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No. 2 of 2017.

*Nevis Limited Liability Company
Ordinance, 2017.*

Island of Nevis.



I assent,

SIR S.W. TAPLEY SEATON
G.C.M.G., C.V.O., Q.C., J.P.
Governor-General

2nd August 2017.

ISLAND OF NEVIS

No. 2 of 2017

A **BILL** to repeal and replace the Nevis Limited Liability Company Ordinance, Cap 7.04(N) as amended with the Nevis Limited Liability Company Ordinance 2017 to provide for the formation of limited liability companies in the Island of Nevis and to provide for matters incidental or consequential thereto

[Published 31st August 2017, Official Gazette No. 44 of 2017.]

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:—

PART I—GENERAL PROVISIONS

1. Short Title and commencement.

(1) This Ordinance may be cited as the Nevis Limited Liability Company Ordinance 2017.

(2) This Ordinance shall come into force on a date to be appointed by the Minister by Order published in the *Gazette*.

2. Interpretation.

(1) In this Ordinance, unless the context otherwise requires, the term:

“*acknowledgement*” means the admission, affirmation or declaration as genuine of the affixation of a person’s signature to an instrument;

“*Advisory Committee*” means the Ordinance Advisory Committee established under section 104;

“*articles of organisation*” include

- (a) the original articles of organisation or any other instrument filed or issued under any law to form a domestic or foreign limited liability company, amended, supplemented, corrected or restated by articles of amendment, merger or consolidation, or other instruments of like effect filed or issued under any law; or

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- (b) a special law or charter creating a domestic or foreign limited liability company as amended, supplemented or restated;

attestation” means the act of witnessing an acknowledgment, and the term “*attested*” shall be construed accordingly;

“*attorney-at-law*” means a person whose name has been entered on the roll of attorneys at law pursuant to the Legal Profession Act, 2008, as amended;

“*authenticated translation*” means a translation into the English language of an instrument which was drafted in a language other than the English language or a language which does not use Latin alphabet characters and was prepared by a professional translator who is accredited by a court of law, a government agency or a recognised international organisation;

“*capital contribution*” means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a person contributes to a limited liability company in his capacity as a member;

“*certificate of departure*” means the instrument as filed by a limited liability company with the Registrar of Companies to make application for a transfer of domicile to a foreign jurisdiction and shall include any application filed in like manner, howsoever described or named;

“*charge*” means any instrument which creates a security interest, over a limited liability company’s shares or property, whether fixed or floating, wherever situated, and any variation of such instrument, which is created after the effective date of this Ordinance, but not an interest arising by operation of law;

“*chargee*” means a person who holds a charge over the interest or property of a limited liability company;

“*chargor*” means the member of a limited liability company who pledges their interest or property in a limited liability company as security for a debt owed to a chargee;

“*charter*” means the instrument which is filed in a foreign domicile to form a foreign limited liability company, which serves the same purposes as the articles of organisation under this Ordinance;

“*consolidated company*” means the new limited liability company into which two (2) or more constituent companies are consolidated;

“*consolidation*” means a procedure whereby any two (2) or more limited liability companies consolidate into a new limited liability company formed by the consolidation;

“*constituent company*” means an existing limited liability company that is participating in the merger or consolidation with one (1) or more other limited liability companies;

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“*corporation*” means a corporation incorporated under the Nevis Business Corporation Ordinance 2017 or a corporation which was incorporated under the laws of a foreign domicile which has been redomiciled to Nevis under such law;

“*creditor*” means any person to whom money is owed and includes the 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 of action against a member;

“*Deputy Registrar of Companies*” means the person appointed by the Minister to assist the Registrar of Companies in performing his duties under this Ordinance;

“*distribution*” means a transfer of money, property from a limited liability company to, or for the benefit of a member in his capacity as a member, or to, or for the benefit of, an assignee of a member’s interest in the limited liability company, in respect of their limited liability company interest;

“*dollars*” or “*\$*” means Eastern Caribbean Currency unless expressly stated otherwise in this Ordinance;

“*earlier charge*” means any instrument which creates a security interest, over a limited liability company’s interest or property, whether fixed or floating, wherever situated, and any variation of such instrument, which is created before the effective date of this Ordinance, but not an interest arising by operation of law;

“*emergency condition*” shall include but not be limited to any of the following events:

- (a) War or other armed conflict;
- (b) revolution or insurrection;
- (c) invasion or occupation by foreign military forces;
- (d) rioting or civil commotion of an extended nature;
- (e) domination by a foreign power;
- (f) expropriation, nationalisation or confiscation of a material part of the assets or property of the foreign corporation;
- (g) impairment of the institution of private property (including private property held abroad);
- (h) the taking of any action under the laws of Saint Christopher and Nevis whereby persons resident in the foreign domicile might be treated as “*enemies*” or otherwise restricted under the laws of Saint Christopher and Nevis relating to trading with enemies of Saint Christopher and Nevis; or
- (i) the immediate threat of any of the foregoing; and
- (j) such other event which, under the laws of the foreign domicile, permits the foreign limited liability company to transfer its domicile;

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“*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;

“*foreign domicile*” means the jurisdiction of registration of a foreign limited liability company or such jurisdiction other than Nevis, to which a limited liability company seeks to redomicile;

“*foreign limited liability company*” means a company which was formed under the laws of any foreign domicile that affords its members, pursuant to the laws under which it is formed, limited liability with respect to the liabilities of the entity;

“*High Court*” means the High Court of Saint Christopher and Nevis;

“*insolvent*” means a condition when a person known as a “*debtor*” is unable to pay their debts as such debts become due;

“*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;

“*limited liability company*”, “*domestic limited liability company*” and “*company*” means a limited liability company formed under this Ordinance;

“*manager*” means:

- (a) a person or persons, whether or not a member, designated and authorised in the operating agreement to manage the limited liability company or to otherwise act as agent of the limited liability company, either to execute management duties generally or to execute certain management duties as specified in the operating agreement;
- (b) where the operating agreement does not designate a person or persons as a manager or managers, or the operating agreement designates as managers, all of the members, in their capacity as members, references in this Ordinance to managers shall mean each of the members of the limited liability company, to the extent management duties are assigned to the members in the operating agreement, or if not so assigned, then without limitation;
- (c) where the operating agreement designates one (1) or more members as a manager or managers, or one (1) or more manager or managers who are not members of the limited liability company, references in this Ordinance to managers shall mean each of the managers of the limited liability company so designated, to the extent management duties are assigned to each such member in the operating agreement, or if not so assigned, then without limitation;

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“*member*” means a person who has been admitted to a limited liability company as a member pursuant to section 55 of this Ordinance, or, in the case of a foreign limited liability company, in accordance with the laws of the foreign domicile;

“*member’s interest*” means a member’s share of the profits, losses, income, gain, deductions and credits of the limited liability company, the right to receive distributions from the limited liability company and all of the member’s rights and obligations under this Ordinance, the articles of organisation, and the operating agreement;

“*merger*” means a procedure whereby any two (2) or more limited liability companies merge with into a single limited liability company, which is any one (1) of the constituent companies;

“*Minister*” means the Minister for the time being charged with the responsibility of finance in the Nevis Island Administration;

“*Nevis Company*” means a company incorporated and registered under the Companies Ordinance, Cap. 7.06 (N);

“*operating agreement*” means the agreement, and any amendments thereto, between the members of the limited liability company as to the affairs of a limited liability company, the conduct of its business, and the relations among the members;

“*Organiser*” means a person who forms a limited liability company pursuant to section 17;

“*pledgee*” means a person to whom a pledge is made;

“*provisions*” includes the provisions of this Ordinance, any Part or any Order hereunder;

“*registered agent*” means

- (a) an attorney-at-law or law firm; or
- (b) a Nevis Company,

which has been duly licensed by the Nevis Island Administration to engage in the business of registered agent of limited liability companies;

“*registered office*” means the location described in section 12 of this Ordinance;

“*Registrar of Companies*” means the person appointed by the Minister to perform the duties of Registrar under this Ordinance;

“*surviving company*” means the constituent limited liability company into which one (1) or more other constituent limited liability companies are merged;

“*termination of a member’s interest*” means a complete cessation of a member’s continued membership in a limited liability company for any reason;

“*transfer*” means the sale, assignment, mortgage, creation or permission to subsist of any pledge, lien, charge or encumbrance over, conveyance, lease, gift, grant

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of any interest or other rights in or other disposition of any member's interest, any part thereof or any interest therein, whether by agreement, operation of law or otherwise.

(2) A reference in this Ordinance to the masculine shall include the feminine or neuter.

3. Application of this Ordinance.

(1) A limited liability company formed or subject to this Ordinance which does business in St. Christopher and Nevis shall be subject to and comply with all requirements of the Companies Ordinance, Cap. 7.06 (N) in the same manner as a Nevis Company.

(2) In construing this Ordinance, any part or section hereof, the High Court, any court of competent jurisdiction and any other person shall refer to the common law, the Regulations to this Ordinance or to the construction of similar laws in other jurisdictions.

4. Form of instruments and filing.

(1) Where any provision of this Ordinance requires an instrument to be filed with the Registrar of Companies, such instrument shall be filed by the registered agent or pursuant to its authority and comply with the provisions of this Part unless otherwise expressly provided for under this Ordinance.

(2) Every instrument referenced herein, filed or required to be filed, shall be in the English language, except that the company name may be in another language and may be written in characters which do not use the Latin alphabet and an authenticated translation of the company name must be provided.

(3) All instruments filed or required to be filed shall be signed by at least:

- (a) one manager of the limited liability company; or
- (b) the registered agent of the limited liability company; or
- (c) a member of the limited liability company; or
- (d) such other person duly delegated such authority by a manager or member in whom such authority resides.

(4) An instrument which is signed by the registered agent on behalf of a limited liability company shall be certified by such registered agent to have been signed pursuant to the written authority of the managers, but such written authority may be filed with the Registrar of Companies at the option of the registered agent.

(5) Where a provision of this Ordinance requires an instrument to be acknowledged, such requirement means, in the case of execution of that instrument within Nevis, that the person shall sign the instrument to acknowledge that it is his act and deed or that it is the act and deed of the limited liability company as the case may be, and declare within that instrument that it was so signed in Nevis.

(6) Where a provision of this Ordinance requires an instrument to be acknowledged, such requirement means, in the case of execution of an instrument within St. Christopher, that:

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- (a) the person signing the instrument shall acknowledge that it is his act and deed or that it is the act and deed of the limited liability company as the case may be; and
 - (b) the instrument shall be acknowledged before a notary public, commissioner of oaths or other person authorised to take acknowledgements, who shall attest that he knows the person making the acknowledgement to be the person who executed the instrument.
- (7) Where an instrument is executed outside of St. Christopher and Nevis, an acknowledgement means that the person signing the instrument shall acknowledge that it is his act and deed or the act and deed of the limited liability company as the case may be.
- (a) An instrument executed in accordance with subsection (7) shall be acknowledged and executed before:
 - (i) a notary public or any other person authorised to take acknowledgements according to the laws of the place of execution;
 - (ii) a consul or vice consul of St. Christopher and Nevis or other governmental official of St. Christopher and Nevis authorised to take acknowledgements; or
 - (iii) in the absence of any of the persons outlined in paragraphs (i) and (ii) of subsection 7(a), a consular official of another government having diplomatic relations with St. Christopher and Nevis.
 - (b) A person before whom an instrument is acknowledged under subsection 7(a) shall attest that he knows the person making the acknowledgement to be the person who executed the instrument.
 - (c) When the acknowledgement shall be taken by a notary public or any other person authorised to take acknowledgements, except a government official of St. Christopher or 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 St. Christopher and Nevis; or in his absence,
 - (ii) a consular official of another government having diplomatic relations with St. Christopher and Nevis;
 - (iii) a government official of the place of execution who is authorised to make such attestation; or
 - (iv) an Apostille according to the Convention de la Haye du 5 Octobre 1961.
- (8) Where a provision of this Ordinance requires an instrument to be filed with the Registrar of Companies, such requirement means that:
- (a) an appropriate receipt evidencing payment of all appropriate fees shall be delivered to the office of the Registrar of Companies, and within ten (10) days of the date of the receipt, the original instrument together with a duplicate instrument, both signed and acknowledged;

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- (b) upon delivery of the original signed and acknowledged instrument with the required receipt and an exact signed and acknowledged duplicate, the Registrar of Companies shall certify that the instrument has been filed by endorsing the word “*Filed*” and the date of the required receipt upon the original instrument and this date shall be the date of filing;
 - (c) the Registrar of Companies shall compare the signed and acknowledged duplicate with the original signed and acknowledged instrument, and if the text of both instruments is identical, the Registrar of Companies shall affix on the duplicate the same endorsement of filing as he affixed on the original and the original, as endorsed, shall be returned to the limited liability company;
 - (d) the endorsement by the Registrar of Companies under paragraph (c) constitutes the certificate of the Registrar of Companies, that the document is a true duplicate of the instrument filed in his office and that it was filed as of the date stated in the endorsement;
 - (e) an instrument filed in accordance with paragraph (b) shall be effective as of the filing date stated thereon; and
 - (f) upon the filing of any instrument, the Registrar of Companies shall issue an endorsement certificate under his hand and seal certifying that the instrument is filed.
- (9) An instrument relating to a domestic or foreign limited liability company and filed with the Registrar of Companies under this Ordinance may be corrected with respect to:
- (a) any error apparent on the face; or
 - (b) a defect in the execution of that instrument

by filing with the Registrar of Companies a certificate of correction, executed and acknowledged in the manner required for the original instrument.

