

2011: Federation of Saint Kitts-Nevis

Editorial Board

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New Developments

As of 1 June, 2009, Saint Kitts-Nevis citizens can also travel to Schengen member countries (“**Schengen**”) of the European Union (“**EU**”) without obtaining a visa. This waiver allows persons to stay for a maximum period of three months, within a six-month period following the date of first entry in any EU country. Schengen does include; Iceland, Norway and Switzerland, which have adopted the treaty. Due to their open borders with Schengen members; Liechtenstein, Monaco, San Marino and Vatican City are considered to be *de-facto* Schengen members. Kittitians-Nevisians do not need visas to visit the United Kingdom and the Republic of Ireland, and can stay for six months in the United Kingdom and three months in Ireland.

On 24 November, 2009, the Federation entered into tax information exchange agreements with Aruba, Belgium, Denmark, Liechtenstein, Monaco, the Netherlands, the Netherlands Antilles and New Zealand.

On 24 March, 2010, the Federation entered into tax information exchange agreements with the Faroe Islands, Finland, Iceland, Norway and Sweden.

On 7 July, 2011, the Federation entered into double tax agreements with Monaco and San Marino.

1. INTRODUCTION

a. History and background

The Caribbean island of Saint Kitts (formally known as “Saint Christopher”) is part of the Federation of Saint Kitts-Nevis (the “**Federation**”), which has been independent of Britain since 1983. The official language of the Federation is English. As provided for by the Federation’s Constitution, Nevis is permitted to legislate on certain specified matters, including commercial and corporate laws. Since Independence, Nevis’ legislature has enacted several laws to stimulate

the development of business in the offshore financial services sector. The Federation has its own corporate, commercial and trusts laws and has developed its own financial services sector, separate and apart from Nevis. The Eastern Caribbean Central Bank has its headquarters on Saint Kitts. It maintains the stability of the Eastern Caribbean Dollar (“**EC\$**”) which is the currency of several countries and territories in the region. The EC\$ has been tied to the United States Dollar (“**US\$**”) at a rate of EC\$2.7 to US\$1 since 1976.

b. Legal system

Saint Kitts and Nevis is a well-functioning democracy based on the Westminster Parliamentary system. While the Head of State is nominally Her Majesty Queen Elizabeth II, a National Assembly comprising 11 elected members from both Nevis and Saint Kitts makes laws for the Federation. The legal system is based on the English common law and has been supplemented by enacted pieces of legislation. Decisions of the High Court, the local trial level court, can be appealed to the regional Court of Appeals of the Eastern Caribbean in Saint Lucia, which are in turn appealable to the Privy Council in London, England.

2. SOURCES OF LAW

a. Trust creation and administration

Prior to 1996, all trusts, both domestic and international were subject to the Trustee Ordinance of 1961, which has been repealed by the Trusts Act of 1996 (the “**TA**”).

b. Property, estate and probate

Real property is vested in the owner either by deed in accordance with the Conveyancing and Law of Property Act or by Certificate of Title in accordance with the Title by Registration Act (the “**TRA**”). Property held by Certificate of Title gives the registered proprietors an indefeasible right to the property described on the face of the Certificate. The title registration regime includes an assurance fund that supports the indefeasible claim of the registered proprietor. There is no such assurance for property held by deed. However, a proprietor may choose to bring his property held by deed under the title by the TRA and be issued an indefeasible Certificate of Title.

Where property is owned by more than one proprietor, the joint ownership can be either in the form of joint tenancy or tenancy in common. The major distinction in the ownership relates to succession. With property held in common the individual share of the property owned by the co-owner becomes part of the deceased’s estate, with joint tenancy on the death of one of the co-owners none of the co-owned property becomes part of his estate instead all of the property is vested in the surviving owner.

There are no estate, inheritance or succession taxes levied on the estate of a deceased person. The Wills Act, (Cap. 84), as Amended governs the formal and essential validity of a will disposing of immovable property in Saint Kitts-Nevis, or movable property of a testator domiciled at death in the Federation. The Intestates Estate Act (Cap. 36), as Amended governs the administration and distribution of estates of persons dying intestate.

There is no forced heirship in Saint Kitts-Nevis, and in the case of trusts established in either Saint Kitts or Nevis, any forced heirship rules in the settlor's or beneficiary's country of domicile are disregarded.

c. Company law

Limited liability companies can be limited by shares or by guarantee. A company limited by guarantee must state the amount of the guarantee that each member is required to contribute to cover the debts and liabilities of the company in the case of its being wound up.

Companies may be private or public, ordinary or exempt. Private exempt companies that conduct their business exclusively with persons who are not resident in the Federation may be exempt from all taxes if registered as an exempt company with the Registrar of Companies.

d. Taxation

3. TRUSTS

a. Introduction

Trust law in the Federation is based in the general principles of the English trust law, as amended and codified by the TA.

b. Most frequently used trusts

Trusts which are created under the TA may be either; charitable trusts, unit trust, common trusts, spendthrift protective trusts. Federation trusts may be used to benefit persons or persons.

c. Proper law of a trust

A trust shall be governed by the law of the jurisdiction which is expressed or may be implied from the terms of the trust, or that with which it has its closest connection. A deed may provide that a severable aspect of the trust will be governed by the law of a different jurisdiction.

d. Creation of a trust

i. Validly constituted trusts

The TA codifies the common law requirement that a trust must comply with the three certainties; namely intention, subject-matter and intention. A trust will be invalid if it is immoral, contrary to public policy or the laws of the Federation, was established by duress, fraud or undue influence.

