

**NEVIS
LIMITED
LIABILITY
COMPANY
ORDINANCE
1995**

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THE NEVIS LIMITED LIABILITY
COMPANY ORDINANCE, 1995

I assent,

(Eustace John)
Deputy - Governor General

ISLAND OF NEVIS
NO.1 OF 1995

AN ORDINANCE to provide for the establishment of limited liability companies in the island of Nevis and provide for matters relating thereto or connected therewith.

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

Short Title and Commencement.

1. This Ordinance may be cited as the NEVIS LIMITED LIABILITY COMPANY ORDINANCE, 1995 and shall come into operation on the 1st May, 1995.

Interpretation.

2. In this Ordinance, unless the context otherwise requires, the term:

"Articles of organisation" includes (i) 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 (ii) a special law or charter creating a domestic or foreign limited liability company as amended, supplemented or restated;

"Business entity" means a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, custodian, nominee, government, governmental subdivision, agency, instrumentality, or any other legal or commercial entity, whether foreign or domestic;

"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;

"Corporation" means any incorporated organisation or similar entity formed under the laws of any country or jurisdiction;

"Court" means a court of law or equity having jurisdiction in any country;

"Distribution" means a transfer of money, property or other benefit 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;

"Foreign limited liability company" means an entity that is an unincorporated association organised under the laws of any foreign country or other foreign jurisdiction that affords its members, pursuant to the laws under which it is organised, limited liability with respect to the liabilities of the entity;

"High Court" means the High Court having jurisdiction in St. Kitts and Nevis;

"Insolvent" means being unable to pay debts as they become due in the usual course of the debtor's business;

"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 or more members as a manager or managers, or one 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;

"Member" means a person who has been admitted to a limited liability company as a member pursuant to section 37 of this Ordinance, or, in the case of a foreign limited liability company, in accordance with the laws of the foreign country or foreign jurisdiction under which the foreign limited liability company is organised;

"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;

"Minister of Finance" means the Minister for the time being charged with the responsibility of Finance in the Nevis Island Administration;

"Operating agreement" means the agreement, and any amendments thereto, of the members 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 21.

"Person" means an individual or a business entity;

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

"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 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.

Application of This Ordinance.

3. Any limited liability company formed or subject to this Ordinance which does business in Nevis shall be subject to and comply with all requirements of the Companies Act (Cap. 335) in the same manner as a company formed thereunder.

Form of Instruments; filing.

4. (1) Whenever any provision of this Ordinance requires any instrument to be filed with the Registrar of Companies, such instrument shall filing comply with the provisions of this Part unless otherwise expressly provided by law.

(2) Every instrument referenced herein, filed or required to be filed, shall be in the English language, except that the corporate name may be in another language if written in English letters or characters.

(3) All instruments shall be signed by at least one manager duly authorised by the limited liability company to sign such instruments on behalf of the company, or such other person duly delegated such authority by the manager or managers in whom such authority resides.

(4) Whenever any provision of this Ordinance requires an instrument to be acknowledged, such requirement means in the case of execution of an instrument within Nevis that:

(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 for 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.

(5) In the case of the execution of an instrument outside of Nevis, an acknowledgement shall mean;

(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 or any other person authorised to take acknowledgements according to the laws of the place of execution, or a consul or vice-consul of St. Christopher and Nevis or other governmental official of St. Christopher and Nevis authorised to take acknowledgements or, in their absence, a consular official of another government having diplomatic relations with St. Christopher and Nevis, and such notary, person, consul or vice-consul shall attest that he knows the person making the acknowledgement to be the person who executed the instrument; and

(c) when the acknowledgement shall be taken by a notary public or another person authorised to take acknowledgements, except a governmental official of St. Christopher or Nevis or foreign consular official, the signature of such person who has authority shall be attested to by a consul or vice-consul of the Federation of St. Christopher and Nevis or, in his absence, by a consular official of another government having diplomatic relation with St. Christopher and Nevis or a government official of the place of execution who is authorised to make such attestation, or an Apostille according to the Convention de la Haye 5 October 1961.

(6) Whenever any provision of this Ordinance requires any 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 days of the date of the receipt, the original instrument together with a duplicate instrument, both signed and acknowledged;

(b) upon delivery of the original signed and acknowledged instrument with the required receipt and an exact signed and acknowledged copy the Registrar of Companies shall certify that the instrument has been filed in his office by endorsing the word "Filed" and the date of the required receipt upon the original instrument. Said date shall be the filing date;

(c) the Registrar of Companies shall compare the duplicate signed and acknowledged copy with the original signed and acknowledged instrument, and if he finds that the text is identical shall affix on the duplicate copy the same endorsement of filing as he affixed on the original. The said original, as endorsed shall be returned to the limited liability company. The endorsement constitutes the certificate of the Registrar of Companies that the document is a true copy of the instrument filed in his office and that it was filed as of the date stated in the endorsement; and

(d) any instrument filed in accordance with this subsection shall be effective as of the filing date stated thereon.

(7) Any 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 any error apparent on the face or defect in the execution thereof by filing with the Registrar of Companies a certificate of correction, executed and acknowledged in the manner required for the original instrument. 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. The corrected instrument when filed shall be effective as of the date the original instrument was filed.

