Governance Laws of Nevis Companies

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Nevis

The Caribbean island of Nevis is located approximately 225 miles southeast of Puerto Rico and two miles south of its sister island of Saint Kitts. The island is part of the Federation of Saint Kitts-Nevis (the **Federation**), a two-island nation which received its independence from Britain in 1983.

While the Federal government retains the right to determine foreign policy for the Federation, Nevis has its own legislative and executive branches of government. Under the Federation's Constitution, Nevis is entitled to legislate on certain specified matters and has enacted its own commercial, trust and corporate laws. Since independence, Nevis' legislature, known as the Nevis Island Assembly, (the **NIA**) has enacted several laws to stimulate the development of business in the offshore financial services sector.

The entity which is responsible for enforcing rules relative to Nevis' offshore financial services sector is the Financial Services Commission (the **FSC**). Any new law or amendments to existing laws are drafted under consultation of the FSC, passed by the NIA and signed into law by the Deputy Governor-General of Nevis. There are no shareholder activist groups in Nevis; however, before enacting new legislation, the FSC consults with local service providers.

International business companies may be established and registered in Nevis under the Nevis Business Corporation Ordinance 1984 (as amended) (**NBCO**) and the Nevis Limited Liability Company Ordinance 1995 (as amended) (**NLLCO**). Nevis is the home to over 50,000 Nevis Business Companies (**NBCs**) incorporated under the NBCO and over 10,000 Nevis Limited Liability Companies (**NLLCs**) formed under NLLCO. Domestic companies may be established under the Nevis Companies Ordinance 1999, as amended.

The governing document for a NBC is the Articles of Incorporation and By-Laws. The Articles of Incorporation must be filed with the Registrar, while the By-Laws may be kept confidential. A NLLC is ruled by its Articles of Organisation and may have an optional document known as an Operating Agreement. Both of these corporate entities are tax-exempt on income earned outside of the island and are forbidden from "doing business" in the Federation, outside of certain limited exemptions. Local corporations may transact business in Nevis, but must pay local taxes.

Nevis Business Corporations (NBCs)

Corporate governance rules and practices

The laws which regulate corporate governance in NBCs are contained in Part VI, Secs. 44 to 59 of the NBCO. Part VI provides that the business and affairs of every corporation shall be managed by a board of directors. The NBCO refers to the owners of NBCs as shareholders. The board of directors shall not be less than three, unless the number of shareholders is less than three. Directors may be natural persons or corporations and need not be residents of Nevis.

The rights and equitable treatment of shareholders

The NBCO provides shareholders with powers to appoint or remove directors or require the board to pursue a particular course of action. Under Secs. 47 and 60 of the NBCO, directors may be elected at annual

meetings of shareholders and shall hold their office until the expiration of their term or until their successors are appointed. Sec. 67 provides that the directors shall be elected by a plurality of the votes cast at a shareholders' meeting. As stated in Sec. 50, any or all of the directors may be removed for cause by the shareholders and without cause if the Articles of Incorporation or By-Laws so provide.

Although the directors are empowered with regard to the management of an NBC, certain decisions are required to be reserved to the shareholders. Under NBCO Sec. 83, an amendment of the Articles of Incorporation may be authorised by vote of the holders of a majority of all outstanding shares entitled to vote thereon, at a meeting of shareholders or by written consent of all shareholders entitled to vote. Sec. 90 states that, after approval of such action has been granted by the board, any plan of merger or consolidation shall be authorised at a meeting of shareholders by vote of the holders of a majority of outstanding shares entitled to vote thereon. Under NBCO Sec. 94, any sale, lease, exchange or other disposition of all or substantially all the assets of a corporation, if not made in the regular course of the business, shall be authorised by the board of directors after approval has been received from the shareholders. Under Sec. 97, an NBC may be dissolved if, at a meeting of shareholders, the holders of two-thirds of all outstanding shares entitled to vote on a proposal to dissolve approve such action.

Issuance of shares and voting rights

There are no restrictions on NBCs regarding the issuance of shares with disproportionate voting rights or limitations on the exercise of voting rights. Under NBCO Sec. 71, however, any shareholder, under an agreement in writing, may transfer his shares to a voting trustee for the purpose of conferring the right to vote thereon for a period not exceeding ten years upon the terms and conditions stated therein.

Any requirements for shareholders to participate in general meetings or to vote are generally set by the entity's governing documents. Sec. 60(2) of the NBCO states that an annual meeting of shareholders shall be held for the election of directors on a date and at a time designated by, or in the manner provided in the By-Laws. Any other proper business may be transacted at the annual meeting. However, under Sec. 64, for the purpose of determining the shareholders entitled to notice of a meeting or to vote at any shareholders' meeting or any adjournment thereof, the By-Laws may provide for fixing, or in the absence of such provision, the board may fix, in advance a date as the record date for any such determination of shareholders. Such date shall not be more than 60, or less than 15 days before the date of such meeting, nor more than 60 days prior to any other action.

