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I assent,

EUSTACE JOHN C.M.G.

Deputy Governor-General.

29th May, 2015.

ISLAND OF NEVIS

No. 1 of 2015

An Ordinance to amend the the Nevis Limited Liability Company Ordinance Cap. 7.04 of the Revised Laws of the Federation of St. Christopher and Nevis to modernize and update the Ordinance and for matters incidental thereto or connected therewith.

[Published 25th June 2015, Official Gazette No. 31 of 2015.]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Nevis Island Assembly and by the authority of the same, as follows:

1. Short Title and Commencement.

This Ordinance may be cited as the **NEVIS LIMITED LIABILITY COMPANY (AMENDMENT) ORDINANCE, 2015** and shall be read and construed as one with the Nevis Limited Liability Company Ordinance, Cap 7.04 hereinafter referred to as the Principal Ordinance and shall come into force on the 1st day of July, 2015.

2. Amendment of Table of Contents.

The Table of Contents of the Principal Ordinance is hereby amended as follows:

- (a) by deleting the sentence “5. Certificates or certified copies as evidence” and replacing it with “5. Inspection of Records.”
- (b) by adding the sentence “43A. Avoidance of Fraud” immediately after the sentence “43. Rights of judgment creditor”;

3. Amendment of Section 2.

- (a) Section 2 of the Principal Ordinance is hereby amended by adding a new subsection “Attorney-at-Law” immediately after the subsection “Articles of Organization” as follows:

“Attorney-at-Law” means a person whose name has been entered on the Roll of Attorneys at law pursuant to the Legal Professions Act 2008, as amended.”

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- (b) Section 2 of the Principal Ordinance is hereby amended by adding a new definition “authenticated translation” immediately after the definition “Attorney-at-Law” as follows:

“Authenticated translation” means a translation done by either a professional translator who is officially accredited to a court of law, a government agency, an international organization, or similar official institution or if done in a country where there are no official accredited translators a translation done by a company whose role or business is doing professional translations;

- (c) Section 2 of the Principal Ordinance is hereby amended by adding a new definition “Dollar” immediately after the definition of Distribution as follows:

“Dollar” means the Eastern Caribbean Dollar unless expressly stated to be otherwise in this Ordinance

- (d) Section 2 of the Principal Ordinance is hereby amended by adding a new subsection “Endorsement” immediately after the new subsection “Dollar” as follows:

“Endorsement” means the seal, stamp or handwritten signature of the Registrar of Companies or any other method now known or hereinafter invented or adopted which may be used to indicate the approval of an instrument by the Registrar of Companies.”

- (e) Section 2 of the Principal Ordinance is hereby amended in subsection “High Court” by substituting the words “St. Kitts” with the words “St. Christopher” occurring therein.

- (f) Section 2 of the Principal Ordinance is hereby amended by adding a new subsection “in writing” immediately after the subsection “High Court” as follows:

“In writing” means any form of communication now known or hereinafter invented or adopted, including but not limited to, mechanical electronic or digital which is used to preserve or record information unaltered for future reference”

4. Amendment of Section 3.

Section 3 of the Principal Ordinance is amended by deleting the words “Companies Act. (Cap. 355) and replacing it with the words “Companies Ordinance, Cap. 7.06”.

5. Amendments of Section 4.

- (a) Section 4 of the Principal Ordinance is hereby amended in subsection (1) by adding the words, *“be filed by the limited liability company’s Registered Agent and”* immediately after the words *“such instrument shall”* occurring therein.
- (b) Section 4 of the Principal Ordinance is amended in subsection 2 as follows:

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- (a) by replacing the word “corporate” with the word “company”
- (b) by adding the words “subject to Section 28A” at the end thereof.
- (c) Section 4 of the Principal Ordinance is hereby amended in subsection 3 as follows:
 - (a) by adding the words “the Registered Agent” immediately after the words “on behalf of the company,” occurring therein;
 - (b) by adding the word “written” after the words “duly delegated such” occurring therein; and
 - (c) by adding the new sentence immediately after the end of the current subsection which reads as follows;

“Any instrument which is signed by the Registered Agent in lieu of the manager shall be certified by the Registered Agent to have been signed pursuant to written authority of the manager. Such certification by the Registered Agent shall be in the form of a sworn or affirmed affidavit and must be filed with the Registrar of Companies.”