(10) The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form.

(11) The correcting instrument when filed shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons, the instrument as corrected shall be effective from the filing date.

5. Certificates and certified copies as evidence.

All certificates issued by the Registrar of Companies in accordance with the provisions of this Ordinance and all duplicates of instruments filed with the Registrar of Companies in accordance with the provisions of this Ordinance shall, when certified by the Registrar of Companies or his Deputy, be taken and received in all courts, public offices and official bodies as *prima facie* evidence of the facts therein stated and of the execution of such instruments.

6. Fees on filing articles of organisation and other instruments.

(1) The Minister shall prescribe a Schedule of fees for the filing and issuance of instruments under this Ordinance and the fees payable in respect of this Ordinance shall be paid in dollars or in another currency as prescribed by the Minister.

(2) The Minister shall prescribe the fees for certified copies of documents and for filing, recording or indexing papers.

7. Annual registration fee.

A limited liability company shall pay to the Office of the Registrar of Companies an annual fee as prescribed in the Schedule of fees required to be prescribed by the Minister under section 6 and that annual fee shall be paid on behalf of the limited liability company by its registered agent.

8. Waiver of notice.

Where a notice is required to be given to any member or manager of a limited liability company or to any other person under the provisions of this Ordinance or under the provisions of the articles of organisation or the operating agreement of the limited liability company, a waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed to be equivalent to the giving of such notice.

9. Notice to members.

(1) Any notice or information required to be given to members shall be provided in the manner designated in the limited liability company's operating agreement or articles of organisation or, if the notice can no longer be provided as stated therein, the notice shall be published in a publication of general circulation in Nevis or in a place where the limited liability company has a place of business.

(2) 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.

PART II – COMPANY PURPOSES AND POWERS**10. Company purposes and duration.**

(1) A limited liability company may be formed under this Ordinance for any lawful business purpose, including, without limitation, the rendering of professional services by or through its members, managers, officers or agents, subject to any licencing or registration requirements applicable in any jurisdiction in which the services are rendered or in which such persons are licensed or registered.

(2) A limited liability company formed under this Ordinance shall have an unlimited duration, or such limited duration, if any, as shall be stated in its articles of organisation or operating agreement.

11. General powers.

Subject to any limitations provided in:

- (a) this Ordinance;
- (b) any other Ordinance of Nevis;
- (c) any act of Saint Christopher and Nevis;
- (d) its articles of organisation; or
- (e) operating agreement,

a limited liability company shall have the same powers as a natural person to do all things necessary or convenient in furtherance of its purposes, irrespective of company benefit and whether or not enumerated in its articles of organisation or its operating agreement.

PART III – REGISTERED AGENT AND SERVICE OF PROCESS**12. Registered agent.**

(1) A limited liability company which is subject to this Ordinance shall at all times have a registered agent in Nevis. A company which fails to maintain a registered agent shall be in contravention of this Ordinance.

(2) A registered agent shall at all times be licensed by the Nevis Island Administration and shall maintain a physical place of business in Nevis which shall be the limited liability company's registered office address.

(3) The Minister shall prescribe the application process and fees for the licencing of registered agents under this Ordinance.

(4) No person shall be or agree to be the registered agent of a limited liability company unless that person holds a valid licence to provide registered agent services issued by the Minister under this Ordinance.

13. Resignation and change of registered agent.

(1) A registered agent of a limited liability company may resign as such registered agent by giving not less than thirty (30) days written notice to the limited liability company of his intention to resign as registered agent of that limited liability company on the date specified in the notice.

(2) A notice given to a limited liability company by a registered agent under subsection (1) shall:

- (a) state that it is a requirement under this Ordinance that the limited liability company have a registered agent in Nevis duly licensed by the Nevis Island Administration;
- (b) direct the limited liability company to the list of authorised registered agents as published from time to time; and
- (c) notify the limited liability company of all penalties applicable under the Ordinance for failure to maintain a registered agent in accordance with section 12.

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(3) Any resignation pursuant to subsection (1) shall not become effective until written notice of such resignation, together with the prescribed fee is delivered to the Registrar of Companies.

(4) The written notice of resignation filed by the registered agent with the Registrar of Companies under subsection (3) shall contain a statement that:

- (a) written notice of resignation was given to the affected limited liability company at least thirty (30) days prior to filing the notice with the Registrar of Companies, by mailing or delivering such notice to the limited liability company at its address last known or by email to the limited liability company's last known email address and shall set forth the date of such notice; and
- (b) all fees and charges owing to the said registered agent have been paid in full by the limited liability company.

(5) The Registrar of Companies shall not accept any resignation from a registered agent under subsection (4) unless the notice filed by the registered agent complies with the provisions of that subsection.

(6) After receipt of the notice of resignation of its registered agent, a limited liability company shall obtain and designate a new registered agent to take the place of the registered agent so resigning. A limited liability company who fails to obtain and designate a new registered agent as aforesaid prior to the expiration of a period of thirty (30) days after the filing by the registered agent of the notice of resignation, contravenes this Ordinance and is liable to a penalty fee of One Thousand Three Hundred and Fifty Dollars (\$1,350.00) or Five Hundred Dollars United States Currency (USD\$500.00).

(7) A registered agent of a limited liability company may resign and appoint a successor registered agent by paying the prescribed fee and filing a notice of change of registered agent with the Registrar of Companies.

(8) A notice of change of registered agent under subsection (7) shall state that the registered agent resigns and the name and address of the successor registered agent, and shall have attached:

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

(9) Upon filing a notice of change of registered agent and provided it satisfies the requirements of subsections (7) and (8), the successor registered agent shall become the registered agent of the limited liability company and the successor registered agent's address, as stated in the notice of change of registered agent shall become the registered office address of the limited liability company in Nevis.

(10) The Registrar of Companies may issue a certificate under this section certifying the resignation or change of registered agent of a limited liability company.

(11) The filing of any notice under sections 13 and 14 shall be deemed to be an amendment to the articles of organisation of the limited liability company affected thereby but a limited

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liability company affected by the change shall not be required to take any further action to amend its articles of organisation.

14. Registered agent resigned by limited liability company.

(1) A limited liability company may resign its registered agent by giving not less than thirty (30) days written notice to the registered agent of its intention to revoke the designation as registered agent, provided that a successor registered agent is appointed.

(2) A resignation under subsection (1) shall not be effective until notice of such resignation and appointment of a successor registered agent, is filed with the Registrar of Companies by the successor registered agent, together with the prescribed fees and shall have attached:

- (a) a statement that the limited liability company has given written notice of resignation to the affected registered agent at least thirty (30) days prior to filing the notice with the Registrar of Companies, by mailing or delivering such notice to the registered agent at its address last known or by email to the registered agent's last known email address and shall set forth the date of such notice; 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 limited liability company.

(3) The Registrar of Companies shall not accept any resignation from a limited liability company by its successor registered agent under subsection (2) unless the notice filed by the successor registered agent complies with the requirements of this section.

15. Change of registered address of limited liability company.

(1) Where a registered agent changes its physical place of business which is also the registered office address of the limited liability company then that registered agent shall notify the limited liability company in writing of its new address at which such registered agent will maintain the registered office of the limited liability company.

(2) The registered agent shall file a notice of change of registered address together with the prescribed fees, with the Registrar of Companies, setting forth the address at which such registered agent has maintained the registered office of the limited liability company and further certifying the new address to which such registered office will be changed on a given day.

(3) A copy of the notice as filed with the Registrar of Companies shall be delivered to the limited liability company by the registered agent.

(4) The filing of a notice of change of registered address under this section shall be deemed to be an amendment to the articles of organisation of the limited liability company but the limited liability company affected by the change shall not be required to take any further action to amend its articles of organisation.

16. Service of process.

(1) The address for service of process of any documents to be served on a limited liability company in a legal action shall be the registered office of the limited liability company and shall be delivered to the registered agent of the limited liability company.

(2) Service of process on a registered agent may be made by personal delivery or by registered mail addressed to the registered agent or in any other manner provided by law for the service of summons as if the registered agent were a defendant.

(3) A registered agent, when served with process, notice or demand for the limited liability company which he represents, shall transmit the same to the limited liability company by personal notification or in the following manner: Upon receipt of the process, notice or demand, the registered agent shall cause a copy of such paper to be mailed to the limited liability company named therein at its last known address. Such mailing shall be by registered mail. As soon thereafter as possible, if process was issued in Nevis, the registered agent may file with the clerk of the court issuing the process, either the receipt of such registered mailing or an affidavit stating that such mailing has been made, signed by the registered agent. Compliance with the provisions of this section shall relieve the registered agent from any further obligation to the limited liability company for service of the process, notice or demand, but the registered agent's failure to comply with the provisions of this section shall in no way affect the validity of the service of the process, notice or demand.

(4) Where a limited liability company which is registered under this Ordinance fails to maintain a registered agent, or whenever said registered agent cannot with reasonable diligence be found at their registered office, then the Registrar of Companies or his appointee shall be the agent of such limited liability company upon whom any process or notice or demand required or permitted by law to be served may be served.

(5) Service on the Registrar of Companies or his appointee as agent of a limited liability company shall be made by personally delivering to any person authorised by the Registrar of Companies to receive such service, at the office of the Registrar of Companies, duplicate copies of such process together with the prescribed fee.

(6) The Registrar of Companies or his appointee shall promptly send one (1) of such copies by registered mail, return receipt requested, to such limited liability company at the business address of its registered agent, or if there is no such office, then the Registrar of Companies or his appointee shall mail such copy in care of any manager named in the articles of organisation at his address stated therein or at the address of the limited liability company without Nevis, or if none, at the last known address of a person at whose request the limited liability company was formed or in any other manner permitted by law.

(7) The Registrar of Companies shall keep a record of each process served upon him under this section, including the date of service.

(8) The Registrar of Companies shall, upon request made within five (5) years of such service, issue a certificate under his seal certifying as to the receipt of the process by an authorised person, the date and place of such service, and the receipt of the prescribed fee.

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(9) Nothing contained in this section shall affect the validity of service of process on a limited liability company effected in any other manner permitted by law.

PART IV – FORMATION AND NAMES OF LIMITED LIABILITY COMPANIES**17. Formation.**

(1) Any person may form a limited liability company under this Ordinance.

(2) Articles of organisation shall be executed by each organiser forming the limited liability company and shall be filed with the Registrar of Companies in conformity with the provisions of section 4.

18. Company name.

(1) Except as otherwise provided in subsection (2), the name of a limited liability company shall:

- (a) end with the company suffix “*limited liability company*” or “*limited company*” or the abbreviations “*LLC*”, “*L.L.C.*”, “*LC*” or “*L.C.*” and
- (b) not be the same as the name of a limited liability company or of any other company of any type or kind, as such name appears on the register of companies or on the reserved name list of companies maintained by the Registrar of Companies or a name so similar to any such name as to tend to confuse or deceive.

(2) The provisions of subsection (1) shall not prevent a limited liability company:

- (a) with which another limited liability company, either domestic or foreign, is merged; or
- (b) which is formed by the reorganisation or consolidation of one (1) or more domestic or foreign limited liability companies; or
- (c) upon a sale, lease or other disposition to or exchange with, a domestic limited liability company of all or substantially all the assets of another domestic limited liability company, including its name,

from having the same name as any of such limited liability companies if at the time such other limited liability company was existing under this Ordinance.

19. Non-Latin alphabet characters.

(1) The name of the limited liability company on the articles of organisation may be written in characters using the Latin alphabet or any other alphabet.

(2) If the name of the limited liability company is not written in the Latin alphabet, the name on the articles of organisation must also include an authenticated translation and the registered agent shall forward the limited liability company’s name and its authenticated translation to the Registrar of Companies via any mechanical, electronic or digital communication and data storage method now known or hereinafter invented or adopted.

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(3) When a limited liability company has been formed under this Ordinance and the name on its articles of organisation is written in non-Latin alphabet characters, the Registrar of Companies shall issue a certificate of formation and any other certificates using the limited liability company's non-Latin alphabet character name and its authenticated translation.

20. Register of companies.

The Registrar of Companies shall maintain a register of companies which contains an alphabetical and/or numerical list of all of the names of the limited liability companies registered under this Ordinance and a list of reserved names of limited liability companies.

21. Reservation of name.

(1) A registered agent may reserve a name with the Registrar of Companies provided said reservation is made in accordance with this section and is made in good faith for subsequent use in formation of a limited liability company under this Ordinance or for use in changing the name of a limited liability company already subject to this Ordinance.

(2) A name may be reserved on behalf of a foreign limited liability company which has filed for a transfer of domicile to Nevis.

