



Other Notable Changes - Part I

Nevis Business Corporation Ordinance 2017 (NBCO 2017)

Nevis Limited Liability Company Ordinance 2017 (NLLCO 2017)



Issue No. 57

August 2017

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We continue with our review of the Nevis Business Corporation Ordinance 2017 (NBCO 2017) and the Nevis Limited Liability Company Ordinance 2017 (NLLCO 2017). The August and September editions of the newsletter will highlight some other notable changes under both Ordinances.

They are intended as a general guide only and must be read in conjunction with the relevant legislation. They should not be used as a substitute for legal advice. Persons are advised to seek independent professional advice as they see fit.

Note: The word "entity(ies)" used herein refers to a company or a corporation established under the NBCO or NLLCO.

FORM OF INSTRUMENTS

The current section 4 has been amended in the NBCO 2017 and NLLCO 2017. Please take note of the following changes:-

- 1) Old Section 4(1) previously only allowed instruments to be filed by the registered agent only. The new Section 4(1) allows instruments to be filed by the registered agent or with the authority of the registered agent.
- 2) Section 4(2) allows the corporate name of an entity to be filed in a language other than the English language. In such case, an authenticated translation of the corporate name should also be filed.
- 3) Section 4(3) allows an instrument to be signed by a director, manager, member or a registered agent of an entity or a person duly authorised by anyone of the above in whom such authority resides.
- 4) Section 4(4) details that an instrument signed by a registered agent on behalf of the entity shall be certified by the registered agent as being signed pursuant to the written authority of the board of directors or managers as the case may be.
- 5) Section 4(5) through to 4(7) introduces a tier system as it relates to the acknowledgement of documents. A distinction is created between the requirements when the documents

are executed and acknowledged in Nevis, in St. Christopher and outside of the Federation of St. Christopher and Nevis. This tier system was introduced to differentiate between what is required in relation to acknowledgment of documents.

Accordingly, Section 4(5) details the procedure to be followed if an instrument is executed in Nevis. Section 4(6) details the procedures which must be followed if an instrument is executed in St. Christopher. Section 4(7) details the procedures which must be followed if an instrument is executed outside of St. Christopher and Nevis.

Save for documents or instruments executed in Nevis, ALL instruments must be executed before a notary or any other person authorised to take acknowledgements.

PROCEDURES FOR CHANGE/RESIGNATION OF REGISTERED AGENTS

All entities are required to maintain a registered agent. This has not changed and continues to be a requirement under the NBCO 2017 and the NLLCO 2017, which shall come into force shortly. Failure to maintain a registered agent as required is a contravention under both the NBCO 2017 (Part III Section 14) and the NLLCO 2017 (Part III Section 12).

However, there has been some changes however in the processes as they relate to the change of registered agent or resignation by a registered agent.

The new ordinances, NBCO 2017 and NLLCO 2017 seek to root the current practices into law and to provide clarity as regards the procedure and obligations of all parties. They are aimed at protecting the interests of the entity and the registered agent as well as the jurisdiction.

RESIGNATION

Resignation can be effected by the registered agent or by the entity.

By Registered Agent

Resignation Only

A registered agent may resign its position at any time but must

first give the entity not less than 30 days' notice. The notice must (i) state that it is a requirement that the entity have a registered agent in Nevis who is duly licensed by the Nevis Island Administration, (ii) direct the entity to the list of authorised registered agents and (iii) notify the entity of all penalties applicable for failure to maintain a registered agent in accordance with the NBCO 2017 or the NLLCO 2017, as the case may be.

A written Notice of Resignation should also be filed with the Registrar of Corporations (RoC) or the Registrar of Companies (RoC), together with any prescribed fees as well as a statement that notice was given to the affected entity. Failure to file the notice with the RoC renders a resignation ineffective.

This statement must advise that such notice was given to the affected entity at least 30 days prior to filing the written Notice of Resignation with the RoC, indicate how the notice was sent, the date sent, and that all fees and charges owing to the said registered agent have been paid in full by the entity. Notice of Resignation to the RoC will be rejected if this information is not included.

An entity on receipt of notice of resignation from its registered agent must begin and complete the process of obtaining a new registered agent within 60 days (30 days' notice period by registered agent and 30 days after the filing of the written Notice of Resignation with the RoC). Failure to obtain a new registered agent within the stipulated time will result in a penalty fee.

Where an entity fails to maintain a registered agent for a period of more than 1 year, the RoC may strike the entity from the Register of Corporations or Register of Companies.

Resignation and appointment of successor Registered Agent

The registered agent may also resign by filing a Notice of Change of Registered Agent whereby the registered agent resigns and appoints a successor agent concurrently.

This is effected under the NBCO 2017 and the NLLCO 2017, by a registered agent filing a Notice of Change of Registered Agent with the RoC. This Notice is to be filed with certain attachments together with the prescribed fee.

In such a Notice, the registered agent will state that it resigns and shall advise of the name and registered address of the successor registered agent. Attached to the notice should be:-

- a) a statement that the entity has ratified and approved such change of registered agent; and
- b) written consent to act by the successor registered agent.

Upon filing a Notice of Change of Registered Agent and provided it satisfies the requirements of the NBCO 2017 or the NLLCO 2017, the successor registered agent shall become the

registered agent of the entity and the successor registered agent's address, as listed in the Notice of Change of Registered Agent shall become the registered office of the entity in Nevis.

A certificate may be requested from the RoC to certify the resignation or change of registered agent of an entity under both Ordinances.

An important new addition to the NBCO 2017 and NLLCO 2017 finds that the filing of any notice under the NBCO 2017 (Sections 15 & 16) and NLLCO 2017 (Sections 13 & 14), shall be deemed to be an amendment to the Articles of Incorporation or the Articles of Organisation of the entity affected, as the case may be. The entity so affected by the change shall not be required to take any further action to amend its Articles of Incorporation or Articles of Organisation.

By the Entity

An entity can resign a registered agent or revoke the designation of registered agent, provided that a successor registered agent is appointed. Filings under this circumstance is to be made by the successor registered agent. The entity is required to give not less than 30 days' written notice to the registered agent of its intention to revoke the designation as registered agent.

Pursuant to Section 16 of the NBCO 2017 or Section 14 of the NLLCO 2017, a resignation under these sections shall not be effective until notice of such resignation and appointment of a successor registered agent, is filed with the RoC by the successor registered agent, together with the prescribed fees and the following attachments: -

- a) a statement that the entity has given written notice of resignation to the affected registered agent at least 30 days prior to filing the notice with the RoC, advising how and when notice was sent; and
- b) a statement by the resigned registered agent that all fees and charges owing to the said registered agent have been paid in full by the entity.

Notice to the RoC will be rejected if the required information is not included or attached, as the case may be.

Similarly as with a filing by a registered agent, the filing of any notice under Section 16 of the NBCO 2017 or Section 14 of the NLLCO 2017 shall be deemed to be an amendment to the Articles of Incorporation or Articles of Organisation of the entity affected. The entity affected by the change shall not be required to take any further action to amend its Articles of Incorporation or Articles of Organisation.