Certificates or certified copies as evidence.

5. All certificates issued by the Registrar of Companies in accordance with the provisions of this Ordinance and all copies as evidence of documents filed in his office in accordance with the provisions of this Ordinance shall, when certified by him, 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.

Fees on filing articles of organisation and other documents.

6. (1) The Minister of Finance is hereby empowered to promulgate and shall so promulgate a schedule of fees for the filing and issuance of documents under this Ordinance. Fees payable in respect of this Ordinance shall be payable in Eastern Caribbean dollars, or upon the authorisation of the Minister of Finance, in any other currency.

(2) Fees for certifying copies of documents and for filing, recording or indexing papers shall be fixed by the Minister of Finance.

Annual Registration Fee.

7. Every limited liability company shall pay to the Minister of Finance an annual fee as prescribed in the schedule required to be promulgated by the Minister of Finance under this Ordinance.

Waiver of notice.

8. Whenever any 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 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.

Notice to Members.

9. 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, 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. Any notice requiring a shareholder 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.

Information and Records.

10. (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 information and documents 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) Each manager shall have the right to examine all of the information 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 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 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.

Construction.

11. In construing this Ordinance, or any part Construction hereof; the Courts or any other person shall refer to the common law or to the construction of the same or similar Acts in other jurisdictions.

PART II

PURPOSES AND POWERS

Purposes.

12. Limited liability companies may be organised under this Ordinance for any lawful business purpose or purposes, including, without limitation, the rendering of professional services by or through its members, managers, officers or agents, subject to any licensing or registration requirements applicable in any jurisdiction in which the services are rendered or which such persons are licensed or registered.

General Powers.

13. Subject to any limitations provided in this Ordinance or any other law of Nevis or its articles of organisation or operating agreement, every limited liability company shall have the same powers as an individual to do all things necessary or convenient in furtherance of its purposes irrespective of company benefit and whether or not enumerated in its articles.

PART III

REGISTERED AGENT; SERVICE OF PROCESS

Registered agent for service of process.

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

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

(3) Any registered agent of a limited liability company may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Registrar of Companies, who shall cause a copy thereof to be sent by registered mail to the limited liability company at the address of the office of the company or, if none, at the last known address of a person at whose request the limited liability company was formed. No designation of a new registered agent shall be accepted for filing unless all charges owing to the former agent shall have been paid.

(4) A designation of a registered agent under this section may be made, revoked, or changed by the limited liability company by filing an appropriate notification with the Registrar of Companies.

(5) The designation of a registered agent shall terminate upon the expiration of thirty days written notice of resignation directed to the limited liability company and the filing of a copy of said notice of resignation with the Registrar of Companies; or sooner if a successor agent is designated.

(6) A registered agent, when served 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, or if the agent is a corporation, by a properly designated member or manager of the same, properly notarised. 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 agent's failure to comply with the provisions of this section shall in no way affect the validity of the process, notice or demand.

(7) Only a barrister or solicitor admitted to practice in St. Christopher and Nevis or a corporation having a paid-in capital of at least \$500,000.00 may act as registered agent.

(8) No barrister or solicitor or corporation shall act as registered agent unless first licensed by the Minister. The original application for licensing shall be in the prescribed form and accompanied by the prescribed fee and there shall be an annual fee payable in January of each year.

(9) The Minister shall prescribe fees for the licensing of registered agents under this Ordinance.

Registrar of Companies or his appointee as agent for process.

15. (1) Whenever a limited liability company subject to this Ordinance fails to maintain a registered agent in Nevis, or whenever said registered agent cannot with reasonable diligence be found at his business address, then the Registrar of Companies or his appointee shall be an 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.

(2) Service on the Registrar of Companies or his appointee as agent of a limited liability company shall be made by personally delivering to and leaving with him or his deputy or with 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 statutory fee. The Registrar of Companies or his appointee shall promptly send one 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 member or 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.

Records and certificates of Registrar of Companies.

16. The Registrar of Companies shall keep a record of each process served upon the Registrar of Companies or his appointee under this part, including the date of service. He shall, upon request made within five 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 statutory fee.

Validity of other service.

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

PART IV**RELATIONSHIP OF THE LIMITED LIABILITY COMPANY
AND ITS MEMBERS TO THIRD PARTIES****Effect of organisation.**

18. A limited liability company shall be a legal entity with separate rights and liabilities, distinct from its members or managers. 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.

Liability to third parties.

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

(2) Notwithstanding any other law, unless liability for limited liability company 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 (i) limited liability company 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 (ii) the acts or omissions of any other manager, officer, member, employee or agent of the limited liability company. 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.

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

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

Limited liability company as proper party to action.

20. The limited liability company shall be a proper plaintiff in a suit to assert a legal right of the limited liability company and a proper defendant in a suit to assert 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 a suit 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.

PART V

FORMATION OF LIMITED LIABILITY COMPANIES; NAMES; AMENDMENT OF ARTICLES OF ORGANISATION

Formation.

21. One or more persons, without regard to his, their or its residence, domicile, or jurisdiction of organisation, may form a limited liability company under this Ordinance by signing and filing articles of organisation with the Registrar of Companies in the manner provided in section 4. Such person or persons need not be a member or members of the limited liability company at the time of formation or after formation.