(3) An application to reserve a name shall be delivered to the Registrar of Companies together with the prescribed fee and that application shall set forth:

- (a) the name to be reserved;
- (b) the name and address of the applicant; and
- (c) a statement of the reasons for the application in accordance with subsections (1) and (2) above.

(4) If the name to be reserved is available for use, then the Registrar of Companies shall enter the name upon the reserved name list and issue a certificate of name reservation in the name to be reserved, to the registered agent making the application and the certificate of name reservation shall set forth:

- (a) the information contained in the application thereof; and
- (b) the date the name was entered upon the reserved name list, which date shall be the date of reservation.

(5) As of the date of the name reservation, the name reserved shall be maintained upon the reserved name list by the Registrar of Companies and shall not be used except by the registered agent, in whose name the certificate of name reservation has been issued.

(6) The reservation shall terminate upon the expiration of one hundred twenty (120) days following the date of reservation unless sooner renewed.

(7) Upon payment of the required fees, the reservation may be renewed with the Registrar of Companies for one like period. An appropriate receipt for the required fees shall be taken along with the certificate of name reservation to be proof of the extension of the reservation.

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(8) The certificate of name reservation or any renewal thereof shall be evidenced to the Registrar of Companies at the time the name is utilised by the registered agent in whose name the certificate has been issued.

22. Contents of articles of organisation.

The articles of organisation shall set forth:

- (a) the name of the limited liability company;
- (b) the authenticated translation of the name of the limited liability company, if it is so registered;
- (c) a statement that the limited liability company is formed under this Ordinance;
- (d) the latest date on which the limited liability company is to dissolve, or if the limited liability company shall have unlimited duration;
- (e) the name of the registered agent of the limited liability company;
- (f) the registered office address of the limited liability company in Nevis which shall be the registered office of its registered agent;
- (g) whether the limited liability company is managed by managers exclusive of the members or by all of the members in their capacity as members;
- (h) the purposes for which the limited liability company is formed and it shall be sufficient to state, either alone or with other businesses or purposes, that the purpose of the limited liability company is to engage in any lawful act or activity for which limited liability company may be formed under this Ordinance, and by such statement all lawful acts and activities shall be within the purposes of the limited liability company, except for express limitations, if any;
- (i) the name and address of each organiser of the limited liability company; and
- (j) any provision, which is not inconsistent with the Ordinance, which the organisers elect to set forth in the articles of organisation for the regulation of the affairs of the limited liability company, and any provision which under this Ordinance is required or permitted to be set forth in the operating agreement.

23. Effect of filing articles of organisation.

(1) The limited liability company's existence shall, upon filing the articles of organisation, be effective as of the filing date stated thereon.

(2) The endorsement by the Registrar of Companies, as required by section 4, shall be conclusive evidence that all conditions precedent required to be performed by the organisers have been complied with and that the limited liability company has been formed under this Ordinance.

(3) When a limited liability company has been formed under this Ordinance, the Registrar of Companies shall issue a certificate of formation under his endorsement certifying that the limited liability company is duly formed and an endorsement certificate certifying that the limited liability company has filed articles of organisation.

24. Inspection of register of companies.

(1) A person who has paid the prescribed fee is entitled during normal business hours, to examine, and to make copies of or extracts from all documents filed with the Registrar of Companies.

(2) The Registrar of Companies shall upon request and payment of the prescribed fee, furnish any person with a copy or certified copy of any document received by the Registrar of Companies under this Ordinance.

(3) If the records maintained by the Registrar of Companies are prepared and maintained other than in written form, then upon payment of the prescribed fee, the Registrar of Companies shall furnish any copy required to be furnished under this Ordinance in an intelligible written form.

25. Company search report.

(1) The Registrar of Companies shall, upon request of any person who has paid the prescribed fee, issue a search report under his endorsement giving public information available on the records of a limited liability company in any format as determined by the Registrar of Companies.

(2) A search report issued by the Registrar of Companies or his deputy is admissible in evidence to the same extent as the original written records or instruments would be.

26. Certificate of good standing.

(1) The Registrar of Companies shall, upon request by the registered agent, issue a certificate of good standing under his endorsement certifying that a limited liability company is in good standing if he is satisfied that:

- (a) the name of the limited liability company is on the register of companies;
- (b) the limited liability company has paid all fees required under this Ordinance;
- (c) the limited liability company is not in contravention of any of the provisions of this Ordinance; and
- (d) the limited liability company is not in the process of being wound up and dissolved.

(2) The certificate of good standing issued by the Registrar of Companies under this section is limited to the company's current state of compliance under this Ordinance and should not be taken as a warranty or representation by the Registrar of Companies concerning the company's compliance with other laws of Nevis which the Registrar does not administer.

27. Operating agreement.

(1) The members of a limited liability company may enter into an operating agreement which may contain any provision relating to:

- (a) the business of the limited liability company;
- (b) the conduct of its affairs;

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- (c) its rights or powers, and the rights of, and its relationship to and among, its members and managers;

not inconsistent with this Ordinance, any other Ordinance of Nevis, any Act of Saint Christopher and Nevis or the articles of organisation.

(2) An operating agreement shall be agreed to by all members before it becomes effective and the operating agreement shall not require the consent of any future member to remain effective.

(3) Unless the articles of organisation require otherwise, an operating agreement need not be in writing.

(4) If the operating agreement does not provide for the method by which it may be amended, then all of the members must agree to any amendment.

(5) A court may enforce an operating agreement by injunction or by granting such other relief that the court in its discretion determines to be fair and appropriate in the circumstances.

(6) The operating agreement may be filed as an exhibit to the articles of organisation.

PART V - AMENDMENT OF ARTICLES OF ORGANISATION

28. Amendment of articles of organisation.

(1) A limited liability company may amend its articles of organisation at any time to add or change a provision that is required or permitted in the articles of organisation or to delete a provision not required in the articles of organisation.

(2) Except as set forth in subsection (3), an amendment of the articles of organisation shall be subject to the consent of the members entitled to vote thereon.

(3) Any one or more of the following amendments may be approved by the managers without the consent of the members:

- (a) to specify or change the location of the registered office of the limited liability company; and
- (b) to make, revoke or change the designation of a registered agent, or to specify or change the address of its registered agent.

(4) The articles of amendment shall be executed for the limited liability company, acknowledged and filed with the Registrar of Companies in accordance with the provisions of section 4, and shall set forth:

- (a) the name of the limited liability company, and if it has been changed, the name under which it was formed;
- (b) the authenticated translation of the name of the limited liability company, if any;
- (c) the date its articles of organisation were filed with the Registrar of Companies and the date of filing of any amendments to the articles of organisation;

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- (d) each section affected by the articles of amendment; and
- (e) the manner in which the amendment of the articles of organisation was authorised

29. Status of legal action.

(1) No amendment to the articles of organisation of a limited liability company shall affect any existing cause of action in favour of or against that limited liability company, or any pending legal action to which it shall be a party, or the existing rights of persons other than members.

(2) Where the name of a limited liability company has been changed, no legal action brought by or against the limited liability company under its former name shall abate for that reason.

30. Restated articles of organisation.

(1) At any time after its articles of organisation have been amended, a limited liability company may, by action of its managers, without necessity of vote of the members, prepare an instrument entitled “*Restated Articles of Organisation*”, which will integrate into one (1) instrument, its original articles of organisation (or articles of consolidation) and all amendments thereto, including those effected by articles of merger.

(2) The restated articles of organisation shall also set forth that this instrument purports merely to restate but not to change the provisions of the original articles of organisation as amended and that there is no discrepancy between the said provisions and the provisions of the restated articles of organisation.

(3) The restated articles of organisation shall be executed, acknowledged and filed as provided in section 4.

(4) The restated articles of organisation filed with the Registrar of Companies in the manner provided in section 4 shall be presumed, until otherwise shown, to be the full and true articles of organisation as in effect on the date filed.

PART VI – COMPANY FINANCE

31. Capital contributions.

The capital contribution of a member to a limited liability company may be in cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

32. Liability for capital contributions.

(1) A promise by a member to contribute to the limited liability company is not enforceable unless set forth in writing and signed by the member.

(2) Unless otherwise provided in the operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services.

(3) Except as set forth in subsection (4), if a member for any reason fails to perform any enforceable promise to make the required contribution of property or services, the member is

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obligated, at the option of the limited liability company, to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(4) If the member is unable to perform an enforceable promise to perform services because of death or disability, the member's estate or other successor is obligated to contribute cash equal to that portion of the value of the stated contribution that has not been made.

(5) An operating agreement may provide that the interest of a member who fails to make a contribution or other payment that the member is required to make shall be subject to specified remedies for, or specified consequences of, the failure in addition to, and not in lieu of, any other rights that the limited liability company may have against such member.

(6) A remedy or consequence specified under subsection (5) may take the form of:

- (a) reducing the defaulting member's interest in the limited liability company;
- (b) subordinating the defaulting member's interest in the limited liability company to the non-defaulting members;
- (c) a forced sale of the interest in the limited liability company;
- (d) forfeiture of the interest in the limited liability company;
- (e) the lending by the non-defaulting members of the amount necessary to meet the commitment;
- (f) a fixing of the value of the member's interest in the limited liability company by appraisal or by formula; or
- (g) redemption and sale of the member's interest in the limited liability company at that value, or other remedy or consequence.

(7) Unless otherwise provided in the operating agreement, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

33. Distributions.

(1) Except as otherwise provided in sections 58 and 79, distributions of cash or other assets of a limited liability company shall be shared among the members, and among classes or groups of members, in the manner and at the times or upon the occurrence of events provided in the operating agreement.

(2) If the operating agreement does not provide the manner in which distributions of cash or other assets of a limited liability company are to be shared, then distributions shall be made on the basis of the value of the contributions made by each member to the extent they have been received by the limited liability company and have not been returned.

(3) Unless otherwise provided in the operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the limited liability company in any form other than cash.

(4) When a member becomes entitled to receive a distribution, the member has the status of a creditor of the limited liability company with respect to the distribution.

PART VII – REGISTRATION OF CHARGES**34. Creation of charges.**

(1) Subject to its articles of organisation and operating agreement, a limited liability company may, by an instrument in writing create a charge.

(2) The governing law of a charge created by a limited liability company shall be the law of such jurisdiction that may be agreed between the limited liability company, the chargee and such parties to the charge, and the charge shall be binding on the limited liability company to the extent, and in accordance with, the requirements of the governing law.

(3) If the limited liability company and the chargee do not agree on a governing law of the charge, the governing law of the charge shall be the laws of Saint Christopher and Nevis.

35. Charges of interest or property.

(1) A charge shall be in an instrument in writing signed by, or with the authority of the member or the limited liability company, to which the charge relates. Any variation to a charge shall be in writing.

(2) A charge shall clearly indicate:

- (a) the intention to create a charge;
- (b) the amount secured by the charge; and
- (c) how the interest and fees on such amount is to be calculated.

(3) Where the governing law of a charge is not the laws of Saint Christopher and Nevis:

- (a) the charge shall be in compliance with the requirements of its governing law in order for the charge to be valid, enforceable and binding against the limited liability company; and
- (b) the remedies which are available pursuant to a charge shall be governed by the governing law save, the rights between the chargor or chargee as a member of the limited liability company shall continue to be governed by its articles of organisation, operating agreement and this Ordinance.

(4) Where the governing law of a charge is the law of Saint Christopher and Nevis, then in the event of default by the chargor on the terms of the charge, the chargee is immediately entitled to the following remedies:

- (a) subject to any limitations to the contrary in the terms of the charge, the right to sell or transfer the interest or property; and
- (b) the right to appoint a receiver who, subject to any limitations to the contrary in the terms of the charge, may until such time as the charge is discharged:
 - (i) vote the interest or property;
 - (ii) receive distributions in respect of the interest or property; and
 - (iii) exercise other rights and powers of the chargor in respect of the interest or property.

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(5) The failure of the chargee to exercise or delay in exercising any of its respective rights and remedies under this section shall not operate as a waiver of such right or remedy.

(6) The rights and remedies provided for in this section do not exclude any other rights and remedies provided by law unless expressly prohibited.

(7) Subject to any language to the contrary in the terms of the charges, all amounts that accrue from the enforcement of the charge shall be applied in the following manner:

- (a) firstly, in meeting the costs incurred in enforcing the charge;
- (b) secondly, in discharging the sums secured by the charge; and
- (c) thirdly, in paying any balance due to the chargor.

36. Registration of charges.

(1) Where a limited liability company creates a charge, an application to register the charge may be made to the Registrar of Companies by the registered agent of that limited liability company or by another registered agent with the consent of the limited liability company's registered agent.

(2) If a charge is not drafted in the English language, an authenticated translation of such charge shall also be filed with the application.

(3) An application under subsection (1) shall be filed together with the charge or a certified copy of the charge, along with the prescribed fee for registration of charge.

(4) Upon registration of the charge with the Registrar of Companies, and its authenticated translation, if applicable, the Registrar of Companies shall issue a certificate of registration of charge which details the date and time that the charge was registered to the applicant and a copy of the certificate of registration of charge shall be sent to the limited liability company by the applicant, if the applicant is not the registered agent of the limited liability company.

