

OBJECTS AND REASONS

This Bill would amend the *Companies Act*, Cap. 308 to reflect more comprehensively the Forty Recommendations and Nine Special Recommendations of the Financial Action Task Force, which Barbados is committed to implement by virtue of its membership in the Caribbean Financial Action Task Force, an associate member of the former body.

Arrangements of Sections

Section

1. Short title.
2. Amendment of section 312 of Cap. 308.
3. Amendment of section 315 of Cap. 308.
4. Repeal and replacement of section 316 of Cap. 308.
5. Repeal and replacement of section 323 of Cap. 308.
6. Insertion of new sections 323A to 323K into Cap. 308.
7. Consequential amendment.
8. Commencement.

SCHEDULE

BARBADOS

A Bill entitled

An Act to amend the *Companies Act*, Cap. 308.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Companies (Amendment) Act, 2011*. Short title.
2. Section 312 of the *Companies Act*, in this Act referred to as the principal Act, is amended by deleting subsection (4). Amend-
ment of
section 312
of
Cap. 308.

Amend-
ment of
section 315
of
Cap. 308.

3. Section 315 of the principal Act is amended by inserting after the word "company" in the first place where it occurs, the words ", other than an external non-profit company,".

Repeal and
replace-
ment of
section 316
of
Cap. 308.

4. Section 316 of the principal Act is repealed and the following is substituted:

"Directors. **316.** (1) A non-profit company must have no fewer than 3 directors.

(2) The articles or by-laws of a non-profit company may provide for an individual to become a director by virtue of holding an office outside the company.

(3) Where there is a change in the composition of the directors of a non-profit company, the company must, within 15 days of the date of the change, file with the Registrar a notice that contains particulars of the change.

(4) A non-profit company that is in default of subsection (3) is liable to a penalty of \$100 payable to the Registrar for every day during which the default continues and every director and officer who knowingly and willfully authorises or permits the default is also liable to that penalty."

5. Section 323 of the principal Act is repealed and the following is substituted:

Repeal and replacement of section 323 of Cap. 308.

"Dissolution and distribution of property.

323. A non-profit company must, upon dissolution and after payment of all debts and liabilities, distribute or dispose of its remaining property to any organisation in Barbados, the undertaking of which is charitable or beneficial to the community."

6. The principal Act is amended by inserting immediately after section 323, the following:

Insertion of new sections 323A to 323K into Cap. 308.

"Inquiries into condition and management of non-profit companies.

323A. (1) The Attorney-General may examine and inquire into a non-profit company and in particular

(a) into the nature and objects, administration, management and results thereof;

(b) into the value, condition, management and application of the property and income of the company;

(c) where the company is suspected of having committed an offence under section 3 or 4 of the *Anti-Terrorism Act* or under section 6 of the *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011*.

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Act 2011-

(2) The Attorney-General may, for the purposes of subsection (1), appoint a public officer or any other person to conduct the examination or inquiry in any specified case.

(3) Notwithstanding subsection (2), where an examination or inquiry is to be carried out for the purpose set out in subsection (1)(c), the Attorney-General shall require the Director of the Financial Intelligence Unit to carry out the examination or inquiry.

(4) Every director and every person acting or having concern in the management and administration of a non-profit company or of the property or income of the company into which an examination or inquiry is being conducted under this section shall

- (a) on request, produce to the Attorney-General or to the public officer or other person conducting the examination or inquiry, all books, papers, writings and documents in relation to
 - (i) the company;
 - (ii) the property or income of the company; and
 - (iii) the administration, management, value, condition and application of the property and income of the company; and
- (b) answer all questions and give all assistance in connection with the examination or inquiry that he is reasonably able to answer or give.

(5) A person who fails to comply with subsection (4) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 6 months or to both and to a further fine of \$500 for every day or part thereof that the offence continues after a conviction is first obtained.

Attorney-
General may
call for
documents
and search
records.

323B. (1) The Attorney-General may require a person who possesses or controls any books, records, deeds or papers relating to a non-profit company to furnish him with

- (a) copies of or extracts from, any of the books, records, deeds or papers; or
- (b) unless the books, records, deeds or papers form part of the records or other documents of a court or a public authority, require the person to transmit to him the original books, records, deeds or papers.

(2) The Attorney-General may, without payment, inspect and take copies of or extracts from, the records or other documents of any court, public registry, public authority or office of records for any purpose connected with the discharge of the functions of the Attorney-General with respect to a non-profit company.

(3) A person who claims to hold property adversely to a non-profit company or property freed or discharged from a trust or charge for the purpose of an undertaking referred to in section 314(2) may not be required under subsection (1) to

- (a) transmit to the Attorney-General any document relating to the property or the trust or charge alleged to affect the property; or
- (b) furnish any copy of or extract from any such document.

