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I assent,



EUSTACE JOHN C.M.G.

Deputy Governor-General.

13th March, 2008.

ISLAND OF NEVIS

No. 2 of 2008

AN ORDINANCE to establish an investment promotion agency in the Island of Nevis and to provide for related and consequential matters.

[Published 17th April 2008, Official Gazette No. 17 of 2008.]

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 PRELIMINARY

1. This Ordinance may be cited as the **Nevis Investment Promotion Agency Ordinance, 2008.** Short title.
2. (a) In this Ordinance Interpretation.
 - “Administration” means the Nevis Island Administration;
 - “Agency” means the Nevis Investment Promotion Agency;
 - “Board” means the Board of Directors of the Agency;
 - “Cabinet” means the Cabinet of the Nevis Island Administration;
 - “incentive and concession” means the legal provisions designed to encourage investment and includes the conferring of any advantage in respect to particular investment;
 - “investment” means the direct investment of foreign or domestic capital to establish a new business enterprise or expand an existing one in Nevis;
 - “investor” means a natural or legal person who makes a lawful direct investment involving a commitment of capital in Nevis;

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“Minister” means the Minister of Finance;

“prescribe” means prescribed in the regulations made under this Ordinance.

(b) The masculine shall include the feminine and the neuter.

**PART II
THE AGENCY**

Establishment of the Agency.

3. (1) There is established a body to be called the Nevis Investment Promotion Agency.

(2) The Agency shall be a body corporate with perpetual succession and a common seal and may:

- (a) acquire, hold, mortgage and dispose of personal and real property;
- (b) enter into contracts;
- (c) sue and be sued; and
- (d) do all such things as are necessary for the purposes of its functions under this Ordinance.

Duties of the Agency.

4. The Agency shall:

- (1) devise and implement a marketing and public relations program to promote Nevis as an attractive destination for investment;
- (2) directly target potential investors to encourage their investment in Nevis;
- (3) offer pre-investment services to facilitate and expedite the establishment of new business or the expansion of existing ones;
- (4) provide after care services to investors to assist them in meeting administrative requirements subsequent to the approval of their investment;
- (5) collect and analyse data related to the flow of investment in Nevis;
- (6) advise the Administration on policy and procedural reforms to facilitate the investment process;
- (7) assist investors and prospective investors in obtaining licenses, permits, certificates or the relevant clearance, as the case may be, needed for the commencement, operation and expansion of business;

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- (8) liaise with government agencies, departments and authorities to identify and secure suitable land that may be required by investors and prospective investors to implement projects;
- (9) provide local and foreign investors and prospective investors with information on potential joint venture partnership;
- (10) undertake activities to foster linkages between local and foreign investors, in coordination with agencies or departments that support small business, as necessary;
- (11) provide such other assistance as may be needed by an investor for the realisation of his investment;
- (12) issue such investment approvals as permitted by law and agreed by Cabinet; and
- (13) do all such other things as may be necessary or incidental to the discharge of the functions conferred by the Ordinance.

5. (1) The common seal of the Agency shall be affixed to all deeds, documents and other instruments requiring the common seal of the Agency only after a resolution of the Board in each case authorising such action.

Common Seal.

(2) The common seal of the Agency shall be authenticated by the signature of the Chairman or in his absence, the Secretary of the Agency.

(3) The common seal of the Agency shall be kept in custody of the Secretary of the Agency.

**PART III
GOVERNING BODY**

6. (1) For the purpose of carrying out the functions, management and control of the affairs of the Agency, there is established a Board of Directors for the Agency.

Board of
Directors.

- (2) The Board shall be comprised of:
 - (a) a Chairman, who shall be a member of Cabinet nominated by the Minister of Finance;
 - (b) one representative of the ministry responsible for finance, who shall be nominated by the Minister of Finance;

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- (c) one representative of the ministry responsible for planning, who shall be nominated by the Minister of Planning;
- (d) two representatives of the private sector, one of whom shall be nominated by the Nevis branch of the Chamber of Industry and Commerce, the other by the Minister of Finance; and
- (e) the Executive Director of the Agency, who shall serve as an ex-officio member of the Board.