(5) A certificate of registration of charge is conclusive proof that the requirements of registration have been complied with and the charge was registered on the date and time stated in that certificate.

(6) The date and time evidenced by the receipt of payment of the prescribed fee as delivered to the Registrar shall be deemed by the Registrar to be the date and time of registration for the purposes of this section.

37. Registration of variation of a registered charge.

(1) Where there is a variation in the terms of a charge which has been registered under section 36, an application for the variation of the registered charge to be registered in the register of charges may be made to the Registrar of Companies by the registered agent of that limited liability company or by another registered agent with the consent of the limited liability company's registered agent.

(2) If a variation of registered charge is not drafted in the English language, an authenticated translation of such variation of registered charge shall also be filed with the application.

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(3) An application under subsection (1) shall be filed together with the variation of the registered charge or a certified copy of the variation, along with the prescribed fee for variation of registered charge.

(4) Upon registration of the variation of registered charge with the Registrar of Companies, and its authenticated translation, if applicable, a certificate of variation of registered charge which details the date and time of registration of the variation of registered charge shall be issued to the applicant by the Registrar of Companies and a copy of the certificate of registration of variation of registered charge shall be sent to the limited liability company by the applicant, if the applicant is not the registered agent of the limited liability company.

(5) A certificate of variation of registered charge is conclusive proof that the requirements of registration of the variation of registered charge have been complied with and the variation of registered charge was registered on the date and time stated in the certificate.

(6) The date and time evidenced by the receipt of payment of the prescribed fee as delivered to the Registrar shall be deemed by the Registrar to be the date and time of registration for the purposes of this section.

38. Registration of satisfaction of a registered charge.

(1) Where a charge which was registered under section 36 ceases to affect the interest or property of a limited liability company, the limited liability company, the chargee or any person who is authorised to act on behalf of the limited liability company or chargee, may file with the Registrar of Companies, through the limited liability company's registered agent, a satisfaction of registered charge which is signed by or on behalf of the chargee and specifies that the limited liability company's interest or property has ceased to be affected by the charge.

(2) If a satisfaction of registered charge is not drafted in the English language, then an authenticated translation of such satisfaction of registered charge shall also be filed with the application.

(3) An application under subsection (1) shall be filed together with the satisfaction of registered charge or a certified copy of the satisfaction, along with the prescribed fee for filing satisfaction of registered charge.

(4) Upon registration of the satisfaction of registered charge, and an authenticated translation, if applicable, the Registrar of Companies shall issue a certificate of registration of satisfaction of registered charge to the limited liability company's registered agent.

(5) The certificate of registration of satisfaction of registered charge shall state the date and time that the limited liability company's interest or property has ceased to be affected by the charge.

(6) Effective as of the date and time stated in the certificate of registration of satisfaction of registered charge, the charge is deemed to be no longer registered.

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(7) A certificate of satisfaction of registered charge is conclusive proof that the requirements of the satisfaction of charge have been complied with and the charge was no longer registered as of the date and time stated in the certificate.

39. Form of application and payment of fees.

An application made under this Part to register a charge, variation of registered charge or satisfaction of registered charge shall be submitted in a form approved by the Registrar of Companies and be accompanied by the relevant prescribed fee.

40. Maintenance by limited liability company of a register of charges.

(1) A limited liability company shall keep a copy of the charge, variation or satisfaction of registered charge created by the limited liability company at its registered office.

(2) A limited liability company shall keep a register of all relevant charges created by the limited liability company outlining in respect of each charge:

- (a) the date of creation of the charge, variation or satisfaction of registered charge as created by the limited liability company;
- (b) the date on which the property was acquired by the limited liability company if the charge is one which relates to existing property acquired by the limited liability company;
- (c) a short description of the liability secured by the charge;
- (d) a short description of the property charged;
- (e) the name and address of the chargee; and
- (f) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the limited liability company to create any future charge ranking in priority to, or equally with the charge.

(3) The limited liability company shall maintain the register of charges in such form as the managers may approve and which easily allows the limited liability company to produce legible evidence of its contents.

(4) If either the charge, variation or satisfaction of registered charge, or Register of Charges is not kept at the limited liability company's registered office, then the limited liability company shall notify the Registrar of Companies of such place of business, where the charge, variation or satisfaction of registered charge or Register of Charges is kept.

(5) The copy of the charge, variation and satisfaction of registered charge may be maintained in any such data storage form now known or hereinafter invented or adopted, that the managers approve which easily allows the limited liability company to produce legible evidence of its terms.

(6) The Registrar of Companies shall be entitled, without charge, to inspect the limited liability company's register of charges subject to providing reasonable notice to the limited liability company of his intention to do so.

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(7) The copy of the charge, variation and satisfaction of registered charge shall be maintained by the limited liability company for a period of five (5) years after a certificate of registration of satisfaction of registered charge has been issued.

(8) A limited liability company that fails to maintain a register of charges in contravention of subsection (2) shall be liable to a fine of Five Thousand Dollars (\$5,000.00) to be imposed by the Registrar of Companies under this Ordinance.

41. Execution, acknowledgment and attestation

All charges, variation and satisfaction of registered charges for applications for registration with the Registrar of Companies shall be:

- (a) in a written instrument which shall be executed by the limited liability company, the chargor, the chargee or any person who is authorised to act on behalf of the limited liability company, chargor or chargee; and
- (b) acknowledged before a notary public or any person who is authorised to take acknowledgements according to the laws of the place of execution and the acknowledgement shall be attested to in accordance with section 4.

42. Register of registered charges.

(1) The Registrar of Companies shall maintain a register of charges of all charges, variations or satisfactions of registered charges which have been made pursuant to sections 36, 37 and 38.

(2) Upon the issuance by the Registrar of Companies of a certificate, all persons, whether resident or registered in Nevis or anywhere else in the World shall be deemed to have notice of the existence and terms of charges, variations or satisfactions of registered charges.

43. Priority of registered charges.

(1) Any charge, variation of registered charge and satisfaction of registered charge of a limited liability company that is registered in accordance with sections 36, 37 and 38 have priority over any charge, variation of registered charge and any satisfaction of registered charge that is subsequently registered in accordance with sections 36, 37 and 38 respectively.

(2) A charge, variation of registered charge and satisfaction of registered charge shall have priority over a charge, variation of registered charge and satisfaction of registered charge that is not registered in accordance with sections 36, 37 and 38 respectively.

(3) Charges, variations of charges and satisfactions of charges which are not registered shall rank among themselves in the order in which they would have been ranked had this Ordinance not come into force.

(4) No charge, variation of charge or satisfaction of charge shall be received into evidence in any legal action before the High Court, unless such charge shall have been duly registered.

44. Priority of earlier charges.

(1) Earlier charges may be registered in accordance with section 36 and shall be prioritised in accordance with section 43.

(2) Earlier charges which were not registered in accordance with section 36 shall continue to be prioritised in the order in which they would have been prioritised had this Ordinance not come into force.

45. Variation of order of priority of charges.

(1) Notwithstanding sections 43 and 44, the order of priorities of charges is subject to:

- (a) an express consent of the chargee that varies the priority of that charge in relation to one (1) or more other charges that it would, but for the consent, have had priority over; or
- (b) any agreement between chargees that affects the priorities in relation to the charges held by the respective chargees.

(2) A registered floating charge is postponed to a subsequently registered fixed charge unless the floating charge contains a prohibition or restriction on the power of the limited liability company to create any future charge ranking in priority to or equally with the charge.

46. Registration and Records Act.

Nothing contained in the provisions of the Registration and Records Act Cap. 23.25 shall preclude the collection of fees by the Registrar of Companies in relation to charges which are registered under this Ordinance.

47. Conflict in translations.

(1) The authenticated translation of a charge, variation of registered charge or satisfaction of registered charge shall be translated by a certified translator to be chosen and agreed upon by the limited liability company, the chargee and all other parties to the charge, the variation of registered charge or satisfaction of registered charge.

(2) In the event of any conflict between:

- (a) a non-English language charge and the authenticated translation of the charge; or
- (b) a non-English language variation of registered charge and the authenticated translation of the variation of registered charge; or
- (c) a non-English language satisfaction of registered charge and the authenticated translation of the satisfaction,

the authenticated translation of charge, variation of registered charge or satisfaction of registered charge shall prevail.

PART VIII – MANAGEMENT**48. Management of the business of a limited liability company.**

(1) Unless otherwise provided in the articles of organisation or the operating agreement and subject to subsection (2), the management of the business and affairs of a limited liability company shall be vested in all of its members exclusively in their capacity as members.

(2) The articles of organisation or operating agreement may fully or partially vest management duties in one or more managers, who may, but need not, be members.

(3) Managers shall have the power to manage the business and affairs of the limited liability company to the extent so vested, exclusive of the members who are not managers.

(4) To the extent not vested in managers as provided in subsection (2), the members in their capacity as members shall retain the power to manage the business and affairs of the limited liability company as set forth in subsection (1).

(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 (1) manager is resident or registered in Nevis, and meetings 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.

(6) The management of a limited liability company may be organised in any manner and the managers may be designated by title, as deemed appropriate by the organisers of the limited liability company.

49. Voting.

(1) Unless otherwise provided in this Ordinance or the operating agreement, if the management of a limited liability company is vested in the members pursuant to section 48(1) or where any affirmative consent of the members is required in this Ordinance or the operating agreement, then any action required or permitted to be taken by the members shall be taken upon a vote of more than fifty percent (50%) of the members' interests as measured by the members' capital contributions.

(2) The measurement of consent set forth in the operating agreement may vary, both in requisite percentage and in the manner in which it is measured for different purposes and the manner in which consent is measured may refer to, without limitation:

- (a) the number of members;
- (b) the proportion, as set forth in the operating agreement, of members' interests in profits, capital or distribution; or
- (c) any combination of paragraphs (a) or (b).

(3) Unless otherwise provided in this Ordinance or the operating agreement, if the management of a limited liability company is vested in more than one (1) manager pursuant to section 48, or where any affirmative consent of the managers is required in this Ordinance or the operating agreement, any action required or permitted to be taken by the managers shall be taken upon a vote of a majority of the managers.

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(4) Where this Ordinance or the operating agreement requires the consent of the remaining members or remaining managers, as the case may be:

- (a) the members' interests of the remaining members shall constitute all of the members' interests entitled to vote thereon; and
- (b) the remaining managers shall constitute all of the managers entitled to vote thereon.

50. Agency of members.

(1) Unless otherwise provided in the operating agreement, if management of the limited liability company is vested in the members pursuant to section 48 (1), each member is an agent of the limited liability company in matters concerning its business or affairs.

(2) An act of a member, including signing of an instrument in the name of the limited liability company, for apparently engaging in limited liability company business, binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member has dealt with, either knew or had received notice that the member lacked authority.

(3) An act of a member which is not apparently for engaging in the ordinary course of the limited liability company's business, of a kind engaged in by the limited liability company, binds the limited liability company if the act was authorised by the other members.

51. Agency of managers.

(1) Unless otherwise provided in the operating agreement, if management of the limited liability company is vested in managers pursuant to section 48 (2), each manager is an agent of the limited liability company in matters concerning its business.

(2) An act of a manager, including signing of an instrument in the name of the company, for apparently engaging in limited liability company business, binds the limited liability company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager has dealt knew or had received notice that the manager lacked authority.

(3) An act of a manager, which is not apparently for engaging in the ordinary course of the limited liability company business, of a kind engaged in by the limited liability company, binds the limited liability company, if the act was authorised by the other managers.

(4) If management of the limited liability company is vested in managers, no member, solely by reason of being a member, is an agent of the limited liability company.

(5) The operating agreement may provide that acts of members may bind the limited liability company, if the managers of the limited liability company are not members but are vested with responsibility for management of the limited liability company, solely by contract.

52. Qualification of managers.

(1) The articles of organisation or operating agreement may prescribe special qualifications for managers and unless otherwise provided in the articles of organisation or

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operating agreement, managers may be a person of any nationality and need not be residents of Nevis or members of the limited liability company.

(2) Alternate or substitute managers may be appointed, provided that the terms and conditions under which such appointments shall be made are set forth in the articles of organisation or operating agreement.

53. Standard of care to be observed by managers.

(1) Managers and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which an ordinarily prudent man would exercise, under similar circumstances in like positions.

(2) In discharging their duties, duly authorised members or managers, as the case may be and officers, when acting in good faith, may rely upon financial statements of the limited liability company, represented to them to be correct by the manager of the limited liability company having charge of its books and records, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such limited liability company.

54. Disposition of assets.

Unless otherwise specified in the operating agreement, the manager of a limited liability company may sell, lease, exchange or dispose of all or substantially all the assets of a limited liability company, whether or not made in the usual or regular course of the business actually conducted by such limited liability company.

PART IX – MEMBERS AND MEMBERS' INTERESTS**55. Membership.**

(1) Subject to subsection (2), a person may become a member in a limited liability company:

- (a) in the case of a person acquiring an interest in the limited liability company directly from the limited liability company, upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the written consent of all members; and
- (b) in the case of an assignee of an interest in the limited liability company, as provided in section 59.

