

# Nevis LLCs

## Limited Liability Companies

A Florida limited liability company (LLC) is a popular business planning tool. Many lawyers use the LLC as an alternative to Sub chapter S corporations as the preferred legal entity for new businesses. Asset protection attorneys also use the LLC as a legal tool for domestic asset protection planning. Membership interests in a limited liability company are not exempt from execution or attachment by judgment creditors, but Florida law gives creditors limited remedies against a debtor's LLC interest.

Florida Statutes restrict a creditor's remedy to what is known as a charging lien against the LLC's cash distributions. In the event the LLC manager chooses to make no distributions, the member's creditor gets nothing. There is an IRS revenue ruling that held that in the event an LLC has taxable income allocated to a debtor/member, but the LLC makes no distributions which are attachable by a charging lien, the member's creditor is responsible for his income tax liability to a member even though the creditor receives no distributions by virtue of its charging lien. A Florida creditor's limited rights under a charging lien, together with the income tax liability, makes creditors reluctant to attack a member's interest in a limited liability company.

## Nevis Limited Liability Companies

Establishing an LLC in an offshore jurisdiction gives another layer of asset protection. The Island of Nevis, in particular, has enacted favorable LLC laws. Most important, Nevis, like Florida, permits a single-member limited liability company. Nevis law also establishes a charging lien as a creditor's exclusive remedy to attack a debtor's LLC ownership interest. A transfer of assets by a U.S. citizen to an offshore single-member LLC does not have any adverse tax consequences otherwise associated with the transfer of assets to other offshore entities. To attack a Nevis LLC interest, the creditor has to apply in a Nevis court for issuance of the charging lien. It is unclear whether a Nevis court would even recognize a Florida judgment giving rise to a creditor's request for a charging order. Officials in Nevis have told me they know of no instance where a U.S. creditor has obtained a charging lien in Nevis to enforce a U.S. judgment.

Under Nevis law, the manager of the LLC does not have to be a Nevis resident or a Nevis business organization. A Nevis LLC's manager may be the debtor/member herself or any other individual located either in the United States or a different foreign jurisdiction. A debtor serving as LLC manager has substantial control over the Nevis LLC and to physically maintain assets anywhere in the world. A Nevis LLC can own assets in the United States, Nevis, or anywhere else in the world. For example, a Nevis LLC may have a Florida bank account, or if appropriate, it may open an offshore account in Nevis or another popular banking center such as Switzerland.

A debtor serving as manager of his own Nevis LLC maintains control over LLC assets, but he does not have the best asset protection. A Nevis LLC provides optimal protection if the debtor appoints as either initial or successor manager an individual or company outside of the United States. No U.S. court has jurisdiction over a foreign manager. The foreign manager will have control over all Nevis LLC assets. An effective LLC operating agreement provides that the foreign manager cannot be removed by the debtor/member. It is critical that the U.S. debtor be willing to trust a foreign LLC manager if an aggressive creditor threatens to attack the Nevis LLC. Some debtors have friends or relatives living in foreign jurisdictions whom they appoint as initial or successor managers.

## **Foreign Entities**

Limited liability companies are a fantastic asset protection tool. Why do foreign entities (sometimes referred to as offshore entities) warrant special attention?

Foreign entities may, at times, be a viable alternative to foreign trusts as a mechanism to protect liquid assets. Foreign trusts allow you the most protection imaginable, usually, unbreakable protection, but they are not the cheapest alternative around.

Some clients do not want to go through the expense or the trouble of a foreign trust, or may simply not need that much protection. A foreign trust may be overkill in some cases.

Holding assets in your name directly also does not work. As a general rule, any asset that is owned by you directly (titled in your name) can be taken from you by a creditor. It does not matter whether this asset is stock of a corporation or a foreign bank account. All assets, domestic and foreign, owned by you directly can be reached.

One of the few exceptions to this rule is an interest in an LLC. All LLCs are shielded by the charging order protection. What is then the difference between a domestic (U.S.) LLC and a foreign LLC?

Simple. A foreign LLC is governed and protected by the laws of a foreign jurisdiction. This means that it may be possible to move any litigation surrounding a foreign LLC to a foreign country. This makes it very expensive for the plaintiff to pursue a foreign LLC. Not impossible, but expensive.

Sometimes all we need to do is change the plaintiff's or the creditor's economic analysis. Destroy their profit potential and they will leave you alone.

All entities, especially foreign entities, may have tax consequences. You should consult with your advisors and implement these strategies very carefully.