(3) The other members, except the Executive Director, shall hold office for a period not exceeding two years but shall be eligible for re-appointment.

(4) The Board shall appoint a Secretary to the Agency.

Appointment of Board Members to be published in the *Gazette*.

7. (1) The Minister shall cause the names of the members of the Board as first constituted and any change in membership to be published in the *Gazette*.

(2) Members of the Board shall be paid remuneration and allowances as determined by a special committee to be appointed by the Board and such remuneration and allowances shall be approved by the Minister.

Duties of the Members of the Board.

8. (1) The general duties include:
- (a) ensuring the financial stability of the Agency; and
 - (b) attending all board meetings as scheduled.
- (2) The specific duties include:
- (a) determining goals and objectives for the Agency;
 - (b) establishing and updating the constitution and by-laws for the Agency;
 - (c) defining roles and responsibilities of board members, committees and staff;
 - (d) defining organisational structure and reporting relationships;
 - (e) establishing policies relating to finances, personnel, programs, reporting protocols and public relations;
 - (f) preparing and updating the policy manual;
 - (g) establishing and approving the budget and committing to securing the required revenues;
 - (h) receiving and approving regular financial statements showing current and budget figures;

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- (i) drafting policies to clarify roles, responsibilities and functions to hold board members and staff accountable;
- (j) recruiting, selecting, supervising and evaluating the performance of the Executive Director; and
- (k) developing a communications strategy to keep the stakeholders informed and supportive.

9. The persons appointed to the Board under this Ordinance who are not appointed by virtue of their office shall be appointed in writing by the Minister for a term of two years but shall be eligible for re-appointment.

Tenure.

10. A member of the Board who is not a member by virtue of his office may resign his office at any time by letter addressed to the Chairman and the resignation shall take effect from the date that the letter is received by the Chairman.

Resignation of a Member of the Board.

11. (1) The Board shall meet at least once every quarter and at such other times as may be necessary or expedient for the transaction of its business.

Meetings of the Board.

(2) All meetings shall be held at such place and time and on such days as the Board shall determine.

(3) The Chairman may, at any time, call a special meeting of the Board within seven days of a requisition for that purpose addressed to him by any three members.

(4) The quorum at meetings of the Board shall be four.

(5) Each member of the Board shall be entitled to one vote.

(6) The decisions of the Board shall be by a majority of votes, and in the event the votes are equal, the Chairman presiding at the meeting shall have an additional casting vote.

(7) The Minister may appoint a person to act temporarily in the place of any member of the Board who may be temporarily absent or unable to act.

(8) The Chairman may invite a Minister or his nominee to attend meetings of the Board for consultation in respect of a proposed investment on which the advice of his Ministry is considered essential or which might have a significant impact on the sector of the economy which is the responsibility of his portfolio.

(9) The Chairman shall invite the Chairman of the St Kitts Investment Promotion Agency or his nominee to attend meetings of the Board for consultation in respect of any proposed investment that involves St Kitts.

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(10) Subject to this Ordinance the Board may regulate its own procedure in respect to meetings.

(11) Minutes of each meeting of the Board shall be recorded by the Secretary and shall be confirmed by the Board at its next meeting and signed by the Chairman.

Conflict of
interest.

12. (1) If a member of the Board has any pecuniary interest, direct or indirect, in any investment project in respect of which an application for a investment certificate has been made, or any contract, proposed contract, license or other matter and is present at a meeting of the Board at which the application, contract, proposed contract, license or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the application, contract, proposed contract, license or other matter or vote on any question with respect to it and shall be excluded from the meeting for the duration of the consideration, discussion and voting procedure.

(2) If any person fails to comply with the provisions of subsection (1) he shall be guilty of an offence and liable-

- (a) on summary conviction to a fine not exceeding \$20,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) on conviction on indictment to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years, or both;

unless he proves that he did not know that the application, contract, proposed contract, license or other matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Board.