(2) The effective date and time of admission of a member to a limited liability company shall be the later of:

- (a) the date and time that the limited liability company is formed; or
- (b) the date and time provided in the operating agreement or, if no such date and time is reflected therein, then when the person's admission is reflected in the register, books and records of the limited liability company.

(3) A person may be admitted to a limited liability company as a member of a limited liability company and may receive an interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company.

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(4) A limited liability company may be operated pursuant to this Ordinance by at least one (1) member and all interests in the limited liability company may be held by a single member.

(5) A member's interest in the limited liability company is personal property and shall not have any interest in specific limited liability company property.

56. Classes and series of members' interests.

(1) Members' interests in a limited liability company may be:

- (a) of one (1) or more class or one (1) or more series within any class thereof;
- (b) with voting powers, full or limited, or without voting powers;
- (c) with such designations, preferences, rights, qualifications, limitations or restrictions thereon as shall be stated in the operating agreement or articles of organisation.

(2) A limited liability company may provide in its operating agreement for one (1) or more classes or series of members' interests which are redeemable, in whole or in part, at the option of the limited liability company at such price or prices, within such period and under such conditions, as are stated in the operating agreement.

57. Termination of a member's interest.

(1) Unless otherwise provided in the operating agreement, a person ceases to be a member of a limited liability company upon the happening of one (1) of the following termination events:

- (a) the member's resignation, expulsion, death, bankruptcy or dissolution, or such other event specified in the operating agreement; or
- (b) the member's assignment of his entire interest pursuant to section 59.

(2) Upon the happening of a termination event specified in subsection (1) (a), a member shall be treated as having relinquished his member's interest in the limited liability company and shall become an assignee pursuant to subsection (1).

(3) Unless provided otherwise in the operating agreement, notwithstanding the termination of a member's interest, no member, assignee or successor to a terminated member may withdraw such member's share of a limited liability company's capital or other property from the limited liability company, nor may he require the limited liability company to acquire his interest prior to dissolution of the limited liability company or the happening of events specified in the operating agreement.

(4) If the member, pursuant to the operating agreement, has the power to withdraw his share of a limited liability company's capital or other property at specified times or upon the occurrence of specified events, such a withdrawal by a member before the specified time or event is a breach of the operating agreement, unless otherwise provided in the operating agreement.

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(5) If the member breaches the operating agreement, or the withdrawal occurs as a result of otherwise wrongful conduct of the member, or the member is expelled for cause, the limited liability company may recover from the withdrawing member, damages for breach of the operating agreement or as a result of the wrongful conduct or expulsion, including the reasonable costs of obtaining replacement of the services the withdrawn or expelled member was obligated to perform and may offset the damages against the amount otherwise distributable to him, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law.

(6) Unless provided otherwise in the operating agreement, the pledge of, or granting of a security interest, lien or other encumbrance in or against any or all of a member's interest is not an assignment and shall not cause the member to cease to be a member.

58. Distributions upon termination of members' interests.

Upon the happening of a termination event that does not cause a dissolution of the limited liability company pursuant to section 57 (1), if the operating agreement provides for a distribution to a terminating member in dissolution of such member's interest in the limited liability company but does not provide the amount of, or a method for determining such dissolution on distribution to a terminating member, the member shall receive within a reasonable time after termination of his interest, the fair market value of the member's interest in the limited liability company as of the date of termination of his interest, based upon the net amount which a willing purchaser would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts, but not based solely upon a proportionate value of the underlying assets of the limited liability company.

59. Assignment of members' interests and restrictions.

(1) Unless provided otherwise in the operating agreement and subject to the restrictions in subsection (2) a member's interest in a limited liability company is assignable in whole or in part.

(2) Unless provided otherwise in the operating agreement, and except as provided in subsection (4), an assignment does not entitle the assignee to vote on matters on which members may vote, to participate in the management and affairs of the limited liability company or to become, or to exercise any rights of, a member, nor is an assignee responsible for fulfilling fiduciary obligations for which members are responsible, if any.

(3) An assignment under this section entitles the assignee to receive, to the extent assigned, only those distributions to which the assignor would be entitled and such share of profits, losses, income, gain, deductions and credits which were allocable to the assignor pursuant to the operating agreement.

(4) Unless provided otherwise in the operating agreement, an assignee of a member's interest may, to the extent assigned, become a member with the full rights and powers of the assignor, and is subject as a member to the same restrictions and liabilities as the assignor, including any liability of the assignor to make capital contributions, if the members other than the assignor and assignee consent to such assignee becoming a member.

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(5) The assignor is not released from his liability to make capital contributions to the limited liability company, until such time as the assignee satisfies such requirement.

(6) Unless provided otherwise in the operating agreement, any person becoming entitled by operation of law or otherwise to a member's interest, due to the death or incompetency of any member of a limited liability company formed under this Ordinance, shall be considered an assignee under this Ordinance and shall have all the rights of an assignee of the member's interest.

(7) The operating agreement may provide that a person who becomes an assignee under subsection (6) may become a member without consent of the members, upon such evidence being produced, as may reasonably be required by the managers.

60. Rights of judgment creditor.

(1) On application to a court of competent jurisdiction by any judgment creditor (including a trustee-in-bankruptcy) 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.

(2) 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.

(3) 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.

(4) 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 (1) or more of the members; or
- (b) with respect to property of the limited liability company, to any one (1) 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 48 (1), or on the consent of the managers whose interests are not charged, if managers are responsible for management duties pursuant to section 48 (2).

(5) 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.

(6) No other remedy of any type, legal or equitable, including, but not limited to,

- (a) foreclosure;
- (b) seizure;
- (c) levy;

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- (d) attachment on the member's interest or rights; or
- (e) 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.

(7) No judgment obtained in a foreign domicile against a member's interest shall be enforced by the High Court to the extent the judgment purports to charge, mortgage, levy, attach, assign or in any other way to affect that member's interests.

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

(9) 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.

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

(11) The creditor in whose favour 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; or
- (f) dissolve, or cause the dissolution of, the limited liability company.

(12) No court order in any jurisdiction that purports to provide the redress or remedy set forth in subsection (11) shall be enforceable or enforced.

(13) A 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.

(14) 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 recognised if issued by a foreign court.

(15) A charging order shall be non-renewable and shall expire three (3) years after the date the order is entered.

(16) Any member may apply for the discharge of a charging order and the court:

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- (a) may 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.

(17) 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 and such distribution shall not be subject to the charging order, to the extent retained by the limited liability company, to satisfy the call.

(18) If the terms of the operating agreement provide, the limited liability company may pay any personal income tax liability attributable to its members, from the income of the limited liability company, on a pro rata basis directly to the taxing authority charged with the collection of the tax so imposed, and any such payment:

- (a) shall not be considered a distribution to the members (or an assignee of a member); and
- (b) shall be made in consideration of the members agreeing with each other and the limited liability company, for the limited liability company to be taxed as a pass-through entity.

61. Avoidance of fraud.

(1) Where it is proven beyond reasonable doubt by a creditor of a member that a limited liability company is formed 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 formation or disposition, such formation or disposition rendered such member insolvent or without property, by which that creditor's claim (if successful) could have been satisfied,

then such formation 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 formation 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 formation or disposition referred to in subsection (1).

(3) Where the fair market value of such member's property exceeded the value of the creditor's claim, at the time immediately after formation or disposition, then the limited liability company so formed or the disposition thereto, shall for the purposes of this Ordinance, be

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deemed not to have been so formed or the property disposed of with intent to defraud the creditor.

(4) The formation of a limited liability company and a disposition to such limited liability company shall not be fraudulent as against a creditor of a member:

- (a) if the formation or the disposition takes place after the expiration of two (2) years from the date of that creditor's cause of action accruing; or
- (b) where the formation or the disposition takes place before the expiration of two (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 one (1) year from the date such formation or disposition took place.

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

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

- (a) has formed a limited liability company or has disposed of property to such limited liability company, within two (2) 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.

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

(8) If the limited liability company is unable to satisfy a creditor's claim in the manner provided for in subsection (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.

(9) For the purpose of this section:

- (a) the burden of proof of the member's intent to defraud the creditor shall be borne by the creditor;
- (b) 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 (1) 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; and

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- (c) The entry of judgment in any legal action shall not constitute a separate cause of action.

(10) The provisions of this section shall apply to all legal actions brought in any court, however described, against any person (whether a party to the legal action or not), with regard to the formation of the 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 (1) shall be the sole remedy available in such legal action, to the exclusion of any other relief or remedy against any party to the legal action.

(11) No judgment obtained in a foreign domicile with respect of any remedy described in subsection (1) shall be recognised or enforced by the High Court.

(12) 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.

(13) In the event that the formation of or disposition to a limited liability company shall become subject to subsection (1) above, if the court is satisfied that the limited liability company and any member subject to the remedies described in subsection (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 legal action (and not merely such costs as might otherwise be allowed by the court).

(14) 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.

(15) 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 subsection (1).

(16) This Ordinance shall constitute the exclusive and proper law regarding the remedies described in subsection (1) or otherwise applicable to the formation of, or disposition to, a limited liability company by a member.

(17) No limited liability company formed under this Ordinance and no formation 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 domicile prohibit or do not recognise the concept of a limited liability company, either in part or in whole; or
- (b) formation 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 domicile upon any person or, contravenes any rules, law, judicial or administrative order or action intended to recognise, protect, enforce or give effect to any such rights, claims or interest; or

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- (c) the acts of Saint Christopher and Nevis, the ordinances of Nevis or this Ordinance are inconsistent with any foreign law.

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

62. Bond.

(1) Every creditor of a member or a limited liability company, before bringing any legal action to collect on a judgment against any member, limited liability company or property thereof, governed by section 60, shall first deposit with the Permanent Secretary in the Ministry of Finance, a bond in an amount to be determined by the High Court, from a financial institution in Nevis, for securing the payment of all costs as may become payable by the creditor.

(2) The High Court may from time to time, increase or vary any bond which has been ordered under subsection (1).

PART X – LIABILITY, CONFLICTS OF INTEREST AND INDEMNIFICATION**63. Liability to third parties.**

(1) A limited liability company shall be solely liable for its own debts, obligations and liabilities.

(2) Notwithstanding any other law, unless liability for a limited liability company's debts, obligations or liabilities has been assumed by the person against whom liability is asserted pursuant to subsection (3) by such person, no manager, officer, member, employee or agent of a limited liability company, or other person, shall be liable for:

- (a) limited liability company's debts, obligations or liabilities, whether arising in contract, tort or otherwise, solely by reason of being a manager, officer, member, employee or agent of the limited liability company; or
- (b) the acts or omissions of any other manager, officer, member, employee or agent of the limited liability company.

(3) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(4) Any or all members may voluntarily assume liability for any or all debts and obligations of the limited liability company.

(5) Nothing in this section shall be interpreted as limiting the criminal liability of any person under any criminal statute.

64. Limited liability company as legal person.

(1) A limited liability company shall be a legal person with separate rights and liabilities, distinct from its members and managers.

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(2) A limited liability company shall be a proper plaintiff in a legal action, to assert a legal right of the limited liability company and a proper defendant in any legal action, to defend a legal right against the limited liability company and the naming of a member, manager or employee of the limited liability company as a party to legal action in Nevis or elsewhere, to represent the limited liability company, is subject to a motion to dismiss, if such party is the sole party to sue or defend, or subject to a motion for misjoinder, if such party is joined with another party who is a proper party and has been joined only to represent the limited liability company.

(3) Any estate or interest in property may be acquired, held and conveyed in the name of the limited liability company and title to any estate or interest so acquired, vests in the limited liability company.

65. Conflicts of interest.

No contract, loan or other transaction between a limited liability company and one (1) or more of its members or managers, or between a limited liability company and any other person in which one (1) or more of its members or managers are members or managers who have a substantial financial interest, shall be either void or voidable for this reason alone, if the material facts as to such member's or manager's interest in such contract or transaction and as to any such common membership, officership or financial interest are disclosed in good faith or known to the limited liability company, and the limited liability company approves such contract or transaction by a vote sufficient for such purpose.

66. Indemnification of members or managers.

(1) A limited liability company shall have power to indemnify and hold harmless, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed legal action whether civil, criminal, administrative or investigative, including a legal action by or in the right of the limited liability company, by reason of the fact that he is or was a member or manager of the limited liability company, or is or was serving at the request of the limited liability company as a manager, or officer of another person, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such legal action if:

- (a) he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the limited liability company; and
- (b) with respect to any criminal action or proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) The termination of any legal action by judgment, order, settlement, conviction, or upon a plea of no contest, or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the limited liability company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(3) A limited liability company shall not indemnify a person under subsection (1) in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the limited liability

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company, unless and only to the extent that the court in which such legal action was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(4) To the extent that a member or manager of a limited liability company has been successful on the merits or otherwise in defence of any legal action referred to in subsection (1), or in the defence of a claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(5) Expenses incurred in defending a legal action, whether civil or criminal action, suit or proceeding may be paid in advance of the final disposition of such legal action as authorised by the duly authorised members or managers, as the case may be, in the specific case upon receipt of an undertaking by or on behalf of the member or manager to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the limited liability company, as authorised in such legal action.