Duration.

22. A limited liability company formed under this Ordinance shall have such duration, if any, as shall be stated.

Company Name.

23. (1) Except as otherwise provided in subsection (2) of this section, the name of a limited liability company;

(a) shall contain the words "limited liability company" or the abbreviation "LLC", "L.L.C.", or "L.C.", and

(b) shall 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 index of names of existing limited liability companies or companies on the reserved name list 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) of this section shall not prevent a limited liability company

(a) with which another limited liability company, domestic or foreign, is merged, or

(b) which is formed by the reorganisation or consolidation of one 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 the laws of Nevis.

Register of names.

24. The Registrar of Companies shall keep an alphabetical index of all reserved names and those of all limited liability companies subject to this Ordinance together with those other names required to be kept by the Registrar of Companies by law.

Reservation of names.

25. (1) Any person or any agent thereof may reserve a name with the Registrar of Companies provided said reservation is made in accordance with this Part 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. A name may be reserved under Parts XIII or XIV by a foreign limited liability company which has filed for a transfer of domicile thereunder. Such name reservation shall not be subject to the time limitation and fee requirements of subsection (4).

(2) An application to reserve a name shall be delivered to the Registrar of Companies together with the required fee. Said application shall set forth:

- (a) the name to be reserved;
- (b) the name and address of the applicant;
- (c) a statement of the reasons for the application in accordance with subsection (1) above; and
- (d) the name in which the Certificate of Name Reservation is to be issued.

(3) Provided the name to be reserved is available for use, the Registrar of Companies shall enter the name upon the reserved name list and issue a Certificate of Name Reservation in the name of the applicant or in the name designated by the applicant. The Certificate of Name Reservation shall set forth:

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

(4) Beginning upon the date of reservation, the name reserved will be maintained upon the reserved name list by the Registrar of Companies and shall not be used except by the person, in whose name the Certificate of Name Reservation has been issued. Said reservation shall terminate upon the expiration of one hundred twenty days next following the date of reservation unless sooner renewed. Upon payment of the required fees, the reservation shall be renewed with the Registrar of Companies for no more than two like periods. 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.

(5) The Certificate of Name Reservation and any renewals thereof shall be evidenced to the Registrar of Companies at the time the name reserved is utilised by the person, natural or corporate, in whose name said Certificate of Name Reservation has been issued.

Contents of articles of organisation.

26. The articles of organisation shall set forth:

- (1) The name of the limited liability company;
- (2) A statement that the limited liability company is formed under this Ordinance;

- (3) The latest date on which the limited liability company is to dissolve, if any;
- (4) The name and address of the registered agent in Nevis;
- (5) Whether the limited liability company is managed by managers exclusive of the members or by all of the members in their capacity as members.
- (6) Any provision, not inconsistent with law, 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.

Execution and filing of articles of organisation.

27. Articles of organisation shall be executed Execution and by each person authorised to do so by the persons filing of articles of forming the limited liability company and filed with organisation the Registrar of Companies in conformity with the provisions of Part I of this Ordinance.

Effects of filing articles of organisation.

28. The limited liability company's existence shall, upon filing the articles of organisation, be effective as of the filing date stated thereon. 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 organised under this Ordinance.

Amendment of articles of organisation.

29. (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 or to delete a provision not required in the articles.

(2) Except as set forth in subsection (3), 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 office or registered address 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 date its articles of organisation were filed with the Registrar of Companies;

(c) each section affected by the amendment.

(5) No amendment shall affect any existing cause of action in favour of or against the limited liability company, or any pending suit to which it shall be a party, or the existing rights of persons other than members; and in the event the limited liability company name shall be changed, no suit brought by or against the limited liability company under its former name shall abate for that reason.

Restated articles of organisation.

30. (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, cause to be prepared a document entitled "Restated Articles of Organisation", which will integrate into one document its original articles of organisation (or articles of consolidation) and all amendments thereto, including those effected by articles of merger.

(2) The restated articles shall also set forth that this document 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.

(3) A copy of the restated articles 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.

Operating Agreement.

31. (1) The members of a limited liability company may enter into an operating agreement which may contain any provision relating to the business of the limited liability company, the conduct of its affairs, its rights or powers, and the rights of, and its relationship to and among, its members and managers not inconsistent with this Ordinance or any other Law of Nevis or the articles of organisation.

(2) An operating agreement shall be agreed to by all members before it becomes effective. The operating agreement shall not require the consent of any future member to remain effective. Unless the articles of organisation requires otherwise, an operating agreement need not be in writing.

(3) 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.

(4) 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.

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

PART VI

FINANCE

Capital Contributions.

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

Liability for capital contributions.

33. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set forth in a writing 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 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. The remedy or consequence may take the form of reducing the defaulting member's interest in the limited liability company, subordinating the defaulting member's interest in the limited liability company to that non-defaulting members, a forced sale of the interest in the limited liability company, forfeiture of the interest in the limited liability company, the lending by the non-defaulting members of the amount necessary to meet the commitment, a fixing of the value of the member's interest in the limited liability company by appraisal or by formula and redemption and sale of the member's interest in the limited liability company at that value, or other remedy or consequence.

