nevis: A Global Wealth Manager's Paradise



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NEVIS HAS BEEN A LONG-STANDING PROVIDER of offshore services for over 30 years. Its flagship legislation saw the invention of the International Business Corporation (IBC) formed pursuant to the Nevis Business Corporation Ordinance, 1984 (NBCO) - as it then was. The IBC, first known to the state of Delaware served as a portal for investors to protect their assets with the consolation of knowing that they would have regulated government intervention and complex legislation offering them the protection craved by shareholders. The NBCO keeps a lot of the features of a regular company whilst incorporating new features akin to a foreign structure of its kind serving as a useful tool for investment holding purposes.

One of the key features of the NBCO in Nevis is that it offers its officers confidentiality eliminating any requirement for registers to be kept at the Offshore Companies' Registry¹ or for disclosure of such information to third parties (without a court order).² The NBCO offers tax benefits in that, once the corporation does not engage in any business activity within the Federation of St Kitts & Nevis, it is not eligible to pay taxes.³ One of the new features of the NBCO compliments of the recent amendments to the legislation is that it allows for an IBC to elect to pay

taxes at a minimum rate of one per cent in order to qualify for benefits allowed for by treaty,⁴ if applicable.

Shortly after the passage of the NBCO, the Nevis Island Administration (NIA), then sought after a hybrid 'limited liability corporation' (LLC). This was formed pursuant to the Nevis Limited Liability Companies Ordinance, 1995 (NLLCO) - as it then was. The LLC was a structure first introduced in the State of Wyoming, USA, as an alternative to the Delaware IBC. One of the special features of the NLLCO and which makes it an upgraded structure to the IBC for GWM is that it offers substantial creditor protection. A judgment lien is not enforceable in this jurisdiction by virtue of S43 (3) (b) of the Nevis Limited Liability Company (Amendment) Ordinance, 2015-1 (Amended Ordinance).⁵ The legislation strictly prohibits the enforcement of foreign judgments in Nevis against a member's shares or property in a limited liability company (LLC). In order to put a charge/lien on property or against a member's interest in an LLC, the judgment creditor would have to possess a judgment decreed in a court in Nevis. Once the judgment was decreed in Nevis, the judgment creditor is likely upon application to the High Court to have the judgment enforced against the member's interest in the LLC and against the member's property to satisfy the debt.⁶

Around the same time of the passage of

the NLLCO, the NIA in its wisdom and bid to provide a 'playground for GWMs' implemented the Nevis International Exempt Trust Ordinance, 1994-95 (NIETO). This statutory regime was designed by Parliament in Nevis specifically to provide a tool to investors for asset planning and protection. NIETO is a robust and modern legislation that seeks to incorporate and expand upon the common law structure known as the trust. One of the key features of NIETO is its creditor protection.

NIETO has its own regime set out comprehensively for the avoidance of fraud or fraudulent transfers. The threshold is extremely high and anyone alleging that a disposition on trust was a fraud on him/her must satisfy the Nevis Court beyond reasonable doubt instead of the normal civil standard of a balance of probabilities.

Also of significance is the very tight limitation on action prescribed by NIETO. If the disposition on trust or establishment of the trust occurs after two years from the date when the cause of action by a creditor might have accrued then such disposition or establishment is not deemed to be fraudulent. If the disposition or establishment takes place before the expiration of two years from the cause of action accruing but the creditor fails to commence action within one year of the date of the disposition or establishment of the trust again the disposition or establishment is statutorily protected and deemed not to be fraudulent. Similarly, a disposition or settlement shall not be deemed to be fraudulent if it takes

¹ Otherwise known as the Nevis Financial Services Department.

² See *The Confidentiality Relationship Act of 1985 as amended*.

³ Inclusive of corporate, income, withholding or any other taxes.

⁴ Such as *Double Taxation Treaties*.

⁵ *Nevis Limited Liability Company, (Amendment) Ordinance, 2015-1*.

⁶ This however does not entitle the creditor to become a member of the LLC.



place before a creditor's cause of action accrued.⁷

NIETO is clearly hostile to creditors or those seeking to attack an international trust. In addition to the high burden of proof and the stringent time bars to actions, anyone seeking to set aside or otherwise attack a disposition to an international trust must post a bond with the Ministry of Finance in the sum of US\$100,000⁸ before initiating action to secure any costs that may become payable by the creditor in the event that the claim fails. This statutory hurdle, before an action can be initiated is presumably in addition to any application for security for costs that can be made under the applicable court rules in Nevis where

⁷ Sections 24 and 44 of NIETO.

⁸ Section 55 of NIETO. This bond was to US\$100,000 by a statutory amendment to NIETO in 2009. NIETO continues to be a work in progress for our parliament who continuously seeks out ways in which it could improve upon the current position catering to the changing times.

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estimates for costs are likely to be higher than US\$100,000.⁹

Last, but not least is the attractive Nevis Multi-form Foundation formed pursuant to the Nevis Multifom Foundations Ordinance¹⁰, as amended (NMFO). A foundation formed pursuant to the NMFO is diversified from the other structures and is not referred to as 'multiform' without

⁹ There is some discussion that the bond should either be US\$100,000 or at least 50 per cent of the value of the action to be brought before the courts.

¹⁰ Cap 7:08N.

good reason! It can assume the character of a general foundation, corporation, trust or even a partnership, notwithstanding its original formation of either one of the above. It is very useful to estate planning, financing, charity and investment holding. In terms of choice of law, the foundation can choose to be governed by a foreign law in some instances and/or by Nevis law in other instances. All of the other features of the other structures discussed herein are applicable to the foundation formed pursuant to the NMFO. ■

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