



Are monetary judgments obtained in another state enforceable against a Nevis international company?

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In Nevis, there are two types of international companies: **International Business Companies (IBCs) which are incorporated under the Nevis Business Corporation Ordinance 1984, and Limited Liability Companies (LLCs) which are incorporated under the Nevis Limited Liability Ordinance 1995.**

A Nevis International Company is a legal entity with separate rights and liabilities, distinct from its managers or members. Therefore, the LLC or IBC is liable for its own debts, obligations and liabilities. It may be used for any legitimate business venture or professional practice including international financing arrangements for US or non-US operations, real estate holdings, manufacturing concerns and as an operational or investment vehicle for offshore trusts.

By virtue of its legal standing and the purposes for which they may be used, business affiliates or creditors sometimes attempt to obtain a monetary judgment against the LLC/IBC and/or its beneficial owner. More often than not, such judgments are obtained outside of Nevis which brings the topic at hand into play.

Having obtained such a judgment and in circumstances where the creditor has not or is unable to satisfy/settle, such judgment creditor then turns its attention to the entity's place of incorporation (Nevis) to see whether they are able to enforce the judgment. As such, the creditor takes steps to ascertain whether the company has any assets that the judgment can be enforced against and whether the foreign judgment can be enforced in Nevis. For the purposes of this article, we will address generally if and how asset information for a Nevis international company may be obtained and whether foreign judgments are enforceable in Nevis.

Asset information

Bearing in mind the nature of a Nevis International Company it is rather challenging to obtain any information as regards the assets of an IBC/LLC. As such, the quest for this information typically commences with a search being conducted at the Nevis Offshore Company's Registry. However, the results of such searches are limited and not usually helpful as they do not provide any information relating to the company's assets and/or its beneficial owners. Therefore, the assistance of the St Christopher (Kitts) and Nevis Supreme Court, Nevis Circuit would have to be engaged by virtue of obtaining an order of the court pertaining to the disclosure of the assets of the company. Even when this procedure is utilised there are a number of requirements to be fulfilled prior to the Court making such an order.

Enforcement of the foreign monetary judgment

Where a party/judgment creditor seeks to enforce a foreign judgment against a Nevis IBC/LLC, it is important to determine whether such a judgment can be registered and enforced in Nevis by virtue of the Reciprocal Enforcement of Judgments Act, Cap 5.14 of the Revised Laws of St Kitts & Nevis (the Act). This Act makes provision for the reciprocal enforcement of judgments obtained outside of St Kitts and Nevis. In so doing, only those countries that have signed reciprocal enforcement of judgments orders with St Kitts and Nevis would fall under this legislation to register judgments in the federation which would have been obtained in that other country. Countries such as the UK and South Wales for instance falls within the provisions of the Act. As it stands, only judgments from countries which fall within the meaning of the Act can be enforced. Accordingly, Section 2 of the Act - 'the interpretation section' provides that: judgment means any

judgment or order given or made by a Court in any civil proceedings, whether before or after the passing of this Act whereby any sum of money is made payable and includes an award in proceedings on an arbitration of the award has in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place. It is therefore, clear that judgments are limited to monetary sums.

Part 72 of the Civil Procedure Rules outlines the procedure to be adapted when applying to register judgments which falls within the provisions of the Act. The procedure entails an application which must be made (with or without notice) in the High Court thereby exhibiting a duly authenticated copy of the judgment. The application should also specify interest where applicable; the name, trade or business of the judgment debtor and the usual or last known place of abode of the judgment creditor or debtor etc. Additionally, the Court may (and usually) makes an order requiring the judgment creditor to give security for the costs of the application for registration and of any proceedings which may be brought to set aside the registration of such a judgment/order. Provided the Court is satisfied with the application, an order is made thereby registering the judgment. Following this a notice of registration of such judgment

must be served on the judgment creditor personally and/or as directed by the said Court.

In cases where the monetary judgment obtained against a Nevis Company was granted in the courts of a State which does not fall within the provisions of the Act such as the United States of America that order or judgment cannot be automatically registered in the Nevis court: The United States of America for instance is not recognised under the Act, as one of those countries which would allow for an application for registration of the judgment. Therefore, a civil action would have to be commenced with the judgment being treated as a cause of action in itself so that no retrial of the issues would be necessary. In which case, it will be necessary that in respect of the foreign judgment:

- (a) the foreign court issuing the judgment had jurisdiction in the matter and the judgment debtor either submitted to such jurisdiction or was resident or carrying on business within such jurisdiction and was duly served with process;
- (b) the judgment given by the foreign court was not in respect of penalties, taxes, fines or similar fiscal or revenue obligations of the company;
- (c) in obtaining judgment there was no fraud on the part of the person in whose favour judgment was given, or on the part of the foreign court;

- (d) recognition or enforcement of the judgment in Nevis would not be contrary to public policy;
- (e) the proceedings pursuant to which judgment was obtained were not contrary to natural justice; and
- (f) the judgment given by the foreign court is not the subject of an appeal.


Conclusion

Evidently, it is not a walk in the park for judgment creditors to enforce monetary judgments against Nevis international companies. The judgment creditor is faced with the possibility that: such a judgment cannot automatically be registered under the Act and if this is the case a brand new claim would have to be initiated in Nevis; the legal costs incurred are quite substantial in addition to being faced with having to pay security for costs based on the sums being claimed; the time it takes can be lengthy; and having obtained an order from the Court there is no guarantee that such an order/judgment can be enforced/settled in circumstances where the assets of the company are not held in Nevis.





Nevis entertains amendments to its Business Corporations, LLC and Insurance Ordinances November 2012, Issue 231

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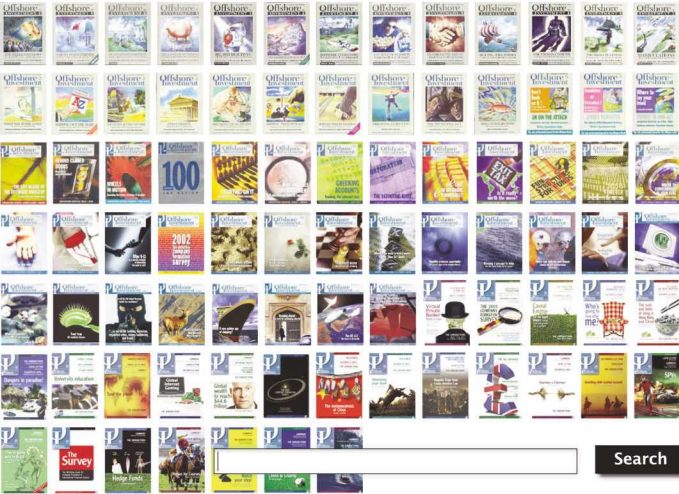


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