(6) 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.

Interim Distributions.

34. Except as otherwise provided in sections 41 and 57, 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. If the operating

agreement does not so provide, 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.

Distributions in kind prohibited.

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

Right to Distribution.

36. At the time 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

MEMBERS AND MEMBERS' INTERESTS

Admission of members.

37. (1) Subject to subsection (2), a person Admission of may become a member in a limited liability company: members

(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 42.

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

(a) the date the limited liability company is formed; or

(b) the time provided in the operating agreement or, if no such time is reflected therein, then when the person's admission is reflected in the 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.

Nature of members interest.

38. A member's interest in the limited liability company is personal property. A member has no interest in specific limited liability company property.

Classes and series of members interests.

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

(a) of one or more classes interests or one or more series within any class thereof;

(b) with voting powers, full or limited, or without voting powers;

(c) and with such designations, preferences, rights, qualifications, limitations or restrictions thereon as shall be stated in the operating agreement.

(2) A limited liability company may provide in its operating agreement for one 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.

Termination of a members interest.

40. (1) As used in this section "Bankruptcy" includes, unless otherwise provided in the operating agreement, a member or manager:

(a) assigning any interest for the benefit of creditors;

(b) filing a voluntary petition in bankruptcy, or its equivalent;

(c) being adjudicated as a bankrupt or as insolvent;

(d) filing a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation;

(e) filing an answer or other pleading admitting or failing to contest the material allegations of a petition filed in any proceeding of this nature;

(f) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or any substantial part of his properties;

(g) failing to obtain dismissal within 120 days of any proceeding filed against him seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; or

(h) failing to obtain within 120 days vacatur or a stay of the appointment of; or the failure to obtain within 120 days of the date on which the stay was obtained vacatur of the appointment of; a trustee, receiver or liquidator of all or any substantial part of his properties.

(2) Unless otherwise provided in the operating agreement, a person ceases to be a member of a limited liability company upon the happening of one 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 42.

(3) Upon the happening of a termination event specified in paragraph (a) of subsection (2), 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 (2) of section 42.

(4) 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 limited liability company 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.

(a) If the member, pursuant to the operating agreement, has the power to withdraw his share of limited liability company 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.

(b) 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 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.

(5) 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.

Distributions upon termination of members interests.

41. Upon the happening of a termination event that does not cause a dissolution of the limited liability company pursuant to section 51(1) (c) if the operating agreement provides for a distribution to a terminating member in liquidation of such member's interest in the limited liability company but does not provide the amount of or a method for determining such liquidating 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.

Assignment of members interest; restrictions.

42. (1) Unless provided otherwise in the Assignment of 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) (a) Unless provided otherwise in the operating agreement, and except as provided in paragraph (b), 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. An assignment 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.

(b) 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.

(c) 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.

(3) 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 organised under this Ordinance shall be considered an assignee under this Ordinance and shall have all the right of an assignee of the member's interest. The operating agreement may provide that such person may become a member without consent of the members upon such evidence being produced as may reasonably be required by the managers.

Rights of judgement creditor.

43. (1) On application to a court of competent jurisdiction by any judgement creditor of a member of a limited liability company, the court may charge the member's interest with payment of the unsatisfied amount of the judgement with interest. To the extent so charged, the judgement creditor has only the rights of an assignee of the member's interest.

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

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

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

(3) Notwithstanding any other law, the remedies provided by subsection (1) shall be the sole remedies available to any creditor of a member's interest.

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

PART VIII
MANAGEMENT

Management of the business of the limited liability company.

44. (1) Unless otherwise provided in the operating agreement and subject to subsection (2), 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 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).

Voting.

45. (1) Unless otherwise provided in this Ordinance or the operating agreement:

(a) if the management of a limited liability company is vested in the members pursuant to subsection 44(1), or where any affirmative consent of the members is required in this Ordinance or the operating agreement, any action required or permitted to be taken by the members shall be taken upon a vote of more than 50% of the members' interests as measured by the members' capital contributions. 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. The manner in which consent is measured may refer to, without limitation, the number of members or the proportion, as set forth in the operating agreement, of members' interests in profits, capital or distribution, or any combination thereof.

(b) If the management of a limited liability company is vested in more than one manager pursuant to subsection 44(2), 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.

(2) Where this Ordinance or the operating agreement requires the consent of the remaining members or remaining managers, as the case may be, (i) the members' interests of the remaining members shall constitute all of the members' interests entitled to vote thereon, and (ii) the remaining managers shall constitute all of the managers entitled to vote thereon.

Agency of managers and members.

46. (1) Unless otherwise provided in the operating agreement, if management of the limited liability company is vested in the members pursuant to subsection (1) of section 44, each member is an agent of the limited liability company in matters concerning its business or affairs.

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

(b) An act of a member which is not apparently for carrying on in the ordinary course the limited liability company business of a kind carried on by the limited liability company binds the limited liability company if the act was authorised by the other members.

(2) Unless otherwise provided in the operating agreement, if management of the limited liability company is vested in managers pursuant to subsection (2) of section 44, each manager is an agent of the limited liability company in matters concerning its business.