- (d) Section 4 of the Principal Ordinance is amended in subsection (4) by adding “St. Christopher and” immediately before the word “Nevis” occurring therein.
- (e) Section 4 of the Principal Ordinance is amended in subsection (5) by adding “St. Christopher and” immediately before the word “Nevis” occurring therein.
- (f) Section 4 of the Principal Ordinance is amended in subsection 5(c) by deleting the existing section and replacing it with the following:

“(c) where the acknowledgment shall be taken by a notary public or any other person authorized to take acknowledgments, except a government official of St. Christopher and Nevis or foreign consular official, the signature of such person who has authority shall be attested to by:

- (i) *a consul or vice consul of the Federation of St. Christopher and Nevis or in his absence;*
- (ii) *a consular official of the government having diplomatic relation with St. Christopher and Nevis; or*
- (iii) *a government official of the place of execution who is authorized to make such attestation, or an Apostille according to the Convention de la Haye 4 October 1961*
- (g) Section 4 of the Principal Ordinance is amended in subsection (6)(a) by adding the words “by the registered agent” immediately after the words “shall be delivered” occurring therein.

6. Amendment to Section 5.

Section 5 of the Principal Ordinance is amended as follows:

By deleting the heading “Inspection of Register” and replacing it with “Inspection of Records”.

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7. Amendment of Section 7.

Section 7 of the Principal Ordinance is hereby amended by adding a new sentence immediately after the end of the current section which reads as follows:

“Such annual fee shall be paid on behalf of the limited liability company by its Registered Agent.”

8. Amendment of Section 14.

- (a) Section 14 of the Principal Ordinance is hereby amended in subsection (1) by deleting the existing subsection (1) and replacing it with the following:

“A limited liability company shall at all times have a registered agent duly licensed in Nevis. A limited liability company which fails to maintain a duly licensed registered agent in Nevis shall be in contravention of this Ordinance”

- (b) Section 14 of the Principal Ordinance is hereby amended in subsection (3) by adding the word “registered” immediately after the words “charges owing to the former” occurring therein.
- (c) Section 14 of the Principal Ordinance is amended in subsection (7) by deleting the existing subsection and replacing it with the following:

“An

(a) Attorney-at-Law admitted to practice in St. Christopher and Nevis and duly licensed in Nevis to carry out the business of Registered Agent, or

(b) A Nevis corporation having a paid-in capital of at least \$500,000.00 and duly licensed in Nevis to carry out the business of Registered Agent,

may act as a Registered Agent.

- (d) Section 14 of the Principal Ordinance is amended in subsection (8) by substituting the words “barrister or solicitor” with the words “attorney-at-law” each instance in which it occurs.

9. Amendment to section 23.

Section 23 of the Principal Ordinance is amended in subsection (1)(a) by deleting the word “contain” and replacing it with the words “end with”.

10. Amendments of Section 25.

- (a) Section 25 of the Principal Ordinance is hereby amended in subsection (1) as follows:
- (a) by substituting the words, “person or agent thereof” with the words “Registered Agent” occurring therein; and
- (b) by deleting the last sentence.

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- (b) Section 25 of the Principal Ordinance is hereby amended in subsection (2) as follows:
 - (a) by deleting subsections (b), (c) and (d); and
 - (b) by adding a new subsection (b) as follows:

“the name of the registered agent in which the Certificate of Name Reservation is to be issued.”
- (c) Section 25 is amended in subsection 3(a) by deleting the word “therefor” and replacing it with the word “thereof”.
- (d) Section 25 of the Principal Ordinance is hereby amended in subsection (4) by substituting the word “person” with the words “Registered Agent” occurring therein.
- (e) Section 25 of the Principal Ordinance is hereby amended in subsection (5) by substituting the words, “person, natural or corporate”, with the words “Registered Agent”.

11. Amendment of Principal Ordinance.

The Principal Ordinance is hereby amended in section 28 by adding after existing section 28 a new section 28A as follows:

“28A. When a company has been organized under this Ordinance, the Registrar of Companies shall issue a certificate of formation under his endorsement certifying that the company is duly formed and has filed articles of organization. The name of the company on the certificate of organization may be represented in any script. The certificate of formation must include an exact English translation of the name as it is registered. If the name is not written in English letters or characters, the name on the certificate of formation must also include a precise transliteration in English characters reflecting the sound of the non-English name, under which the company’s records will be filed.”

12. Amendment to Section 33.

- (a) Section 33 of the Principal Ordinance is amended in subsection (1) by deleting the word “a” which appears before the word “writing” in the second line.
- (b) Section 33 of the Principal Ordinance is amended in subsection (6) by deleting the word “that” and replacing it with the word “the” in the second sentence prior to “non-defaulting members...”

13. Amendment of Section 37.

Section 37 of the Principal Ordinance is hereby amended by adding new subsection (4) at the end thereof as follows:

“(4) A limited liability company may be operated pursuant to this Ordinance by at least one member and all interests in the limited liability company may be held by a single member.”