ii. Duration and termination of a trust

A trust may continue for 100 years from the date that it came into existence, if not terminated sooner.

iii. Beneficiaries

A beneficiary must be identifiable by name or ascertainable by reference to a person or class of persons. A settlor or trustee may be members of the beneficial class. The terms of a trust may provide for the addition or exclusion of persons from the beneficial class. The terms of a trust may impose an obligation upon a beneficiary as a condition to benefit.

iv. Trustees

The number of trustees shall not be less than two, unless only one trustee was originally appointed or the sole trustee is a corporate trustee.

v. Protectors

A protector may be appointed over a trust created under the TA with the power to direct a trustee over matters specified in the deed. A protector must be a lawyer, auditor, member of a professional body, body corporate or a partnership. In the exercise of the office, a protector shall act honestly and in good faith with a fiduciary duty to the beneficiaries or purpose.

vi. Role of Courts

The High Court of the Federation of Saint Kitts-Nevis (the “**High Court**”) has jurisdiction over a trust if Federation law is the proper law of the trust, a trustee or trust assets are located in the Federation or if administration is conducted in Saint Kitts-Nevis. Any foreign judgments which are obtained against a trustee, settlor, trust, protector, beneficiary, trust assets or a person appointed pursuant to the trust will not be recognized by the High Court if the judgment relates to a matter that is governed by Federation law.

e. Confidentiality and disclosure

All trusts must be registered with the Registrar and kept in a non-public registry. An attestation shall be delivered to the Registrar which states that the names of the trust and trustee and if such trust is a charitable trust or unit trust. Any documents maintained by the Registry may only be inspected upon written permission of the trustee or by an Inspector appointed by the Minister of Finance pursuant to a court order. All trustees shall keep confidential all information regarding the trust assets or the conduct of trust administration.

4. OTHER FORMS AND ENTITIES

a. Commonly used legal entities

International business companies may be incorporated in the Federation under the Companies Act, 1996, as amended. Foundations may be established under the Foundations Act, 2003 and Limited Partnerships may be formed under the Limited Partnerships Act, 1996.

b. Foundations

The Foundations Act, 2003 introduced the concept of private foundations to the Federation. The Act abolishes several requirements regarding private foundations that are normally found in other jurisdictions.

The founder or any person acting on behalf of the founder may, by delivering to the registrar of foundations the articles of the foundation and on payment of the prescribed registration fee, apply for the registration of the foundation. Upon the registration of the foundation, it will be a separate and independent legal entity in its own right.

A Federation foundation is not subject for assessment to any tax and the beneficiaries of a foundation are similarly exempt from all taxes that may arise out of their interest in the foundation if the foundation effects transactions exclusively with persons who are not resident in Saint Kitts or Nevis.

c. Limited Partnerships

Saint Kitts Limited Partnerships are interesting planning vehicles, particularly due to the flexibility that Federation law provides. Any two or more persons can form a limited partnership, which must consist of one or more persons who are general partners and one or more persons who are limited partners. A body corporate may be a general or a limited partner and a person may be a general partner as well as a limited partner at the same time. A limited partnership is not itself a subject for assessment to any tax in the Federation and the partners of a limited partnership are exempt from all taxes that may arise out of their interest in the limited partnership if the partners of the limited partnership are, in respect of it, effecting transactions exclusively with persons who are not resident in Saint Kitts or Nevis.

d. Taxation

i. General information

There are no general income taxes, capital gains, withholding, net worth, gift, inheritance or estate taxes in the Federation.

ii. Tax information exchange agreements

The Federation of Saint Kitts-Nevis has entered into tax information exchange agreements with Aruba, Belgium, Denmark, the Faroe Islands, Finland, Iceland, Liechtenstein, Monaco, the Netherlands, the Netherlands Antilles, New Zealand, Norway and Sweden.

6. OTHER RELEVANT MATTERS

a. Anti-money laundering

The Federation enacted a suite of anti-money laundering legislation in 2001 in an effort to preserve the Federation's integrity as an emerging financial centre. The Proceeds of Crime Act, 2000 made money laundering a criminal offence and provides for the confiscation and forfeiture of proceeds of crime. The anti-money laundering regime provides for the relevant authorities to receive information from financial institutions on suspicious transactions. Financial institutions are required to have anti-money laundering compliance officers and to adopt "*Know Your Customer*" policies.

b. Visa Waiver

Federation citizens can visit the Schengen member countries ("**Schengen**") of the European Union ("**EU**") without obtaining a visa and stay for a period of three months, within a six-month period following the date of first entry in any EU country. Schengen does include; Iceland, Norway and Switzerland, which have adopted the treaty. Due to their open borders with Schengen members; Liechtenstein, Monaco, San Marino and Vatican City are considered to be *de-facto* Schengen members. Kittitians-Nevisians do not need visas to visit the United Kingdom and the Republic of Ireland, and can stay for six months in the United Kingdom and three months in Ireland.

c. Citizenship by Investment

The Federation offers foreign persons the opportunity to become citizens on the basis of the purchase of a piece of real property or upon the investment in a public charity. Citizenship can be obtained through the purchase of property valued at US\$350,000 or more on the southern peninsula of Saint Kitts, in the northwest of Nevis or via a donation of US\$200,000 to a fund for displaced sugar industry employees. The Application for Citizenship and accompanying passports must certify that all family members are free of infectious diseases, including HIV/AIDS, and do not have a criminal record.