(a) An act of a manager, including signing of an instrument in the company name, for apparently carrying on company business binds the 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;

(b) An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company business of a kind carried on by the limited liability company binds the limited liability company if the act was authorised by the other managers;

(c) 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.

(3) 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.

Qualification of managers.

47. Unless otherwise provided in the operating agreement, managers may be natural persons, corporations, limited liability companies, partnerships, or other entity, of any nationality and need not be residents of Nevis or members of the limited liability company.

Standard of care to be observed by managers.

48. Managers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. 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 or accounts, 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.

PART IX
RELATIONS OF MEMBERS AND MANAGERS TO THE
LIMITED LIABILITY COMPANY

Conflicts of interest.

49. No contract, loan or other transaction between a limited liability company and one or more of its members or managers, or between a limited liability company and any other person in which one 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.

Indemnification of members or management.

50. (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 action, suit or proceeding whether civil, criminal, administrative or investigative, including an 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, director, or officer of another person, against expenses (including attorneys' fees), judgements, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding.

(2) 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 action, suit or proceeding 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.

(3) Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid in advance of the final disposition of such action, suit or proceeding 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 this action.

(4) 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, director or officer of another person against any liability asserted against him and incurred by him 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 X

DISSOLUTION

When dissolved.

51. (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 44(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 44(2), unless the business of the limited liability company is continued by the consent of the remaining members, on or before the 180th day following the occurrence of any such event; or

(d) entry of a decree of judicial dissolution under section 52.

(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.

Judicial dissolution.

52. 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 carry on the business of the limited liability company in conformity with the operating agreement.

Dissolution on failure to pay annual registration fee or appoint registered agent.

53. (1) On the failure of a limited liability company to pay the annual registration fee or maintain a registered agent for a period of one year the Registrar shall remove the limited liability company from the register.

(2) A limited liability company which is removed from the register pursuant to subsection (1) may be restored to the register within three years of the date of removal upon payment to the Registrar of Companies of the prescribed fee.

(3) A limited liability company shall be restored to the register retroactive to the date of its removal.

(4) Every limited liability company shall pay a fee for restoration to the register.

(5) A limited liability company which is not restored to the register within three years of the date of removal shall be deemed to have commenced to wind up and dissolve in accordance with this part.

Winding up affairs of limited liability company after dissolution.

54. (1) All limited liability companies whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the members any remaining assets, but not for the purpose of continuing the business for which the limited liability company was organised. With respect to any action, suit, or proceeding begun by or against the limited liability company either prior to or within three years after the date of its expiration or dissolution, and not concluded within such period, the limited liability company shall be continued beyond that period for the purpose of concluding such action, suit or proceeding and until any judgement, order, or decree therein shall be fully executed.

(2) Upon the dissolution of any limited liability company, the managers shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, as may be required by the laws of the jurisdiction where situated, prosecute and defend all such suits as may be necessary or proper for the purposes aforesaid, distribute the money and other property among the members after paying or adequately providing for payment of its liabilities and obligations, and 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 of the limited liability company.

(3) At any time within three 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 liquidation of the limited liability company under the supervision of the court in Nevis and may make all such orders as it may deem proper in all matters in connection with the dissolution or in winding up the 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.

Agency power of managers after dissolution.

55. (1) Except as provided in subsections Agency power (3) and (4), after dissolution of the limited liability of managers after company, each of the managers having authority to dissolution 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 affairs or completing transactions 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 purposes of subsection (1) (b).

(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.

Settlement of claims against limited liability company.

56. (1) Any time within one 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 120 days after the first publication of such notice.

(a) Notice shall be published at least once a week for four successive weeks in a newspaper of general circulation in Nevis.

(b) On or before the date of the first publication of notice, the limited liability company shall mail a copy thereof, postage prepaid and addressed to his last known address, to each person known to be a creditor of or claimant against the limited liability company whose name and address are known to the limited liability company.

(2) 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 counter claim 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.

(3) 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.

(4) Any 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. 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 litigation 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.

(5) Notwithstanding anything in this section, tax claims and other claims by the Nevis Island Government 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.

Distribution of assets upon winding up.

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

(1) 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;

(2) unless otherwise provided in the operating agreement, to members or former members in satisfaction of liabilities for distributions; and

(3) 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' shares of distributions from the limited liability company prior to dissolution.

Articles of dissolution.

58. (1) After dissolution of the limited liability company pursuant to section 52, the limited liability company may file articles of dissolution with the Registrar of Companies in accordance with the provisions of section 4.

(2) The articles of dissolution shall set forth:

(a) the name of the limited liability company;

(b) the date its articles of organisation, and all amendments thereto, were filed with the Registrar of Companies;

(c) the name and address of each of its managers having authority to wind up the limited liability company's business and affairs; and

(d) the reason for the dissolution.

PART XI

CONVERSION; MERGER AND CONSOLIDATION

Conversion of a corporation to a limited liability company.

59. (1) Whenever used in this section and in section 60, "corporation" means a corporation formed under the Nevis Business Corporation Ordinance or redomiciled in Nevis.

(2) A plan of conversion must set forth the terms and conditions of the conversion of the interests of 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.

(3) 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, its articles of incorporation or bylaws.