14. Amendment of Section 39.

Section 39 of the Principal Ordinance is amended in subsection 1(a) by substituting the words “within any class thereof” with the words “and any combination thereof;”

15. Amendment of Section 43.

Section 43 of the Principal Ordinance is hereby amended by deleting existing section 43 and substituting the new section 43 as follows:

“(1) On application to a court of competent jurisdiction by any judgment creditor (including a bankruptcy trustee) of a member of a limited liability company the court may make an order to charge the member’s interest with payment of the unsatisfied amount of the judgment with interest.

(a) A charging order shall entitle the judgment creditor to receive any distributions, in relation to that member’s interest, in lieu of the member, whether of income or capital, but only as and when made by the limited liability company.

(b) For the purposes of assessing the sum which may be subject to, and recoverable pursuant to a charging order the court shall disregard and exclude any amount which constitutes a fine, penalty, or award of exemplary or punitive damages (by whatever name), or is an amount of multiplied damages assessed as compensation for loss or damage.

(2) Unless otherwise provided in the operating agreement, the member’s interest charged may, but need not, be redeemed at any time:

*(a) with separate property of any member, to any one or more of the members;
or*

(b) with respect to property of the limited liability company, to any one or more of the members whose interests are not charged, on the consent of the members whose interests are not charged, if all members are responsible for management duties pursuant to section 44(1), or on the consent of the managers whose interests are not charged, if managers are responsible for management duties pursuant to section 44(2).

(3) Notwithstanding any other law, the remedies provided by subsection (1) shall be the sole remedies available to any creditor of a member’s interest whether the limited liability company has a single member or multiple members.

(a) No other remedy of any type, legal or equitable, including, but not limited to, foreclosure, seizure, levy or attachment on the member’s interest or rights or a court order for directions or an accounting, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor’s interest in the limited liability company.

(b) No judgment obtained in a foreign jurisdiction against a member’s interest shall be enforced by the Court to the extent the judgment purports

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to charge, mortgage, levy, attach, assign or in any other way to affect that member's interests.

(4) This Ordinance does not deprive any member of the benefit of any exemption laws applicable to his interest in the limited liability company.

(5) No judgment creditor of a member or a member's assignee has any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company.

(6) A charging order shall not be construed to constitute a lien on a member's interest in a limited liability company.

(7) The creditor in whose favor a charging order is issued pursuant to this section shall not:

(a) thereby become an assignee of any member's interest or any part thereof;

(b) thereby hold or be entitled to exercise any member rights in relation to that interest;

(c) interfere in the manager's management of the limited liability company including decisions to sell assets, loan assets, acquire capital assets, make distributions (including disproportionate and non pro rata distributions), or take in more members;

(d) liquidate or seize the assets of the limited liability company;

(e) restrict the business of the limited liability company;

(f) dissolve, or cause the dissolution of, the limited liability company.

(8) No court order in any jurisdiction that purports to provide the redress or remedy set forth in subsection (7) shall be enforceable or enforced.

(9) Any member holding any member's interest subject to a charging order shall continue to exercise all his membership rights and obligations in relation to those rights in all respects as if the charging order had not been issued.

(10) No interlocutory or preliminary order, including any injunction or restraining order, against a limited liability company in relation to a claim by a creditor against a member shall be issued by the High Court or recognized if issued by a foreign court.

(11) A charging order shall be non-renewable and shall expire three years after the date the order is entered.

(12) Any member may apply for the discharge of a charging order and the Court:

(a) shall discharge the charging order where it is satisfied the Creditor has been paid all sums payable under the charging order; and

(b) may discharge the charging order where it is satisfied the circumstances giving rise to the charging order have changed such that it is just and proper to discharge the charging order.

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(13) Nothing in this section shall affect the limited liability company's ability to make calls upon its members where its operating agreement so provides and for the limited liability company to meet that call from a distribution otherwise payable to a member. Such distribution shall not be subject to the charging order to the extent retained by the limited liability company to satisfy the call."

16. Amendment of Principal Ordinance.

The Principal Ordinance is hereby amended by adding after existing section 43 a new section 43A as follows:

"43A. Avoidance of fraud.

(1) Where it is proven beyond reasonable doubt by a creditor of a member that a limited liability company is established or property is disposed into a limited liability company -

(a) by or on behalf of such member with the principal intent to defraud such creditor; and

(b) at the time of such establishment or disposition, such establishment or disposition rendered such member insolvent or without property by which that creditor's claim (if successful) could have been satisfied, then such establishment or disposition shall not be void or voidable and the limited liability company shall be liable solely to satisfy such creditor's claim and such liability shall only be to the extent of the interest that such member had in the property prior to such establishment or disposition.

