



KEY FACTS

THE NEVIS INTERNATIONAL EXEMPT TRUST ORDINANCE 1994

The Nevis International Exempt Trust Ordinance, 1994 was enacted in direct response to the needs of international lawyers and fiduciaries for a progressive trust statute that incorporates modern trust concepts.

The enactment of the Trust Ordinance followed the success which Nevis had achieved as a corporate domicile after the introduction of The Nevis Business Corporation Ordinance, 1984. The Trust Ordinance envisages the use of a Nevis Business Corporation in conjunction with a Nevis Trust.

In addition to its codification of common law trust principles, the Trust Ordinance also includes special provisions tailored to make Nevis a preferred jurisdiction for the establishment of "Asset Protection Trusts" or "APTs". Although all trusts generally provide protection against claims of third parties there has developed in many of the industrialised economies, particularly in the United States, a strong demand for APTs as a direct result of increased frivolous litigation and the prohibitive costs of obtaining indemnity insurance by many professionals and business people who may be exposed to lawsuits.

IMPORTANT PROVISIONS OF THE TRUST ORDINANCE

Definition of International Trust A trust qualifies as an "International Trust" and is exempt from all forms of Nevis taxation and exchange controls if it meets the following criteria:

- At least one of the trustees is either a trust company doing business in Nevis or a company incorporated under the Corporation Ordinance.
- The settlor and beneficiaries are at all times non-residents of Nevis; and
- The trust property does not include any land situated in Nevis or the neighbouring island of St Kitts.

Proper Law An International Trust may have as its proper law the law of Nevis or the law of another jurisdiction. If no proper law is expressed the proper law will be that with which the trust has its closest connection at the time of its creation.

Rule Against Perpetuities The rule against perpetuities does not apply to an International Trust. The maximum duration of an International Trust is 100 years.

Spendthrift or Protective Trusts The terms of an International Trust may make the interest of a beneficiary subject to termination or diminution in the event the beneficiary becomes insolvent.

Charitable Trusts The Trust Ordinance defines purposes which shall be regarded as charitable (e.g. the relief of poverty, the advancement of education, the advancement of religion, protection of the environment, advancement of human rights and freedoms) whether they are carried out in Nevis or elsewhere.



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Protector The terms of an International Trust may provide for the office of protector of the trust. The protector may also be a settlor, a trustee or beneficiary. The protector has a fiduciary duty to the beneficiaries of the trust or to the purpose for which the trust was created.

Foreign Heirship Rights Heirship Rights of the domicile of the settlor may not overrule the provisions of an International Trust.

Liability for Breach of Trust Subject to the provisions of the Trust Ordinance and to the terms of the trust, a trustee who commits or concurs in a breach of trust is liable for any loss or depreciation in value of the trust property resulting from the breach, and any profit which would have accrued to the trust had there been no breach.

Fraudulent Dispositions A creditor seeking to set aside a transfer to an International Trust must establish beyond reasonable doubt that the transfer constituted a fraudulent disposition. The Ordinance expressly states that a trust settled or established or a disposition to the trust shall not be fraudulent as against a creditor or a settlor:

- If settlement, establishment or the disposition to the trust takes place more than 2 years from the date the creditor’s cause of action accrued, or
- If the settlement, establishment or disposition takes place before the expiration of two years from the date that the creditor’s cause of action accrued, the creditor fails to commence an action before the expiration of one year from the date of settlement, establishment or disposition.

Time Period to Commence Action Any action to set aside a trust settlement or disposition to an International Trust must be commenced in the High Court of Nevis within two years from the date the trust was settled or the disposition took place.

Bond Requirement A \$25,000 bond to secure payment of costs must be placed with the Ministry of Finance in Nevis before a creditor may commence an action or proceeding against property of an International Trust.

Statute of Elizabeth The provisions of the Statute of Elizabeth are declared inapplicable to an International Trust.

Community Property Property determined to be community property at the time of transfer to an International Trust retains its character as community property despite its transfer to an International Trust unless the provisions of the trust deed provide otherwise.

Control The settlor of the trust or trustee of an International Trust can also be a beneficiary.

Taxation and Exchange Controls Trust assets and income derived from the corpus of an International Trust are exempt from all exchange controls and estate, corporate, gift, income, inheritance, withholding, succession and stamp taxes in Nevis.

REQUIREMENTS TO REGISTER A TRUST

- The Trust Name, Name of the Trustee and Registered Office must be registered with the Registrar of International Trusts together with a statement certifying that the trust conforms with the provisions of the Trust Ordinance.
- The trust deed or declaration of trust itself is not required to be registered with the Registry and remains a private document which ensures confidentiality of the name of the settlor and beneficiaries.
- A fee of US\$225 is payable to the Government on the initial registration of the trust and a fee of US\$220 is payable to the Government annually thereafter.

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