(4) After the plan is approved in accordance with subsection 3 the corporation shall file articles of organisation with the Registrar of Companies in the manner set forth in Part V. In addition to the requirements of Part V, 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 have been satisfied;

(5) The filing of the articles of organisation cancels the certificate of incorporation as of the effective date of the articles of organisation.

(6) 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.

(7) 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.

Effects of conversion.

60. (1) A corporation that has been converted pursuant to this Part is for all purposes 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) an action or proceeding 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 proceeding 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

(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.

Merger or consolidation.

61. (1) Whenever used in this part:

"consolidation" means a procedure whereby any one or more limited liability companies consolidate with other limited liability companies or with other business entities into a new domestic limited liability company or other business entity formed by the consolidation;

"merger" means a procedure whereby any one or more limited liability companies merge with or into other limited liability companies or other business entities to form a single limited liability company, which is any one of the parties to the merger;

"other business entity" means a corporation, association, a real estate investment trust, or any other unincorporated business, including a partnership, a limited partnership, and a limited life company, whether foreign or domestic, and a foreign limited liability company, but excluding a domestic limited liability company.

(2) Pursuant to a plan of merger, a domestic limited liability company may be merged or consolidated with or into one or more domestic limited liability companies or other business entities, with one domestic limited liability company or other business entity as the plan shall provide being the surviving or consolidated limited liability company or other business entity.

(3) In the case where one or more parties to the merger or consolidation are other business entities formed in a foreign jurisdiction such entities may be merged or consolidated with one or more domestic limited liability companies if such merger or consolidation is permitted by the laws of the jurisdiction under which each such other business entity is established.

(4) The plan of merger or consolidation must set forth:

(a) the name and jurisdiction of formation of each entity that is a party to the merger;

(b) the name and address of the surviving or consolidated limited liability company or other business entity;

(c) the type of organisation of the surviving or consolidated entity;

(d) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the interests of each party to the merger or consolidation into interests, bonds or other securities of the surviving or consolidated entity, or the cash or other consideration to be paid or delivered in exchange for such interests, or a combination thereof.

(5) In the case of a domestic limited liability company that is a party to the merger or consolidation, unless a greater quantity is otherwise required in the operating agreement, the plan of merger or consolidation shall be consented to by the members of such domestic limited liability company who are entitled to vote thereon. All other parties must authorise the merger or consolidation pursuant to the laws applicable thereto.

(6) After approval of the plan of merger or consolidation, but before it takes effect, the plan may be terminated or amended pursuant to a provision for such termination or amendment within the plan.

(7) After approval of the plan of merger or consolidation, articles of merger or consolidation shall be executed in duplicate on behalf of each limited liability company and other business entity 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, and, in case a domestic limited liability company is the surviving or consolidated entity, any statement required to be included in articles of organisation for a limited liability company formed under this Ordinance;

(b) for each domestic limited liability company party to the merger or consolidation, the date the articles of organisation of each such domestic limited liability company were filed with the Registrar of Companies;

(c) the effective date of the merger or consolidation, subject to subsection (1) of section 62, if not effective upon filing; and

(d) the manner in which the merger or consolidation was authorised with respect to each party to the merger or consolidation.

(8) The articles of merger or articles of consolidation shall be filed with the Registrar of Companies in accordance with the provisions of section 4.

(9) If the surviving or consolidated limited liability company is to be governed by the laws of any jurisdiction other than Nevis:

(a) it shall file with the Registrar of Companies a certificate of merger or consolidation issued by the appropriate official of the foreign jurisdiction;

(b) the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic limited liability companies except in so far as the laws of such other jurisdiction provide otherwise;

(c) the effective date of a merger or consolidation shall be determined by the filing requirements and laws of such other jurisdiction.

Effects of merger or consolidation.

62. (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 days, as shall be set forth in such articles.

(2) When a merger or consolidation has been effected and the surviving or consolidated entity is a domestic limited liability company:

(a) such 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 or consolidation. No action or proceeding, whether civil or criminal, then pending by or against any such party to the merger or consolidation 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 action or special proceeding in place of any party to the merger or consolidation;

(b) all the property, real and personal, including causes of action and every other asset of each of the parties to the merger or consolidation 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 of the parties to the merger or consolidation. No liability or obligation due or to become due, claim or demand for any cause existing against any such party shall be released or impaired by such merger of 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

(d) 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; and, in the case rights, privileges, immunities, powers and purposes of each of the parties to the merger or consolidation;

(e) unless otherwise provided in the articles of merger or consolidation, all parties to the merger or consolidation which is not the surviving domestic limited liability company or the consolidated domestic limited liability company, ceases to exist and is dissolved.

Sale, lease, exchange or other disposition of assets.

63. 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 XII

TRANSFER OF DOMICILE TO NEVIS

Definitions.

64. As used in this Part and Part XIV, unless the context otherwise requires, the term:

"Foreign Domicile" means a jurisdiction other than Nevis in which a limited liability company has been formed.

"Articles of Organisation" means such document filed in the Foreign Domicile that serves the same purposes as does articles of organisation in Nevis.

When transfer of domicile is permitted.

65. (1) Any 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, so long as the law of the Foreign Domicile do not expressly prohibit such transfer.