(4) No act or proceeding of the Board shall be questioned on the ground that a member of the Board has contravened this section.

(5) For the purposes of subsection (1), a member of the Board shall be treated as having indirectly a pecuniary interest in an application, contract, proposed contract, license or other matter if-

- (a) he or any nominee of his is a member of a company or other body with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the application or other matter under consideration;
- (b) he is a partner, or is in the employment of a person with whom the contract was made or is proposed to

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be made, or who has a direct pecuniary interest in the application or other matter under consideration; or

- (c) he, or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in an application, or other matter under consideration.

(6) Subsection (1) does not apply to membership of or employment under any public body.

(7) In the case of married persons the interest of one spouse shall be deemed to be also the interest of the other.

13. (1) The Minister may at his discretion and subject to such conditions as he may think fit appoint persons to act as members of the Board for any specified period, in any case in which the number of members of the Board disabled by section 12 at any one time would be so great a proportion of the whole as to impede the transaction of business.

Removal or
exclusion of
Disability, Etc.

(2) Nothing in section 12 precludes any member of the Board from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Minister for the exercise of the powers conferred by subsection (1).

(3) Section 12 does not apply to an interest in an application, contract, proposed contract, license or other matter which a member of the public or an interest in any matter relating to the terms on which the right to participate in any service is offered to the public.

(4) Where a member of the Board has an indirect pecuniary interest in an application, contract, proposed contract, license or other matter by reason only of a beneficial interest in securities of a company or other body, and the nominal value of shares of any one class in which he has a beneficial interest does not exceed one thousandth of the total value of the issued share capital that class, section 12 shall not prohibit him from taking part in the consideration or discussion of the application, contract, proposed contract, license or other matter or from voting on any question with respect to it.

14. The Minister may remove a member of the Board from office on being satisfied that the member -

Removal of a
Member of the
Board.

- (a) is unable, due to physical or mental impairment, to exercise his functions;
- (b) is guilty of misconduct which, in the opinion of the Minister, is likely to bring the Agency into disrepute;
- (c) is convicted of an offence involving dishonesty or immorality;

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- (d) fails within one year without reasonable excuse to attend and participate in three successive meetings of the Board;
- (e) fails to disclose a personal interest in an investment project which is being or has been considered to the Board;
- (f) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law;

**PART IV
STAFF OF AGENCY**

Executive
Director.

15. (1) The Executive Director shall be appointed by the Minister of Finance upon the recommendation of the Board.

(2) The Executive Director shall be the administrative head of the Agency and shall perform the duties assigned to him under this Ordinance and such other duties as the Board may determine.

(3) The Executive Director may resign from office at any time by giving three months' written notice to the Chairman of the Board.

(4) The Executive Director, subject to the provision of this Ordinance and the general direction of the Board, shall be responsible for the management and administration of the Agency.

(5) The Executive Director may be removed from office by the Board in the event of

- (a) misconduct in or in connection with his office or duties;
- (b) failure or inability through physical, mental or emotional impairment to perform his duties under this Ordinance, where such failure or inability can be professionally validated; or
- (c) conviction by a court of competent jurisdiction of a criminal offence involving dishonesty or immorality or of any other crime which in the opinion of the Board is likely to bring the Agency into disrepute.

(6) The Executive Director shall not be dismissed under the provision of subsection (5) until the period for lodging an appeal against the conviction had expired, without such an appeal being lodged.

Staff.

16. (1) The Agency may employ such persons as are required for the proper discharge of its functions under this Ordinance.

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(2) The Governor-General may on the recommendation of the Public Service Commission second or transfer any officer in the Public Service to any office in the Agency subject to such conditions as he may approve.

(3) For the performance of its functions under this Ordinance, the Agency may employ the services of consultants or other independent contractors.