Proceedings to enforce or vary a trust or to require a scheme. **323C.** (1) Subject to subsection (2), the Attorney-General, a public officer or any other person may apply to the court in respect of any property, money or income subject to a trust for the purpose of an undertaking referred to in section 314(2) for an order

- (a) requiring the trustees to carry out the trust on which the property, money or income is held;
- (b) requiring a trustee to meet his liability for a breach of trust affecting the property, money or income, as the court may direct;
- (c) removing
 - (i) a director of the non-profit company;
 - (ii) any person acting or having concern in the management and administration of the non-profit company or of the property or income of the company; or
 - (iii) any trustee
 - who is responsible for, or privy to, any misconduct or mismanagement in the administration of the non-profit company, or has by his conduct contributed to or facilitated the misconduct or mismanagement;
- (d) excluding a purpose from the purposes for which the property, money or income may be used, applied or disposed of;

- (e) giving directions in respect of
 - (i) the administration of the trust;
 - (ii) an examination or inquiry under section 323A; or
 - (iii) a question to be answered or assistance to be given by a person in connection with the examination or inquiry; or
- (f) directing that on and after the date of the order or any subsequent date specified in the order, the property, money or income subject to the trust shall not be used, applied or disposed of otherwise than in accordance with a scheme that, after the date of the order, is approved by the court,

and the court may make such order in respect of the application as it thinks fit.

(2) Where a person other than the Attorney-General or a public officer intends to make an application under this section, the person shall give one month's prior notice of the application to the Attorney-General.

(3) Where a person other than the Attorney-General makes an application under this section, copies of the application shall be served on

- (a) the directors of the non-profit company;
- (b) the trustees of the property, money or income to which the application relates; and
- (c) the Attorney-General, where such service is appropriate.

(4) On an application under this section, the court may specify the persons who, in addition to the Attorney-General, may be heard before it in support of, or in opposition to, the application.

Furnishing
of accounts.

323D. (1) A non-profit company is exempt from sections 147 to 152.

(2) A non-profit company must within 15 days after its annual meeting, send to the Registrar a copy of its annual financial statement showing

- (a) the assets and liabilities of the company in the form of a balance sheet;
- (b) the revenue and expenditure of the company since the date of incorporation or the date of its previous financial statement; and
- (c) the names of
 - (i) the donors, in any case where a donation exceeds \$20 000; and
 - (ii) where the donor is an entity within the meaning of the *Anti-Terrorism Act*, the individuals who beneficially own or control the entity and the directors of the entity.

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(3) The annual financial statement referred to in subsection (2) must be

- (a) accompanied by the report of the auditor of the company; and
- (b) approved by the directors of the company, and the approval must be evidenced by the signature of one or more directors.

(4) For the avoidance of doubt, section 15A applies to a non-profit company as it applies to a company described in subsection (1) of that section.

Audit of
accounts.

323E. (1) The Registrar may by order require that the condition and accounts of a non-profit company, for such period as he thinks fit, be investigated and audited by an auditor appointed by him and qualified in accordance with section 153.

(2) An auditor appointed in accordance with subsection (1) shall

- (a) have the right of access to all books, accounts and documents relating to the non-profit company that are in the possession or under the control of the directors and persons acting or having concern in the management and administration of the company or of the property or income of the company or to which the directors and such persons have access;
- (b) be entitled to require from any person referred to in paragraph (a) or any past or present member, officer or servant of the company, such information and explanation as he thinks necessary for the performance of his duties; and

(c) at the conclusion or during the progress of the audit make such reports to the Registrar on the audit or the accounts or affairs of the company as the auditor thinks the case requires, and send a copy of any such report to the persons referred to in paragraph (a).

(3) The expenses of an audit under subsection (1), including the remuneration of the auditor, must be paid by the non-profit company.

(4) A person who in respect of a non-profit company fails to

(a) transmit to the Registrar any financial statement as required by section 323D;

(b) afford an auditor any facility to which he is entitled under subsection (2); or

(c) make full disclosure to the Registrar of all material facts required to be disclosed under this Act, knowingly makes a false statement of a material fact or makes a statement containing information that is misleading in light of the circumstances in which it was made,

is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 6 months or to both and to a further fine of \$500 for every day or part thereof that the offence continues after a conviction is first obtained.

Manner of
executing
instru-
ments.

323F. (1) The directors of a non-profit company may, subject to the articles of the company, confer on any of their number, not being less than two, a general authority or an authority limited to such number of persons as the directors think fit, to execute in the names and on behalf of all the directors, assurances or other deeds or instruments for giving effect to transactions to which the directors are a party; and any deed or instrument executed in accordance with an authority so given shall be of the same effect as if executed by the company.