(2) 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.

Application to transfer domicile.

66. Any 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 which shall be executed in accordance with section 68 and filed and recorded in accordance with section 4, together with:

(1) a certificate evidencing its existence issued by an authorised officer of the Foreign Domicile;
and

(2) a certified copy of the Articles of Organisation, with amendments, if any, and if said documents are not in English, translation thereof under oath of the translator.

Contents of Application to Transfer Domicile.

67. An application to transfer Domicile must contain:

(1) the date on which, and the jurisdiction where, the Foreign Limited Liability Company was formed, organised, created or otherwise came into existence; and

(2) the name of the Foreign Limited Liability Company;

(3) the name the Foreign Limited Liability Company will be adopting upon re-domiciliation in Nevis;

(4) a declaration that the transfer of domicile has been approved by all necessary action of the managers;

(5) 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;

(6) the name and address of the limited liability company's registered agent in Nevis;

(7) any other pertinent information required to be set forth in articles of organisation under section 26; and

(8) the amendments of its Articles of Organisation or their equivalent, that are to be effective upon filing the application to transfer domicile.

Execution of the Application to Transfer Domicile.

68. The Application to Transfer Domicile shall be in English and notwithstanding the requirements of section 4(3) of this Ordinance, shall be signed by a manager of the limited liability company or any other person performing functions equivalent to those of a manager, however named or described and who is authorised to sign such Application to Transfer Domicile on behalf of the limited liability company.

Transfer of domicile to Nevis; Certificate of Transfer of Domicile.

69. Upon the filing of the Application to Transfer Domicile and the documents referred to in sections 66 and 67, together with the fees prescribed in section 6, if the Registrar of Companies shall find that such documents are in proper form and satisfy the requirements of this Part, and if the name of the limited liability company meets the requirements of section 23, then the Registrar of Companies shall deliver to the limited liability company a Certificate of Transfer of Domicile and the limited liability company shall become domiciled and domesticated in Nevis as a limited liability company of Nevis and shall thereafter be subject to all provisions of this Ordinance, and the limited liability company shall be deemed to have commenced its existence on the date the limited liability company was first formed, organised, created or otherwise came into existence and shall be deemed to have continued its existence in Nevis, and thereafter. The limited liability company shall promptly adapt its operating agreement, its registration, management and records to comply with Nevis Law.

Prior obligations and liabilities.

70. (1) A Foreign Limited Liability Company that has been re-domiciled pursuant to this Part is for all purposes the same entity that existed before the re-domiciliation.

(2) When a re-domiciliation takes effect:

(a) all property owned by the re-domiciliating Foreign Limited Liability Company 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 document 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 re-domiciliating Foreign Limited Liability Company continue as obligations of the limited liability company;

(c) an action or proceeding pending by or against the re-domiciliating Foreign Limited Liability Company may be continued as if the re-domiciliation had not occurred, except that, if

appropriate in the jurisdiction in which the proceeding is pending, the caption of the action may be changed to reflect the re-domiciliation;

(d) except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of the re-domiciliating Foreign Limited Liability Company are vested in the limited liability company; and

(e) all of the members of the re-domiciliating 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.

Applicable law.

71. The filing of an Application to Transfer Domicile 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 organised as a limited liability company of Nevis on that date and title to the limited liability company's assets shall also be governed by Nevis law.

PART XIII

TRANSFER OF DOMICILE FROM NEVIS

Departure.

72. Any limited liability company formed, organised, created, or otherwise existing under or subject to this Ordinance may become domiciled in any foreign jurisdiction upon compliance with this Ordinance and the laws of the jurisdiction into which the limited liability company seeks to become domiciled.

Certificate of departure.

73. Any limited liability company described in section 72 shall submit for filing with the Registrar of Companies a Certificate of Departure which shall be executed in the same manner as an Application to Transfer Domicile. The Certificate of Departure shall set forth:

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

(2) that the intended departure from Nevis and transfer of domicile to a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the limited liability company;

(3) that the limited liability company at the time of application to the foreign jurisdiction is not in breach of any duty or obligation imposed upon it by this Ordinance or any other law of Nevis;

(4) that the transfer of domicile to the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing members or other parties in interest;

(5) a consent and agreement by the limited liability company that it may be served with process in Nevis in any proceeding 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 by mail.

Effective date of departure.

74. 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 jurisdiction, the departing limited liability company shall notify the Registrar of Companies as to the effective date of the transfer of domicile outside of Nevis. As of the date of such transfer to the foreign jurisdiction, said limited liability company shall be deemed to have ceased to be a limited liability company domiciled in Nevis.

Jurisdiction of courts after departure.

75. Nothing in this Part shall obviate, diminish or affect the jurisdiction of any court in Nevis to hear and determine any proceeding commenced therein by or against the limited liability company arising out of actions or omissions which occurred before the limited liability company ceased to be domiciled in Nevis.

PART XIV

EMERGENCY TRANSFER OF DOMICILE INTO NEVIS

Emergency conditions.