(2) In determining whether the establishment or disposition has rendered such member insolvent or without property by which a creditor's claim (if successful) may be satisfied, regard shall be had to the fair market value of the member's property (excluding property of the limited liability company but including the fair market value of member's interest in the limited liability company) at the time immediately after the establishment or disposition referred to in sub-section 43A(1). In the event that the fair market value of such member's property exceeded the value of the creditor's claim, at the time immediately after establishment or disposition, then the limited liability company so established or the disposition thereto shall for the purposes of this Ordinance be deemed not to have been so established or the property disposed of with intent to defraud the creditor.

(3) A limited liability company established and a disposition to such limited liability company shall not be fraudulent as against a creditor of a member -

(a) if established or the disposition takes place after the expiration of 2 years from the date of that creditor's cause of action accruing; or

(b) where established or the disposition takes place before the expiration of 2 years from the date that the creditor's cause of action accrued, but such creditor fails to commence such action before the expiration of 1 year from the date such establishment or disposition took place.

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(4) A limited liability company established and a disposition of property to such limited liability company shall not be fraudulent as against a creditor of a member if the establishment or disposition of property took place before such creditor's cause of action against the member accrued or had arisen.

(5) A member shall not have imputed to him an intent to defraud a creditor, solely by reason that the member -

(a) has established a limited liability company or has disposed of property to such limited liability company within two years from the date of that creditor's cause of action accruing; or

(b) has retained, possesses or acquires any of the powers or benefits of a member or as a manager.

(6) Where a limited liability company is liable to satisfy a creditor's claim in the manner provided for in sub-section 43A(1) that creditor's rights to recovery shall be strictly limited to the property referred to in subsection 43A(1), or to the proceeds from the disposition of that property, to the exclusion of any claim, right or action against any member or manager of the limited liability company or any other property of the limited liability company.

(a) If the limited liability company is unable to satisfy a creditor's claim in the manner provided for in sub-section 43A(1) by reason of the fact that the property has been disposed of other than in a bona fide sale to a bona fide purchaser for full and adequate value then such disposition shall be void.

(7) For the purpose of this section, the onus of proof of the member's intent to defraud the creditor lies on the creditor.

(8) For the purpose of this section: the date of the cause of action accruing shall be, the date of that act or omission which shall be relied upon to either partly or wholly establish the cause of action, and if there is more than one act or the omission shall be a continuing one, the date of the first act or that date that the omission shall have first occurred, as the case may be, shall be the date that the cause of action shall have accrued.

(a) The term "cause of action" means the earliest cause of action capable of assertion by a creditor against the member or, as the case may be, against the member of property upon a limited liability company, by which that creditor has established (or may establish) an enforceable claim against that initial member;

(b) The entry of judgment in any proceeding shall not constitute a separate cause of action.

(9) (a) The provisions of this section shall apply to all actions and proceeding brought in any court, however described, against any person (whether a party to the proceedings or not) with regard to the establishment of the

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limited liability company or the disposition of property to such limited liability company by a member, or receipt of property by or for such a limited liability company and the remedy conferred by subsection 43A(1) shall be the sole remedy available in such an action or proceeding to the exclusion of any other relief or remedy against any party to the action or proceeding.

(b) No judgment obtained in a foreign jurisdiction in respect of any remedy described in subsection 43A(1) shall be recognized or enforced by the Court.

(10) Failure by a creditor to present all claims arising out of any controversy and join all parties with a material interest shall prevent that creditor from presenting such claims and bringing an action against such parties in a subsequent proceeding.

(11) For the purposes of this section, the term “creditor” means a creditor of a member, including a judgment creditor and an assignee from such creditor of any claim and includes any person who alleges a cause or action against a member.

(12) In the event that the establishment of or disposition to a limited liability company shall become subject to sub-section 43A(1) of this Ordinance, if the Court is satisfied that the limited liability company and any member subject to the remedies described in sub-section 43A(1) has not acted in bad faith, the member and the limited liability company shall have a joint first and paramount charge over limited liability company property at issue of an amount equal to the entire costs properly incurred by each in the defense of the action or proceedings (and not merely such costs as might otherwise be allowed by the Court).

(13) Nothing in this Ordinance shall validate any disposition of property which is neither owned by a member nor the subject of a power in that behalf vested in a member. This Ordinance shall not affect the recognition of any foreign laws in determining whether a member is the owner of such property or the holder of such power referred to in sub-section 43A(1).