Duties and responsibilities of shareholders

Controlling shareholders of NBCs do not owe any duties to the company, but they do owe duties to non-controlling shareholders. Under Secs. 87 and 95 of the NBCO, any shareholder of an NBC shall have the right to dissent from a merger, consolidation, amendment of the Articles of Incorporation and dissolution of the company, and receive payment of the fair value of their shares.

The shareholders of NBCs cannot be held responsible for the acts or omissions of the company. Under Sec. 16 of the NBCO, unless otherwise provided by law, the shareholders of an NBC shall not be liable for corporate debts and obligations.

Corporate control and transfer of shares

There are no statutory restrictions in the NBCO on the use of anti-takeover devices, however, the directors have the duty to act in the best interest of their company at all times. Under the NBCO, there are no restrictions on the transfer of fully paid shares; however, Nevis allows NBCs to issue bearer shares, which must be held by an authorised custodian in Nevis. Any insurance company created under the Nevis International Insurance Ordinance 2004, must be an NBC; all shares issued by the insurer to its shareholders have to be registered shares.

The responsibilities of the board

The predominant board structure for NBCs can be best described as one-tier, with the responsibility of each director or manager being equal to that of other directors or managers. Sec. 58 of the NBCO states that every NBC shall have a president and treasurer or managing director and a secretary. Under NBCO Sec. 46(1), 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.

Under the common law principles of agency, the board of directors represents the company, owes legal duties to the shareholders, has the responsibility to manage the company and may undertake such acts or enter into such agreements as necessary to achieve the objects of the corporation. These principles are also applicable to NBCs.

Delegation of board duties and standards of care

While the board has a duty to manage an NBC, it can delegate some of its responsibility. Under NBCO Sec. 53(1), if the Articles of Incorporation or the By-Laws so provide, the board may designate from among its members a committee, which shall have and may exercise all the authority of the board of directors. If the directors fail in these duties, an enforcement action may be brought by those to whom duties are owed. Under NBCO Sec. 50(1), any or all of the directors may be removed for cause by vote of the shareholders.

The duties of the board of NBCs must be executed with a certain standard of care. Under Sec. 57 of the NBCO, directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

Meetings

Under Sec. 29 of the NBCO, within a reasonable time after the filing of the Articles of Incorporation, an organisational meeting shall be held. The purpose of this meeting is to elect directors, adopt By-Laws, transact business or do such acts that are necessary to organise the company. Under Sec. 60, an NBC is required to hold an annual meeting for the election of directors and any other corporation business may be transacted at that meeting. However, the failure to hold either the initial or annual meetings shall not cause the dissolution of the corporation. Under NBCO Sec. 63, any action which is required to be taken, or may be taken at a shareholders' meeting, may be taken without a meeting if consent in writing is given by all the shareholders entitled to vote with respect to the subject matter thereof.

Disclosure and transparency

While transactions between the company and any director may be frowned upon, they are not prohibited by the NBCO. Under Sec. 54(1), no transaction between an NBC and one of its directors, or between an NBC and any other entity in which one or more of its directors are officers who have a substantial financial interest, shall be either void or voidable for this reason alone. The transaction shall be permitted if the directors disclose their interest in good faith and their vote is not utilised to approve the transaction. Sec. 55 of the NBCO further states that a loan shall not be made by a corporation to any director unless it is authorised by vote of the shareholders.

The NBCO allows for the protection of directors by allowing them to obtain liability insurance and permitting the company to pay the premiums. Under NBCO Sec. 56(5), an NBC shall have the power to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation. There are no statutory duties owed by an employee to an NBC. Under NBCO Sec. 16, unless otherwise provided by law, employees shall not be liable for corporate debts and obligations. The Articles of Incorporation and By-Laws of an NBC are available for viewing or inspection by the public, upon the payment of a search fee at the Registry. While the Articles of Incorporation must be filed, the By-Laws may be kept confidential. No public filings, annual reports or information regarding beneficial ownership is required of NBCs.

Nevis Limited Liability Companies (NLLCs)

Corporate governance rules and practices

The law which regulates corporate governance for NLLCs is contained in Part VIII, Secs. 44 to 48 of the NLLCO. The Ordinance refers to the owners of NLLCs as members and these sections address their rights and responsibilities and also address the duties of the managers.

The rights and equitable treatment of members

Under NLLCO Sec. 44, the management of the business and affairs of a NLLC shall be vested in all of its members exclusively in their capacity as members. However, an Operating Agreement may fully or partially vest management authority in managers, who need not be members. To the extent that management duties are not vested in managers, members shall retain the power to manage the business and affairs of the NLLC.

Issuance of members' interests and voting rights

There are no restrictions on NLLCs regarding the issuance of membership interests with disproportionate voting rights or limitations on the exercise of voting rights. Pursuant to NLLCO Sec. 39, members' interests in an NLLC may be: of one or more classes or one or more series within any class thereof; with voting powers, full or limited, or without voting powers; and with such designations, preferences, rights, qualifications, limitations or restrictions thereon as shall be stated in the Operating Agreement.