76. As used in this Part, unless the context requires otherwise, the term:

"Emergency condition" shall be deemed to include but not be limited to any of the following: war or other armed conflict; revolution or insurrection; invasion or occupation by foreign military forces; rioting or civil commotion of an extended nature; domination by a foreign power; expropriation, nationalisation or confiscation of a material part of the assets or property of the limited liability company; impairment of the institution of private property (including private property held abroad); the taking of any action under the laws of Nevis whereby persons resident in the Foreign Domicile might be treated as "enemies" or otherwise restricted under the law of Nevis relating to trading with enemies of Nevis; or the immediate threat of any of the foregoing; and such other event which, under the laws of the Foreign Domicile permits the limited liability company to transfer its domicile. Terms used in this part and not defined herein are used as defined in section 64.

When emergency transfer of domicile is permitted.

77. During the existence of an Emergency Condition in the jurisdiction of its 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.

Application for emergency transfer of domicile.

78. (1) Any Foreign Limited Liability Company may apply for emergency transfer of domicile to Nevis by filing with the Registrar of Companies:

(a) documents and certificates similar in respect to those required by sections 66 and 67, except that such documents shall refer to an emergency transfer of domicile pursuant to this Part; and

(b) a certificate of an authorised office, director or agent of the Foreign Limited Liability Company specifying the Emergency Condition which exists in the Foreign Domicile.

(2) The Registrar of Companies, in his discretion, may waive any of the above requirements upon request by such limited liability company supported by facts (including without limitation, the existence of an Emergency Condition) justifying such waiver. In addition, if Emergency Conditions have affected ordinary means of communication, any of the documents or certificates hereby required may be submitted by telegram, telex, telecopy or other form of writing so long as the duly executed original documents and supporting documentation are received by the Registrar of Companies within 30 days thereafter or as soon as the Emergency conditions cease to exist. If the Registrar of Companies finds the required documents and certificates to be in proper form upon payment of the prescribed fee, the Registrar of Companies shall certify that the 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 Transfer of Domicile, and such certificate of the Registrar of Companies shall be prima facie evidence of the transfer by such limited liability company of its domicile into Nevis.

Governing law after emergency transfer.

79. Except to the extent expressly prohibited Governing law by the laws of Nevis after a Foreign Limited Liability after emergency Company transfers its domicile to Nevis pursuant to transfer 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 laws of such jurisdiction.

Prior obligations and liabilities.

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

Services of process after emergency transfer of domicile.

81. All process issued out of any court of Nevis, all orders made by any court of Nevis, and all rules and notices of any kind required to be served on any limited liability company which has transferred its domicile into Nevis pursuant to this Part may be served on the limited liability company and its managers pursuant to section 15 in the same manner as if such limited liability company were a limited liability company of Nevis.

Return to foreign jurisdiction.

82. Any 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 72 and 73. Such application shall be accompanied by a certified resolution of the managers of the limited liability company authorising such withdrawal.

PART XV
TAX EXEMPTION

Exemption.

83. (1) Any limited liability company subject to this Ordinance which does no business in 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 Nevis or in connection with other activities outside of Nevis or in connection with matters of corporate administration which may occur in Nevis, except as provided in sections 6 and 7.

(2) For purposes of this section, no limited liability company shall be considered to be doing business in Nevis solely because it engages in one or more of the following activities:

- (a) maintaining bank accounts in Nevis;
- (b) holding meetings of managers or members in Nevis;
- (c) maintaining company or financial records in Nevis;
- (d) maintaining an administrative or managerial office in Nevis with respect to assets or activities outside of Nevis;
- (e) maintaining a registered agent in Nevis;
- (f) investing in stocks or interests of Nevis corporations or limited liability companies or being a partner in a Nevis partnership or a beneficiary of a Nevis trust or estate.

Dividends and distributions.

84. In addition, any dividend or distribution by limited liability companies, corporations or other entities which do no business in Nevis or to individuals who are not citizens or residents of Nevis, shall be exempt from any tax or withholding provisions of Nevis law which would otherwise be applicable to such limited liability company making the distribution or allocation or the recipient of the distribution or allocation.

PART XVI
MISCELLANEOUS

Savings Provision.

85. 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.

Regulations.

86. (1) The Minister may make regulations with respect to the duties to be performed by the Registrar of Companies under this Ordinance.

(2) Without limiting or affecting subsection (I), the Minister may make regulations with respect to the conduct, duties and responsibilities of registered agents.

Endorsement Certificates.

87. Upon the filing of any instrument the Registrar of Companies shall issue a certificate of endorsement under his hand and seal certifying that the instrument is filed.

Certificate of Good Standing.

88. The Registrar of Companies shall, upon request by any registered agent, issue a certificate of Good Standing under his hand and seal certifying that a limited liability company subject to this Ordinances of good standing if he is satisfied that -

(1) the name of the limited liability company is on the register; and

(2) the limited liability company has paid all fees required under this Ordinance; and

(3) the limited liability company is not in contravention of any of the provisions of this Ordinance or is in the process of being wound up and dissolved.

Form of certificate.

89. Any certificate or other document required to be issued by the Registrar of Companies under this Ordinance shall be in such form as the Minister may approve.

(R. Spencer Byron) - President

Passed by the Nevis Island Assembly this (Pearlievan Wilkin)
21st day of April, 1995 Clerk of the Nevis Island Assembly