(6) A limited liability company 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, or is or was serving at the request of the limited liability company as a manager, officer or another person, against whom any liability is either asserted or incurred in such capacity, whether or not the limited liability company would have the power to indemnify him against such liability under the provisions of this section.

PART XI – LIMITED LIABILITY COMPANY RECORDS AND REPORTS

67. Books and records of limited liability companies.

(1) A limited liability company shall cause to be kept proper books and records including, where applicable, material underlying documentation including contracts and invoices and should reflect details of:

- (a) all sums of money received and expended by the limited liability company, and the matters in respect of which the receipt and expenditure takes place; and
- (b) all sales and purchases and other transactions and the assets and liabilities of the limited liability company.

(2) The books and records of a limited liability company shall accurately explain all transactions:

- (a) to enable the financial position of the limited liability company to be determined with reasonable accuracy at any time; and
- (b) to allow financial statements to be prepared.

(3) The books and records which a limited liability company is required to keep shall be preserved by it for a minimum period of five (5) years from the date on which they are prepared.

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(4) The books and records shall be stored in any mechanical, electronic or digital storage method now known or hereinafter invented or adopted or in any form capable of being converted into written form within a reasonable time.

(5) The books and records of a limited liability company shall be kept at the registered office of the limited liability company or at such other place or places as the managers think fit.

68. Right of inspection of books and records.

(1) Each member of a limited liability company has the right, at his own expense and subject to such reasonable standards (including standards governing what books and records are to be furnished) as may be set forth in the operating agreement or otherwise established by the managers, to obtain from the limited liability company from time to time, upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company, such information and records as the limited liability company may maintain.

(2) A manager shall have the right to examine all of the books and records described in subsection (1) for a purpose reasonably related to his position as a manager.

(3) The manager of a limited liability company shall have the right to keep confidential from the members, for such period of time as the manager deems reasonable, any information which is maintained by the limited liability company's books and records, which the manager reasonably believes to be in the nature of trade secrets or other information, the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or which the limited liability company is required by law or by agreement with a third party to keep confidential.

(4) Any demand by a member under this section shall be in writing and shall state the purpose of such demand.

(5) Any action to enforce any right arising under this section shall be brought in the High Court.

(6) Failure of the limited liability company to keep or maintain the books and records shall not be grounds for imposing liability on any manager, officer, member or agent of the limited liability company for debts, obligations and liabilities of the limited liability company.

(7) Subject to subsection (3), the right of inspection stated by this section is a fundamental right and may not be limited in the limited liability company's articles of organisation or its operating agreement.

PART XII – CONVERSION, MERGER AND CONSOLIDATION

69. Conversion of a corporation to a limited liability company.

(1) A plan of conversion must set forth the terms and conditions of the conversion of the shares held by the shareholders of the corporation into interests in the limited liability company, or the cash or other consideration to be paid or delivered as a result of the conversion.

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(2) The terms and conditions of a conversion of a corporation to a limited liability company must be approved by the corporation in the manner required by the Nevis Business Corporation Ordinance 2017, its articles of incorporation or bylaws.

(3) After the plan is approved in accordance with subsection (2), the corporation shall file articles of organisation by conversion with the Registrar of Companies in the manner set forth in Part IV and in addition to the requirements of Part IV, the articles of organisation shall include:

- (a) the name of the corporation from which the limited liability company was converted;
- (b) a statement that all requirements of the Nevis Business Corporation Ordinance 2017, have been satisfied;

(4) The filing of the articles of organisation by conversion cancels the certificate of incorporation as of the effective date of the articles of organisation by conversion.

(5) A person who has personal liability for debts and obligations of the corporation which was converted to the limited liability company, remains liable for debts and obligations incurred by the corporation, before the effective date of the formation of the converted limited liability company to the same extent as he would be liable, had there not been a conversion.

(6) A person's liability for debts and obligations of the limited liability company incurred on or after the effective date of the formation of the converted limited liability company is that of a member of a limited liability company as provided in this Ordinance.

70. Effect of conversion.

(1) A limited liability company that has been converted pursuant to this Part is for the purposes of this section the same entity that existed before the conversion.

(2) When a conversion takes effect:

- (a) all property owned by the converting corporation is vested in the limited liability company without further act or deed. If deeds or other documents evidencing ownership or title must be filed in any jurisdiction, such documents shall be filed only to give notice that the name and form of owner of such property has been changed, and not to evidence or record a change of owner or title holder;
- (b) all debts, liabilities and other obligations of the converting corporation continue as obligations of the limited liability company;
- (c) a legal action pending by or against the converting corporation may be continued as if the conversion had not occurred, except that, if appropriate in the jurisdiction in which the legal action is pending, the caption of the action may be changed to reflect the conversion;
- (d) notwithstanding any other law, all the rights, privileges, immunities, powers and purposes of the converting corporation are vested in the limited liability company; and

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- (e) except as otherwise provided in the plan of conversion, all of the shareholders of the converting corporation continue as members of the limited liability company.

71. Merger or consolidation of domestic limited liability companies.

(1) Two (2) or more domestic limited liability companies may merge or consolidate as provided in this Part.

(2) The managers of each limited liability company proposing to participate in a merger or consolidation shall approve a plan of merger or consolidation setting forth:

- (a) the name of each constituent company, and if the name of any of them has been changed, the name under which it was formed; and the name of the surviving company, or the name, or the method of determining it, of the consolidated company;
- (b) as to each constituent company, the designation and interest or the cash or other consideration to be paid or delivered in exchange for such interests, or a combination thereof.
- (c) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the interests of each constituent company into interests, bonds or other securities of the surviving or consolidated company or the cash or other consideration to be paid or delivered in exchange for interest in each constituent company, or a combination thereof;
- (d) in case of merger, a statement of any amendment in the articles of organisation of the surviving company to be effected by such merger;
- (e) in case of consolidation, all statements required to be included in articles of organisation for a limited liability company formed under this Ordinance, except statements as to facts not available at the time the plan of consolidation is approved by the managers; and
- (f) such other provisions with respect to the proposed merger or consolidation as the managers consider necessary or desirable.

(3) The managers of each constituent company to a merger or consolidation, who are entitled to vote thereon and all other parties, unless a greater quantity is otherwise required in the operating agreement, shall consent to the merger or consolidation and authorise the merger or consolidation pursuant to the laws applicable thereto.

(4) After approval of the plan of merger or consolidation by the managers and members of each constituent company, articles of merger or consolidation shall be executed in duplicate on behalf of each limited liability company that is party to the merger or consolidation and shall set forth:

- (a) the plan of merger or consolidation that had been duly approved as set forth herein;
- (b) the date the articles of organisation of each constituent company were filed with the Registrar of Companies;

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- (c) the manner in which the merger or consolidation was authorised with respect to each party to the merger or consolidation; and
 - (d) in case a domestic limited liability company is the surviving or consolidated company, any statement required to be included in articles of organisation for a limited liability company formed under this Ordinance.
- (5) The articles of merger or articles of consolidation shall be filed with the Registrar of Companies in accordance with the provisions of section 4.

72. Effect of merger or consolidation.

- (1) The merger or consolidation shall be effective upon the filing of the articles of merger or consolidation with the Registrar of Companies or on such date subsequent thereto, not to exceed thirty (30) days, as shall be set forth in such articles of merger or articles of consolidation.
- (2) When such merger or consolidation has been effected:
- (a) a surviving or consolidated domestic limited liability company shall thereafter, consistent with its articles of organisation as altered or established by the merger or consolidation, possess all the rights, privileges, immunities, powers and purposes of each constituent company;
 - (b) all the property, real and personal, including causes of action and every other asset of each constituent company shall vest in such surviving or consolidated domestic limited liability company without further act or deed;
 - (c) the surviving or consolidated domestic limited liability company shall assume and be liable for all the liabilities, obligations and penalties of each constituent company;
 - (d) no liability or obligation due or to become due, claim or demand for any cause existing against any such constituent company, or any member, officer or manager thereof, shall be released or impaired by such merger or consolidation;
 - (e) no legal action then pending by or against any such constituent company or any member, officer or manager thereof, shall abate or be discontinued by such merger or consolidation, but may be enforced, prosecuted, settled or compromised as if such merger or consolidation had not occurred, or such surviving or consolidated limited liability company may be substituted in such legal action in place of any constituent company;
 - (f) in the case of a merger, the articles of organisation of the surviving limited liability company shall be automatically amended to the extent, if any, that changes in its articles of organisation are set forth in the plan of merger;
 - (g) in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organisation of a limited liability company formed under this Ordinance, shall be its articles of organisation; and

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- (h) unless otherwise provided in the articles of merger or consolidation, a constituent company which is not the surviving limited liability company or the consolidated limited liability company, ceases to exist and is dissolved.

PART XIII – DISSOLUTION

73. Dissolution on failure to pay annual registration fee or maintain a registered agent and removal from register.

(1) On the failure of a limited liability company to pay the annual renewal of registration fee for a period of one (1) year the Registrar of Companies shall remove the limited liability company from the register of companies.

(2) On the failure of a limited liability company to maintain a registered agent for a period of sixty (60) days, the Registrar of Companies shall remove the limited liability company from the register of companies.

(3) Where the Registrar of Companies has reasonable grounds to believe that a company formed under this Ordinance is engaged in any criminal activity, the Registrar of Companies shall forfeit the articles of organisation of the company and shall remove the company from the register of companies.

(4) A limited liability company which is removed from the register pursuant to subsections (1) and (2) may be restored to the register within three (3) years of the date of removal, upon filing an application for restoration with the Registrar of Companies in the prescribed form, together with the prescribed fee for restoration and all outstanding fees and penalties accrued as at the date of the application.

(5) A limited liability company removed from the register pursuant to subsection (3) may be restored to the register at any time if to the satisfaction of the Registrar of Companies the grounds for forfeiture of the articles of organisation have been proven false. In such a case, the provisions of subsection (9) shall not apply to that limited liability company with respect to the payment of the fee for restoration.

(6) Where a limited liability company has been removed from the register of companies, the Registrar of Companies may in his discretion, restore a limited liability company to the register of companies at any time upon an application made by the limited liability company on the prescribed form and upon payment of the prescribed fees.

(7) A limited liability company that makes an application for restoration under this section shall submit to the Registrar of Companies a statement that there has been no illegal activity perpetrated by the limited liability company or pending litigation against the limited liability company that would render the limited liability company undesirable in any way to be restored to the register of companies.

(8) The Registrar shall, after removing any limited liability company from the register pursuant to subsection (3), give notice of removal in writing to the registered agent of the limited liability company, specifying the allegations of criminal activity of which the limited liability company is accused and the limited liability company shall be given a period of fourteen (14) days to respond to the notice. If the limited liability company has no registered

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agent, then such notice shall be sent to the last known registered agent of the limited liability company.

(9) A limited liability company shall be restored to the register of companies retroactive to the date of its removal and shall pay a fee for restoration to the register of companies.

74. Manner of effecting dissolution.

(1) A limited liability company is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (a) at the time or upon the occurrence of an event specified in writing in the operating agreement;
- (b) the written consent of all of the members entitled to vote thereon;
- (c) unless otherwise provided in the operating agreement, the death, bankruptcy or dissolution (or other event specified in the operating agreement) of:
 - (i) any member of the limited liability company, if the limited liability company is managed by the members pursuant to section 48 (1), or
 - (ii) any manager that is also a member of the limited liability company, if the limited liability company is managed by managers pursuant to section 48 (2),

unless the business of the limited liability company is continued by the consent of the remaining members, on or before the one hundred eighty (180) days following the occurrence of any such event; or

- (d) entry of a decree of judicial dissolution under section 75.

(2) Unless provided otherwise in the operating agreement, an assignment of an interest in a limited liability company does not of itself dissolve the limited liability company.

75. Judicial dissolution.

On application by or for a member, the High Court may decree dissolution of a limited liability company whenever it is not reasonably practicable to continue engaging in the business of the limited liability company, in conformity with the operating agreement.

76. Winding up after dissolution.

(1) A limited liability company, whether it expires by its own limitations or is otherwise dissolved, shall nevertheless be continued for the term of three (3) years from such expiration or dissolution to enable it to:

- (a) prosecute and defend legal actions by or against it;
- (b) gradually to settle and close its business and affairs;
- (c) dispose of and convey its property;
- (d) discharge its liabilities; and
- (e) distribute to the members any remaining assets,

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but not for the purpose of continuing the business for which the limited liability company was organised.

(2) Where any legal action is commenced by or against the limited liability company either prior to or within three (3) years after the date of its expiration or dissolution, and not concluded within such period, then the limited liability company shall be continued beyond that period for the purpose of concluding such legal action and until any judgment, order, or decree therein shall be fully executed.

(3) Upon the dissolution of a limited liability company, the managers shall be trustees thereof, with full power to:

- (a) settle the business and affairs of the limited liability company;
- (b) collect the outstanding debts of the limited liability company;
- (c) sell and convey the property, real and personal, as may be required by the laws of the jurisdiction where the property is situated;
- (d) prosecute and defend all legal action as may be necessary or proper for the purposes mentioned in paragraphs (a) to (c) above;
- (e) distribute the money and other property among the members after paying or adequately providing for payment of its liabilities and obligations; and
- (f) do all other acts which might be done by the limited liability company, before dissolution, that may be necessary for the final settlement of the unfinished business and affairs of the limited liability company.