(2) An authority under subsection (1)

- (a) shall suffice for any deed or instrument if it is given in writing or by resolution of a meeting of the directors notwithstanding the want of any formality that would be required in giving authority apart from that subsection;
- (b) may be given so as to make the powers conferred exercisable by any of the persons referred to in subsection (1), or may be restricted to named persons or in any other way; and
- (c) shall, subject to any restriction, and until it is revoked, and, notwithstanding any change in the composition of the directors of the company, have effect as a continuing authority given by and to the persons who from time to time are directors of the company.

(3) Where a deed or instrument purports to be executed in accordance with this section, in favour of a person who in good faith acquires for money or money's worth an interest in or charge on property or the benefit of any covenant or agreement expressed to be entered into by the directors, it shall be conclusively presumed to have been duly executed by virtue of this section.

Transfer
and
evidence of
title to
property
vested in
trustees.

323G. (1) Where, under the articles of a non-profit company, trustees of property held for the purposes of the undertaking of the company in accordance with section 314 (2) may be appointed or discharged by resolution of a meeting of the members or other persons, a memorandum declaring a trustee to have been so appointed or discharged shall be sufficient evidence of that fact, if the memorandum is signed either at the meeting by the person presiding or in some manner directed by the meeting, and is attested by two persons present at the meeting.

Cap. 250.

(2) A memorandum evidencing the appointment or discharge of a trustee under subsection (1), if executed as a deed, shall have the same operation under section 42 of the *Trustee Act*, which relates to a vesting declaration in respect of trust property in deeds appointing or discharging trustees, as if the appointment or discharge were effected by deed.

(3) For the purposes of this section, where a document purports to have been signed and attested as mentioned in subsection (1), upon proof, whether by evidence or as a matter of presumption, of the signature, the document shall be presumed to have been so signed and attested, unless the contrary is shown.

Orders of
the
Attorney-
General or
Registrar.

323H. A person who fails to comply with an order of

- (a) the Attorney-General under section 323A or 323B; or
- (b) the Registrar requiring that a default under this Act be made good,

may, on the application of the Attorney-General or the Registrar to the court, be dealt with as for disobedience to an order of the court.

Right of
appeal to
the court.

323I. (1) A person who is dissatisfied with a decision of the Registrar under this Division may appeal to the court against the decision.

(2) Where an appeal is made in accordance with subsection (1)

- (a) section 323J applies; and
- (b) the Attorney-General and such other persons as the court may direct shall be entitled to appear and be heard.

Effect of
claims and
objections
to registra-
tion.

323J. (1) A non-profit company shall for all purposes other than rectification of the Register of Companies be conclusively presumed to be or to have been a non-profit company at any time when it is or was on the register as a non-profit company.

(2) A person who may be or is affected by the registration of a non-profit company may, on the ground that the company does not

- (a) have its undertaking restricted to an undertaking set out in section 314(2); or

- (b) provide the undertaking for which it is incorporated,

object to the registration of the company or apply to the Registrar for the company to be removed from the register.

(3) An appeal against a decision of the Registrar to

- (a) register or not to register a non-profit company; or
- (b) remove or not to remove a non-profit company from the register,

may be brought in the court by the Attorney-General, or by the persons who are or claim to be the directors of the non-profit company, or by any person whose objection or application under subsection (2) is disallowed by the decision.

(4) Where there is an appeal to the court against a decision of the Registrar to register a non-profit company or not to remove a non-profit company from the register, the entry in the register shall be maintained, but shall be in suspense and marked to indicate that it is in suspense until the appeal is determined.

(5) For the purposes of subsection (1), a non-profit company shall be deemed not to be on the register during any period when the entry relating to it is in suspense under subsection (4).

(6) Any question affecting the registration or removal from the register of a non-profit company may, notwithstanding that it has been determined by a decision on appeal under subsection (3), be considered afresh by the Registrar and shall not be concluded by that decision, if it appears to the Registrar that there has been a change of circumstances or that the decision is inconsistent with a later judicial decision, whether given on such an appeal or not.

Regulations
in respect
of non-
profit
companies.

323K. (1) The Minister may make regulations for giving effect to this Division and in particular with respect to

- (a) examinations and inquiries to be conducted into the affairs of non-profit companies; and
- (b) the manner in which any objection or application pursuant to section 323J is to be made, dealt with or prosecuted.

(2) Regulations made under subsection (1) are subject to negative resolution of Parliament."

Consequen-
tial
amend-
ment.
Schedule.

7. The enactment set out in the *Schedule* is amended in the manner specified therein.

Commence-
ment.

8. This Act comes into a operation on a day to be fixed by Proclamation.

SCHEDULE

(Section 7)

Consequential Amendment

S.I. 1984
No. 29. Regulation 37 of the *Companies Regulations, 1984* is deleted.