**PART V
FUNDS OF THE AGENCY**

17. (1) The funds and resources of the Agency shall consist of:
- (a) monies generated through services rendered;
 - (b) money appropriated by the Nevis Island Assembly for the purposes of the Agency;
 - (c) money borrowed and property paid or provided to the Agency by way of grants, fees, subsidies, donations, gifts, charges, rent, interest and other income derived from the investment of the Agency's funds;
 - (d) any money derived from the disposal of or dealing with real or personal property held by the Agency;
 - (e) money borrowed under this Ordinance or derived from financial accommodation extended to the Agency under this Ordinance; and
 - (f) all other money lawfully received by or made available to Agency.

Funds and resources of the Agency.

(2) The Agency may charge investors for services rendered on behalf of their investment projects.

(3) The Agency shall have an autonomous annual budget, executed according to the Agency regulations without being restricted to provisions relating to the budgets of public administrations and authorities.

18. (1) Subject to subsection (2), the Agency may borrow money required by it for the purpose of carrying out its functions under this Ordinance.

Borrowing powers of the Agency.

(2) No money shall be borrowed under this section unless the Minister approves in writing the amount to be borrowed, the source of the borrowing and the terms on which the borrowing is to be made.

19. (1) The funds of the Agency shall be applied towards-
- (a) the performance of its functions under this Ordinance; and

Application of the funds of the Agency.

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- (b) the payment of salaries, wages, fees, allowances, gratuities and other similar benefits of the employees of the Agency;
- (c) costs of administration of the Agency offices; and
- (d) expenses incurred in the form of property mortgage and interest paid on mortgage.

Accounts and
Audit.

20. (1) The Agency shall keep proper books of accounts and other books or records in which shall be recorded all financial transactions of the Agency.

(2) The Agency shall prepare within two months of the Agency's financial year end the financial statement for that financial year.

(3) The accounts of the Agency shall be prepared according to accepted international accounting standards and shall be audited annually by the Government Director of Audit or by such person as the Government Director of Audit may appoint.

(4) The Board, the Executive Director and all employees of the Agency shall afford the Government Director of Audit or other auditor appointed by the Government Director of Audit, access to all books, documents, cash and securities of the Agency and, on request, shall give the Government Director of Audit or other auditor appointed by the Government Director of Audit any information within his knowledge.

(5) The Agency may engage an external auditor if it sees fit.

**PART VI
MISCELLANEOUS PROVISIONS**

Agency to
submit regular
reports.

21. The Agency shall send a quarterly written report of its activities to the Minister on the 15th day of April, July, October and January in each year, and on the 31st day of January in each year shall send a written report to the Minister of Finance summarising the previous four reports and containing the outlook for the next year and such advice in accordance with section 4 as it considers appropriate.

Limitation of
liability.

22. (1) A person or body to whom this section applies shall not be liable in damages for anything done or omitted in the performance or purported performance of any functions of the Agency conferred by or under this Ordinance or any other enactment, or any other functions conferred by or under this Ordinance, unless it is shown that the act or omission was in bad faith.

(2) This section applies to –

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- (a) the Minister or any person who is, or is acting as, an officer, employee or agent of the Minister, or performing any function on behalf of the Minister;
- (b) the Agency or any person who is, or is acting as, an officer, employee or agent of the Agency or performing any function on behalf of the Agency, and;
- (c) the Board, or any member of the Board, or any person who is, or is acting as, an officer, employee or agent of the Board or performing any function on behalf of the Board.

23. No act done or proceeding taken under this Ordinance shall be questioned on the grounds of the existence of any vacancy in the membership of the Board nor on the ground of any omission, defect or irregularity not affecting the merits of the case.

Protection of the Agency.

24. The Minister may by regulations make provision for the purpose of carrying this Ordinance into effect and for the better carrying out of the objects and purpose of this Ordinance, and, in particular, but without prejudice to the generality of the foregoing, for or with respect to any matter that may be prescribed under this Ordinance by regulations.

Regulations and Orders.

MARJORIE MORTON
President

Passed by the Nevis Island Assembly this 28th day of February, 2008.

DWIGHT MORTON
Clerk of the Nevis Island Assembly