(4) At any time within three (3) years after the filing of the articles of dissolution, the High Court, in a special proceeding instituted under this section, upon the petition of the limited liability company, or of a creditor, claimant, manager, member, or organiser or any other person in interest, may continue the dissolution of the limited liability company under the supervision of the High Court and may make all such orders as it may deem proper in all matters in connection with the dissolution or in winding up the business and affairs of the limited liability company, including the appointment or removal of a receiver, who may be a manager or member of the limited liability company.

77. Power of managers after dissolution.

(1) Except as provided in subsections (3) and (4), after dissolution of the limited liability company, each of the managers having authority to wind up the limited liability company's business and affairs can bind the limited liability company:

- (a) by any act appropriate for winding up the limited liability company's business and affairs or completing transactions which are unfinished at dissolution; and
- (b) by any transaction that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution shall be presumed to constitute notice of dissolution for the purposes of subsection (1) (b).

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(3) An act of a manager which is not binding on the limited liability company pursuant to subsection (1) is binding if it is otherwise authorised by the limited liability company.

(4) An act which would be binding under subsection (1) or would be otherwise authorised but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having a knowledge of the restriction.

78. Settlement of claims against limited liability company

(1) Any time within one (1) year after dissolution, a limited liability company may give notice requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the limited liability company has unfulfilled contracts, to present their claims in writing and in detail at a specified place and by a specified day, which shall not be less than six (6) months after the first publication of such notice.

(2) A notice issued by a limited liability company under subsection (1) shall be published at least once a week for four (4) successive weeks in a newspaper of general circulation in the jurisdiction in which the limited liability company conducted its business at the date of dissolution, or in a newspaper of general circulation in Nevis.

(3) On or before the date of the first publication of notice under subsection (2), the limited liability company shall deliver a copy thereof, via any method of delivering written communication now known or hereinafter invented or adopted, which will provide proof of delivery and receipt of such communication to the last known address of each person believed to be a creditor of or claimant against the limited liability company, whose name and address are known to or can with due diligence be ascertained by the limited liability company.

(4) The giving of notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid or operate as a recognition of the validity of, or a waiver of any defence or counterclaim in respect of any claim against the limited liability company, its assets, managers or members, which has been barred by any statute of limitation or which has become invalid by any cause, or in respect of which the limited liability company, its members or managers have any defence or counterclaim.

(5) Any claims which shall have been filed as provided in such notice and which shall be disputed by the limited liability company may be submitted for determination to the High Court.

(6) A person whose claim is, at the date of the first publication of the notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section.

(7) The claim of any such person and all other claims which are not timely filed as provided in the notice, except claims which are the subject of legal action on the date of the first publication of such notice, and all claims which are so filed but are disallowed by the High Court, shall be forever barred as against the limited liability company, its assets, members or managers, except to such extent, if any, as the High Court may allow them against any remaining assets of the limited liability company in the case of the creditor who shows satisfactory reason for his failure to file his claim as so provided.

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(8) Notwithstanding this section, tax claims and other claims by the Nevis Island Administration shall not be required to be filed under this Ordinance, and such claims shall not be barred because not so filed, and distribution of the assets of the limited liability company, or any part thereof, may be deferred until determination of any such claims.

79. Distribution of assets upon winding up.

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (a) payment, or adequate provision for payment, shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;
- (b) unless otherwise provided in the operating agreement, to members or former members in satisfaction of liabilities for distributions; and
- (c) unless otherwise provided in the operating agreement, to members and former members first, for the return of their contributions and second, in proportion to the members' portion of distributions from the limited liability company prior to dissolution.

80. Articles of dissolution.

(1) Upon the dissolution of the limited liability company pursuant to section 74, the limited liability company shall file articles of dissolution with the Registrar of Companies in accordance with the provisions of section 4.

(2) The articles of dissolution shall be signed and delivered to the Registrar of Companies and shall set forth:

- (a) the name of the limited liability company;
- (b) the date its articles of organisation were filed with the Registrar of Companies and date of filing of amendments, if any;
- (c) that the limited liability company elects to dissolve and the reason for such dissolution; and
- (d) the manner in which dissolution was authorised.

PART XIV – CHANGE OF DOMICILE

81. Transfer of domicile to Nevis.

(1) A foreign limited liability company may, subject to and upon compliance with the further provisions of this Part, transfer its domicile into Nevis, and may perform the acts described in the provisions of this Part, provided that the laws of such foreign domicile do not expressly prohibit such transfer.

(2) The transfer of domicile of any foreign limited liability company to Nevis shall not be deemed to affect any obligations or liabilities of said foreign limited liability company incurred prior to such transfer.

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(3) Nothing in this Ordinance shall be regarded as permitting a foreign limited liability company which transfers its domicile to Nevis to transfer business operations to Nevis.

82. Application to transfer domicile.

A foreign limited liability company may apply for permission to transfer its domicile to Nevis by filing with the Registrar of Companies an application to transfer domicile to Nevis which shall be filed in accordance with section 4.

83. Contents of application to transfer domicile.

An application to transfer domicile to Nevis by a foreign limited liability company shall contain:

- (a) the date on which, and the jurisdiction where, the foreign limited liability company was formed, organised, created or otherwise came into existence;
- (b) the name of the foreign limited liability company and the authenticated translation of its name, if any;
- (c) the name of the foreign jurisdiction that constitutes the domicile;
- (d) a declaration that the transfer of domicile has been approved by all necessary corporate action;
- (e) a declaration that the transfer of domicile is made in good faith and will not serve to hinder, delay or defraud existing members, creditors, claimants or other parties in interest;
- (f) a declaration that the limited liability company at the time of application to transfer domicile to Nevis is not in breach of any duty or obligation imposed upon it by the laws of its current jurisdiction;
- (g) the name of the limited liability company's registered agent in Nevis;
- (h) the address of the limited liability company's registered office in Nevis which will be the registered office of the registered agent;
- (i) any other pertinent information required to be set forth in articles of organisation under section 22; and
- (j) any amendments of its articles of organisation or their equivalent, that are to be effective upon filing the application to transfer domicile to Nevis.

84. Instruments to be submitted with application.

An application by a foreign limited liability company under section 82 shall be submitted to the Registrar of Companies together with:

- (a) a certificate of good standing or its equivalent, duly issued by an authorised officer of the foreign domicile and such certificate to be issued no earlier than sixty (60) days prior to its submission to the Registrar of Companies;
- (b) a certified copy of the charter of the foreign limited liability company, with amendments, if any, and if said instruments are not in the English language, the authenticated translation of such instruments duly certified;

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- (c) a certified copy of the certificate of formation or its equivalent, issued by an authorised officer of the foreign domicile;
- (d) a certified copy of a certificate of continuation or its equivalent, issued by an authorised officer of the foreign domicile, if any; and
- (e) a certified copy of the certificate issued to the limited liability company, or an irrevocable undertaking that application has been made to discontinue the limited liability company on the foreign register.

85. Execution of application.

The application to transfer domicile shall be in the English language and notwithstanding the requirements of section 4, shall be signed by a manager of the limited liability company or any other officer performing functions equivalent to those of a manager, however named or described and who is authorised to sign such application to transfer domicile to Nevis on behalf of the limited liability company.

86. Certificate of Transfer of Domicile to Nevis.

(1) Upon the filing of the application to transfer domicile to Nevis and the documents referred to in sections 83 and 84, together with the prescribed fees, if the Registrar of Companies shall find that such instruments are in proper form and satisfy the requirements of this Part, and if the name of the company meets the requirements of sections 18 and 19, then the Registrar of Companies shall deliver to the limited liability company a certificate of transfer of domicile to Nevis and the limited liability company shall become domiciled in Nevis and shall thereafter be subject to all the provisions of this Ordinance.

(2) Where a limited liability company is issued a certificate of transfer of domicile to Nevis under subsection (1), that limited liability company shall be deemed to have commenced its existence on the date the limited liability company was first formed, organised, created or came into existence and shall have continued existence in Nevis thereafter.

(3) A limited liability company shall promptly adapt its articles of organisation, operating agreement, management and records to comply with this Ordinance.

87. Applicable law.

The filing of an application to transfer domicile to Nevis shall not affect the choice of law applicable to prior obligations and rights of the limited liability company, except that from the date the application to transfer domicile is filed, the laws of Nevis, including the provisions of this Ordinance, shall apply to the limited liability company to the same extent as if the limited liability company had been originally formed as a domestic limited liability company on that date and title to the limited liability company's assets shall also be governed by this Ordinance.

88. Prior obligations and liabilities.

(1) A foreign limited liability company that has been redomiciled pursuant to this Part, is for all purposes the same entity that existed before the redomiciliation.

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- (2) When a redomiciliation takes effect then:
- (a) all property owned by the redomiciled foreign limited liability company is vested in the limited liability company without further act or deed and if deeds or other instruments evidencing ownership or title must be filed in any foreign domicile, such instrument shall be filed only to give notice that the name and form of owner of such property has been changed, and not to evidence or record a change of owner or title holder;
 - (b) all debts, liabilities and other obligations of the redomiciled foreign limited liability company continue as obligations of the limited liability company;
 - (c) any legal action pending by or against the redomiciled foreign limited liability company may be continued as if the redomiciliation had not occurred, except that, if appropriate in the jurisdiction in which the legal action is pending, the caption of the legal action may be changed to reflect the redomiciliation;
 - (d) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of the redomiciled foreign limited liability company are vested in the limited liability company; and
 - (e) all of the members of the redomiciled foreign limited liability company continue as members of the limited liability company.
- (3) The transfer of domicile of any foreign limited liability company to Nevis shall not be deemed to affect any obligations or liabilities of said foreign limited liability company incurred prior to such transfer.

89. Departure and jurisdiction of courts after departure.

(1) A limited liability company formed or otherwise existing under or subject to this Ordinance may become domiciled in any foreign domicile upon compliance with this Ordinance and the laws of the foreign domicile into which the limited liability company seeks to become domiciled.

(2) The transfer of domicile of any limited liability company from Nevis shall not affect the jurisdiction of the High Court to hear and determine any legal action, by or against the limited liability company which was commenced before the limited liability company ceased to be domiciled in Nevis.

90. Certificate of departure.

(1) A limited liability company formed under this Ordinance shall submit for filing with the Registrar of Companies, a certificate of departure which shall be filed in accordance with the provisions of section 4.

- (2) The certificate of departure shall set forth:
- (a) the names and addresses of the limited liability company's creditors and the total amount of its indebtedness to such creditors, and the names and addresses of all persons or entities which have notified the limited liability company in

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writing of a claim in excess of one thousand dollars (\$1,000) and the total amount of such claims;

- (b) that the intended departure from Nevis and transfer of domicile to a foreign domicile is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the limited liability company;
- (c) that the limited liability company at the time of application to the foreign domicile is not in breach of any duty or obligation imposed upon it by this Ordinance or any other law of Nevis;
- (d) that the transfer of domicile to the foreign domicile is made in good faith and will not serve to hinder, delay or defraud existing members or other parties in interest; and
- (e) a consent and agreement by the limited liability company that it may be served with process in Nevis in any legal action arising out of actions or omissions occurring prior to its departure from Nevis, which agreement shall include the appointment of the Registrar of Companies as the agent of the limited liability company to accept such service of process and shall set forth an address to which a copy of such process shall be forwarded via registered mail.

(3) Upon the filing of a certificate of departure together with the prescribed fee, if the Registrar of Companies shall find the instrument to be in proper form, then the Registrar of Companies shall issue an endorsement certificate under his hand and seal certifying that the limited liability company has filed a certificate of departure out of Nevis.

91. Effective date of departure.

(1) Upon payment of all fees outstanding in Nevis and upon proper compliance with this Ordinance and applicable laws for transfer of domicile to the foreign domicile, the departing limited liability company shall notify the Registrar of Companies as to the effective date of the transfer of domicile outside of Nevis by filing with the Registrar of Companies an instrument or copy thereof, duly issued by the relevant authority permitting or agreeing to the change of domicile.

(2) As of the effective date of a transfer by a limited liability company under subsection (1) to the foreign domicile, that limited liability company shall be deemed to have ceased to be a limited liability company domiciled in Nevis and the certificate of departure shall take effect as at that date.

(3) The departure of a limited liability company from Nevis is not valid until the provisions of this section have been fully complied with.

(4) If a limited liability company fails to make the required filing under subsection (1) within thirty (30) days of the filing of the certificate of departure, the process of transfer to the foreign domicile shall be deemed to have been so cancelled by the limited liability company.

(5) Where a certificate of departure has been cancelled under subsection (4), and a limited liability company wishes to transfer its domicile, the certificate of departure shall be reissued and filed with the Registrar of Companies in accordance with the provisions of sections 89 to 91.