Under Sec. 9 of the NLLCO, any notice required to be given to members shall be provided in a manner designated by the NLLC's Operating Agreement. If the Operating Agreement is silent, then such notice shall be published in Nevis or any place where the NLLC does business. Any notice requiring a member to take action in order to secure a right or privilege shall be published or given in time to allow a reasonable opportunity for such action to be taken.

Duties and responsibilities of members

The members of an NLLC are the entity's managers unless otherwise provided for in the Operating Agreement. Therefore, if the members are also the managers, all members, both controlling and non-controlling owe duties to the NLLC. Controlling members of an NLLC do not owe duties to non-controlling members; however, under Secs. 51 and 61, unanimous consent by all of the members entitled to vote on such action is required for dissolution, merger or consolidation of an NLLC. Under Sec. 19 of the NLLCO, the NLLC shall be solely liable for its debts, unless liability has been assumed by a member.

Corporate control and transfer of interests

There are no statutory restrictions in the NLLCO on the use of anti-takeover devices, however, the management of an NLLC have the duty to act in the best interest of their entity at all times.

A member's interest in an NLLC is assignable in whole or in part, although unless provided for otherwise by the Operating Agreement, there are certain restrictions on the transfer of interest. Under Sec. 42(2), an assignment entitles the assignee to receive, only those distributions and such share of profits, losses, income, gain, deductions and credits to which the assignor would be entitled. An assignor is not released from his liability to make capital contributions to the NLLC, until such time as the assignee satisfies such requirement. An assignment does not entitle the assignee to vote on matters which the members may vote, participate in the management of the NLLC

Managerial responsibilities

The predominant managerial structure for NLLCs is one of shared duties, with the responsibility of each manager being 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. Under Sec. 44(3) of the NLLCO, managers shall have the power to manage the business and affairs of the NLLC to the extent so vested, exclusive of the members who are not managers. There is no minimum or set number of managers' meeting required by the NLLCO.

Delegation of membership duties and standards of care

Under NLLCO Sec. 44, the management of an NLLC is vested in its members, but the Operating Agreement may delegate such duties to managers, who need not be members. There is no provision for managers to further delegate their responsibilities. Under common law principles, the managers of an NLLC, either members or non-members, would owe duties to the members and could be removed for their failure to fulfil these duties.

The duties of the managers of NLLCOs must be executed with a standard of care. NLLCO Sec. 48, states that managers are required to discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances and in like positions.

Disclosure and transparency

Under NLLCO Sec. 49, no contract, loan or other transaction between an NLLC and its managers, or between an NLLC and any other person in which one or more of its managers are members or have a

substantial financial interest, shall be either void or voidable for this reason alone if the material facts are disclosed in good faith or known to the NLLC and is approved by a vote sufficient for such purpose.

Under NLLCO Sec. 50(4) an NLLC shall have power to purchase and maintain insurance on behalf of any person who is or was a member or manager of the limited liability company. There are no statutory duties owed by an employee to an NLLC. Under NLLC Sec. 19, no employee shall be liable for any NLLC's liability, unless liability for an NLLC's debts, obligations or liabilities has been assumed. The Articles of Organisation of an NLLC is available for viewing or inspection by the public. The Operating Agreement could also be viewed by members of the public, if such document has been filed. No public filings, annual reports or information regarding beneficial ownership is required of NLLCs.

Conclusion

In choosing a domicile for a corporate entity, one should ensure that the law of the jurisdiction can protect the financial interests of its owners and allows management the flexibility to develop the business. After reviewing the legislation, it is obvious that Nevis is such a place. With the NBCO and NLLCO, the island allows the establishment of two distinct structures, which can fulfil the tax, commercial and estate planning needs of any use. A company incorporated or formed under the laws of Nevis can be used to hold real property or assets, act as the holding company of another entity or as a trading company to minimise taxes.

Management of an NBC is granted to the directors, but shareholders may remove or appoint directors or require the board to pursue a certain course of action. NBCs allow their shareholders a certain degree of anonymity, since they are allowed to issue bearer shares. The NBCO also protects all persons involved with the entity since the only information that NBCs are required to file and disclose to the Registrar is its name, Registered Agent and Articles of Incorporation. No public filings, annual reports or details regarding the beneficial owners need be provided.

While the management of an NLLC is vested in its members, the NLLCO allows an Operating Agreement to bestow managerial authority in managers who need not be members. The legislation also provides some level of privacy, since only the Articles of Organisation is available for public inspection. No public filings, annual reports or beneficial owner information need be supplied to the Registrar.

Nevis may be a relatively new offshore business destination, but it has quickly become a premier jurisdiction. The island's regulatory environment offers a relative level of freedom to the owners of an entity, whilst maintaining a level of government involvement that guarantees that its licensed entities are utilised for lawful purposes. Whether one seeks to incorporate a corporation or form a limited liability company, the law of Nevis ensures its owners, security, safety and stability.

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