(14) This Ordinance shall constitute the exclusive and proper law regarding the remedies described in sub-section 43A(1) or otherwise applicable to the establishment of or disposition to a limited liability company by a member. No limited liability company established in Nevis or governed by this Ordinance and no establishment of or disposition of property to be held by the limited liability company shall be declared void, voidable, liable to be set aside or defective in any fashion, nor is the capacity of any member or manager to be questioned by reason that -

(a) the laws of any foreign jurisdiction prohibit or do not recognize the concept of a limited liability company either in part or in whole; or

(b) establishment of the limited liability company or disposition to or associated with a limited liability company avoids or defeats rights, claims or interests conferred by the law of a foreign jurisdiction upon

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any person or, contravenes any rules, law, judicial or administrative order or action intended to recognize, protect, enforce or give effect to any such rights, claims or interest; or

(c) the laws of St. Christopher and Nevis or the provisions of this Ordinance are inconsistent with any foreign law.

(15) The Court may order all or some of the cost and expenses of and incidental to an application to the Court under this section 43A to be paid in such manner and by such persons as it determines.

(16) Every creditor of a member, before bringing any action or proceeding to collect on a judgment against any member or property thereof, governed by this section shall first deposit with the Permanent Secretary in the Ministry of Finance a bond in the sum of \$100,000.00 from a financial institution in Nevis, for securing the payment of all costs as may become payable by the creditor in the event such person shall be assessed pursuant to sub-section (15).

17. Amendment of Section 44.

(a) Section 44 of the Principal Ordinance is hereby amended by adding a new subsection (5) as follows:

“(5) The management and control of the limited liability company shall vest in the managers and shall be presumed to be in Nevis, if at least one manager is resident or registered in Nevis and meeting of the managers are regularly convened from Nevis, even though no manager may be present in person but only present by any method of instantaneous oral communication, now known or hereinafter invented or adopted.”

(b) Section 44 of the Principal Ordinance is hereby amended by adding a new subsection (6) as follows:

“(6) The management of a limited liability company may be organized in any manner and the managers may be designated by name, as deemed appropriate by the organizers of the company.”

18. Amendment of Section 45.

Section 45 of the Principal Ordinance is hereby amended in subsection 1(a) by substituting the word “50%” with the words “fifty percent” occurring therein.

19. Amendment of Section 53.

(a) Section 53 of the Principal Ordinance is hereby amended by adding a new subsection (2) as follows:

“Where the Registrar has reasonable grounds to believe that a company formed under this Ordinance is engaged in any criminal activity, the Registrar shall forfeit the articles of organization of the company and shall remove the company from the register.”

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(b) Section 53 of the Principal Ordinance is amended as follows:

- (a) Subsection (2) shall be renumbered as subsection (3).
- (b) Subsection (3) shall be renumbered as subsection (4).
- (c) Subsection (4) shall be renumbered as subsection (5).
- (d) Subsection (5) shall be renumbered as subsection (6).
- (e) A new subsection 2 shall be inserted as follows:

- (c) Section 53 of the Principal Ordinance is hereby amended in the new subsection 6(2) by adding the words, “where a limited liability company has been removed from the Register for over three years, the Registrar of Companies” after the words, “Notwithstanding subsection (1)” occurring therein.

20. Amendment of Section 58

- (a) Section 58 of the Principal Ordinance is amended by deleting the words “pursuant to Section 52” and replacing them with the words “pursuant to Section 51”.
- (b) Section 58 of the Principal Ordinance is amended in subsection (2) by deleting sub-paragraph (c) and renumbering sub-paragraph (d) to (c).

21. Amendment to Section 65

Section 65 of the Principal Ordinance is amended in subsection (1) by deleting the phrase “transfer its domicile into Nevis and may perform the acts described in the provision of this Part” that occurs in the third line.

22. Amendment to Section 70

Section 70 of the Principal Ordinance is amended in subsection (2) by deleting the word “re-domiciliating” and replacing it with the word “re-domiciled” in each instance in which it occurs in that section.

23. Amendment of Section 78.

Section 78 of the Principal Ordinance is hereby amended in subsection (2) by substituting the words “by telegram, telex, telecopy or other form of writing” with the words “in writing” occurring therein.

24. Amendment of Section 88.

Section 88 of the Principal Ordinance is hereby amended by substituting the words “hand and seal” with the word “endorsement” occurring therein.

25. Amendments of Section 89.

Section 89 of the Principal Ordinance is hereby amended by deleting the words “under his hand and seal” occurring therein.

HON. FARREL SMITHEM
President

Passed by the Nevis Island Assembly this 27th day of May, 2015.

SHEMICA MALONEY
Clerk of the Nevis Island Assembly