PART XV – EMERGENCY TRANSFER OF DOMICILE INTO NEVIS**92. Application for emergency transfer of domicile.**

(1) During the existence of an emergency condition in a foreign domicile, any foreign limited liability company may, subject to and upon compliance with the further provisions of this Part, apply for an emergency transfer of its domicile to Nevis.

(2) A foreign limited liability company may apply for emergency transfer of domicile to Nevis by filing with the Registrar of Companies:

- (a) instruments and certificates similar in respect to those required by sections 83 and 84, except that such instruments shall refer to an emergency transfer of domicile pursuant to this Part; and
- (b) a certificate of a manager, officer or agent of the foreign limited liability company specifying the emergency condition which exists in the foreign domicile.

(3) The Registrar of Companies, in his discretion, may waive any of the above requirements upon request by such foreign limited liability company supported by facts (including without limitation, the existence of an emergency condition) justifying such waiver.

(4) If emergency conditions have affected ordinary means of communication, any of the documents or certificates hereby required may be submitted in writing by any mechanical, electronic or digital form of communication now known or hereinafter invented or adopted so long as the duly executed original documents and supporting documentation are received by the Registrar of Companies within thirty (30) days thereafter or as soon as the emergency conditions cease to exist.

(5) If the Registrar of Companies finds the required documents and certificates to be in proper form and upon payment of the prescribed fee, the Registrar of Companies shall certify that the foreign limited liability company has filed all documents and paid all fees required by this Part, and shall deliver to the foreign limited liability company a certificate of emergency transfer of domicile, and such certificate of the Registrar of Companies shall be *prima facie* evidence of the transfer by such foreign limited liability company of its domicile into Nevis.

93. Governing law after emergency transfer of domicile.

(1) Except to the extent expressly prohibited by this Ordinance or the laws of Nevis, after a foreign limited liability company transfers its domicile to Nevis pursuant to this Part, the limited liability company shall have all of the powers which it had immediately prior to such transfer under the laws of the foreign domicile and the managers of the limited liability company and their successors may manage the business and affairs of the limited liability company, in accordance with the provisions of this Ordinance.

(2) The emergency transfer by any foreign limited liability company from its foreign domicile into Nevis pursuant to this Part shall not be deemed to affect any obligations or liabilities of such foreign limited liability company incurred prior to such transfer.

94. Service of process after emergency transfer of domicile.

All process issued out of the High Court, all orders made by the High Court, and all rules and notices of any kind required to be served on any foreign limited liability company which has transferred its domicile into Nevis pursuant to this Part may be served on the limited liability company pursuant to section 16 in the same manner as if such foreign limited liability company were a domestic limited liability company.

95. Return to foreign domicile.

(1) Any foreign limited liability company which has transferred its domicile into Nevis pursuant to this Part may return to the foreign domicile by filing with the Registrar of Companies a certificate of departure pursuant to sections 90 and 91.

(2) Such application shall be accompanied by a certified resolution of the managers of the limited liability company authorising the return to the foreign domicile.

PART XVI – TAX AND EXEMPTIONS**96. Tax exemptions.**

(1) Under this Part, unless the context otherwise requires:

“administrative office” means a physical office in which clerical functions including filing, record keeping, maintenance of registers, storage or maintenance of financial records, making and receiving of telephone calls are carried out with respect to the operations of a limited liability company.

“corporate residency tax” means a tax to be charged to and payable by a limited liability company which elects to be a tax resident in Nevis.

“tax resident certificate” means a certificate issued to a limited liability company which has elected to become a tax resident in Nevis, by the Minister, which enables the limited liability company to be tax resident in Nevis for all intents and purposes.

(2) A limited liability company subject to this Ordinance which does no business in Saint Christopher and Nevis, shall not be subject to any corporate tax, income tax, withholding tax, stamp tax, asset tax, exchange controls, or other fees or taxes based upon or measured by assets or income originating outside of Saint Christopher and Nevis or in connection with other activities outside of Saint Christopher and Nevis or in connection with matters of corporate administration which may occur in Saint Christopher and Nevis, except as provided in sections 6 and 7.

(3) Any profits on member’s interest paid by a limited liability company which does not carry on business in St. Christopher and Nevis to its members, shall be exempt from any tax or withholding provisions of the laws of Nevis which would otherwise be applicable to such limited liability company or the recipient of the profits.

(4) Unless a limited liability company is a tax resident company, no limited liability company shall be considered to be doing business in Nevis solely because it engages in one (1) or more of the following activities:

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- (a) maintaining bank accounts in Nevis;
- (b) holding meetings of managers or members in Nevis;
- (c) maintaining company or financial books and records in Nevis;
- (d) maintaining an administrative office in Nevis with respect to assets, business or activities done outside of Nevis;
- (e) maintaining a registered agent in Nevis;
- (f) investing in shares of a Nevis company, international business corporations, investing in the interest of Nevis limited liability companies, acting as a partner of partnership registered under the Partnership Act or the Limited Partnership Act, or as a beneficiary of an international trust or qualified foreign trust; or
- (g) acquires real property in a local, industrial or tourist facility provided always that such property shall be situated in a project or development approved and authorised by the Nevis Island Administration.

97. Licence required for administrative office.

(1) Notwithstanding section 96(3) (d), no limited liability company shall maintain an administrative office in Nevis unless licensed to do so by the Minister of Finance.

(2) An application for a licence under subsection (1) shall be in such form as may be prescribed by the Minister and shall be accompanied by such particulars and such evidence, documentary or otherwise, as the Minister of Finance requires.

(3) A licence may be issued subject to such conditions or restrictions as the Minister of Finance thinks fit to impose.

(4) A licence may be revoked by the Minister of Finance on the breach of any condition or restriction to which the licence is subject.

(5) A limited liability company that maintains an administrative office in Nevis without a licence shall be subject to a fine of Thirty Thousand Dollars (\$30,000) and to be struck off the register.

(6) The provisions of this section shall apply to every limited liability company that:

- (a) maintains an administrative office in Nevis immediately before the commencement of this Ordinance; or
- (b) wishes to maintain an administrative office in Nevis on or after the commencement of this Ordinance.

(7) A limited liability company described in subsection (6)(a) may apply for a licence within thirty (30) days after the commencement of this Ordinance and shall not be deemed to be in violation of this Ordinance during such period that the application is being considered by the Minister of Finance.

(8) If an application made by a limited liability company under subsection (7) is rejected, the limited liability company shall close such administrative office in Nevis within ten (10) days after receipt of the notice of rejection.

98. Limitation of section 97.

The provisions of section 97 shall not apply to any limited liability company that is managed or administered by a company or a person duly licensed by the Minister in accordance with section 12 of this Ordinance or in accordance with any other law enacted by the Nevis Island Assembly.

99. Application and issue of tax resident certificate.

(1) A limited liability company may apply to the Minister for a tax resident certificate and elect to pay a corporate residency tax in order to be eligible to be considered a tax resident in Nevis.

(2) A limited liability company shall apply for a tax resident certificate by paying an application fee of Four Thousand and Fifty Dollars (\$4,050) or One Thousand Five Hundred Dollars United States Currency (USD\$1,500) and submitting an application in the prescribed form duly executed in accordance with section 4, through the Office of the Registrar of Companies; upon filing the application together with the prescribed fee, the Minister shall issue a tax resident certificate to the limited liability company.

(3) Where a limited liability company makes an application under subsection (1) for a tax resident certificate, that limited liability company shall submit its financial statements and pay the corporate residency tax to the Inland Revenue Department in Nevis, within thirty (30) days after the end of the limited liability company's financial period.

(4) The corporate residency tax payable by a limited liability company shall be assessed on the gross revenue of the limited liability company and be charged at a rate equivalent to the current tax rate charged for unincorporated business tax on Nevis.

(5) Upon the issue of a tax resident certificate to a limited liability company under this section, the provisions of section 96 (2) shall apply, except with respect to any of the prescribed taxes payable and the limited liability company shall be tax resident in Nevis for all purposes.

100. Renewal of tax resident certificate.

(1) A limited liability company that applies for and is issued a tax resident certificate by the Minister shall apply for a renewal of its tax resident certificate at the same time when it submits its financial statements and pays the corporate residency tax in accordance with section 99.

(2) A limited liability company which fails to file its financial statements and pay the corporate residency tax in accordance with this Part shall not be allowed to renew its tax resident certificate until it has filed the outstanding financial statements and paid the corporate residency tax to the Inland Revenue Department.

(3) A limited liability company that fails to pay the corporate residency tax as it becomes due contravenes this section and shall be removed from the Register of Companies, if taxes are owing for more than one (1) year after becoming due, and notice of failure to pay is delivered to the Office of the Registrar of Companies by the Inland Revenue Department.

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101. Application of tax laws.

A limited liability company which elects to be a tax resident and is registered as a taxpayer and fails to file a return on or before the date by which filing is required shall be subject to the penalty provisions under the Tax Administration and Procedures Ordinance Cap. 6.11.

102. Applicability and effectiveness of tax resident certificate.

- (1) A limited liability company shall only become a tax resident company in Nevis on and from the date of the issue of the tax resident certificate by the Minister.
- (2) A tax resident certificate issued to a limited liability company shall only be applicable for the relevant income year for or in respect of which it was issued.
- (3) Subject to section 103(2), a tax resident certificate issued to a limited liability company shall be effective for the whole of the income year to which it relates.

103. Ceasing to be a tax resident.

- (1) A limited liability company automatically ceases to be a tax resident upon the expiration of any existing tax resident certificate issued to it by the Minister.
- (2) A limited liability company may at any time during an income year elect to cease to be a tax resident company by completing and signing the prescribed form, and upon acknowledgment of receipt by the Minister or his designate, that limited liability company shall cease to be a tax resident company in Nevis.

PART XVII – MISCELLANEOUS PROVISIONS

104. Ordinance Advisory Committee.

- (1) The Minister may establish the Nevis Limited Liability Company Ordinance Advisory Committee which shall function as an advisory body for matters affecting this Ordinance and such body so established, shall consist of members appointed by the Minister.
- (2) In establishing the Ordinance Advisory Committee under subsection (1), the Minister shall have regard to the desirability of having members who possess the requisite expertise and knowledge of the Ordinance, the law of companies and knowledge of the financial services industry.

105. Functions of the Ordinance Advisory Committee.

- (1) The Ordinance Advisory Committee shall:
 - (a) advise the Minister on any matter that the Ordinance Advisory Committee believes that the Minister should be aware of, on an annual basis by the 30th day of September of each year or on such more frequent occasions as may be necessary;
 - (b) provide recommendations regarding possible amendments to this Ordinance; and
 - (c) advise the Minister on any matter that relates to the Ordinance which is referred to it by the Minister.

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(2) The Minister may defray or contribute towards the expenses of the Ordinance Advisory Committee established under this section.

106. Secretary to Ordinance Advisory Committee.

(1) There shall be a Secretary to the ordinance advisory committee who shall be a public servant appointed by the Permanent Secretary.

(2) The duties of the Secretary shall be:

- (a) to attend meetings of the Committee;
- (b) to record the minutes of each meeting in a proper form; and
- (c) generally to perform duties connected with the work of the Committee and as directed by the Committee.

107. Appointment of Deputy Registrar.

(1) The Minister may appoint a person or persons to be Deputy Registrar of Companies.

(2) The Deputy Registrar of Companies shall assist the Registrar of Companies in the performance of his duties under this Ordinance.

108. Regulations.

The Minister may make regulations for the purpose of carrying out and effectively administering the provisions of this Ordinance and for prescribing anything that needs to be prescribed.

109. Penalty for default.

Any person, natural or corporate, found in default of one (1) or more provisions of this Ordinance for which no specific penalty is applicable, shall be liable to a fine not to exceed Ten Thousand dollars (\$10,000) dollars.

110. Immunity from suit.

(1) No personal liability, action or other proceeding shall attach to or lie against the Registrar of Companies, Deputy Registrar or any other officer authorised to administer this Ordinance in respect of any act done or omitted to be done in good faith in the exercise or purported exercise of his functions under this Ordinance.

(2) No action shall lie against the Nevis Island Administration, the Registrar, Deputy Registrar or any other authorised officer for any sums of money, damages or legal costs in respect of any act or failure to act or in respect of any act or thing done in good faith for the purpose of carrying the provisions of this Ordinance into effect.

111. Repeal and savings.

(1) The Nevis Limited Liability Company Ordinance Cap. 7.04(N) as amended is hereby repealed.

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(2) Any existing limited liability company which at the commencement of this Ordinance is validly registered under the Nevis Limited Liability Company Ordinance, Cap 7.04(N), as amended shall continue to be registered under this Ordinance.

(3) Any registered agent of limited liability companies which at the commencement of this Ordinance is validly licensed under the Nevis Limited Liability Company Ordinance Cap 7.04 (N), as amended shall continue to be a registered agent under this Ordinance.

(4) This Ordinance shall not affect any cause of action, liability, penalty or action or special proceeding which on the effective date of this Ordinance is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted or defended as if this Ordinance had not been enacted.

Passed in the Nevis Island Assembly this 20th day of July, 2017.

HONOURABLE FARREL SMITHEN
President

MYRA WILLIAMS
Clerk of the Nevis Island Assembly