

**ARRANGEMENT OF CLAUSES**

1. Short title
2. Amendment of section 329 of principal Act
3. Amendment of section 330 of principal Act
4. Amendment of section 337 of principal Act
5. Amendment of section 344 of principal Act





GRENADA

**ACT NO. 23 OF 2014**

I assent,



CÉCILE E. F. LA GRENADE  
Governor-General.

14th June, 2014.

AN ACT to amend the Companies Act Cap. 58A.

[4th July, 2014].

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Grenada and by the authority of the same as follows—

1. This Act may be cited as the

Short title.

COMPANIES (AMENDMENT) NO. 2 ACT, 2014.

2. Section 329 of the principal Act is amended by inserting after paragraph (d) the following new paragraph—

Amendment of  
section 329 of  
principal Act.

“(e) information on the beneficial ownership of the company.”

Amendment of  
section 330 of  
principal Act.

**3.** Section 330 of the principal Act is amended by inserting the following new section—

**“Change in composition of Directors**

330A. (1) Where there is a change in the composition of the directors or in the particulars of a non-profit company, the company must, within fifteen days of the date of the change, file with the Registrar a notice that contains particulars of the change.

(2) A non-profit company that is in default of sub-section (1) is liable to a penalty of five hundred and fifty dollars 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.”

Amendment of  
section 337 of  
principal Act.

**4.** The principal Act is amended by inserting after section 337, the following new sections—

**“Inquiries into condition and management of non-profit companies**

337A.— (1) The Attorney-General may examine and inquire into a non-profit company and in particular—

- (a) into its nature, objects, administration and management;
- (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 the Terrorism Act No. 16 of 2012.

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

(3) Notwithstanding sub-section (2), where an examination or inquiry is to be carried out for the purpose set out in sub-section (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;

- (b) answer all questions and give all assistance in connection with the examination or inquiry that he or she is reasonably able to answer or give.

(5) A person who fails to comply with sub-section (4) is guilty of an offence and is liable on summary conviction to a fine of ten thousand dollars or to a term of imprisonment for six months or to both and to a further fine of five hundred dollars 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**

337B.—(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 or her 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 or her 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 328(2) may not be required under sub-section (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**

337C.—(1) Subject to sub-section (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 328(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 or her 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 or her 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 337A; or
  - (iii) a question to be answered or assistance to be given by a person in connection with the examination or inquiry;

- (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 further 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.

(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**

337D.—(1) A non-profit company must within fifteen 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 five thousand dollars; and
  - (ii) where the donor is an entity, the individuals who beneficially own or control the entity and the directors of the entity.

(2) The annual financial statement referred to in sub-section (1) 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 at least two directors.

**Audit of accounts**

337E.— (1) The Registrar may by order require that the condition and accounts of a non-profit company, for such period as he or she thinks fit, be investigated and audited by an auditor appointed by him or her.

(2) An auditor appointed in accordance with sub-section (1) shall—

- (a) have the right of access to all books, accounts and documents relating to the non-profit company that are in 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 or she thinks necessary for the performance of his or her 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 sub-section (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 337D;
- (b) afford an auditor any facility to which he or she is entitled under sub-section (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 is made,

is guilty of an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both and to a further fine of five hundred for every day or part thereof that the offence continues after a conviction is first obtained.

**Orders of the Attorney-General or Registrar**

337F. A person who fails to comply with an order of—

- (a) the Attorney-General under section 337A or 337B; 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**

337G.—(1) A person who is dissatisfied with a decision of the Attorney-General or the Registrar under this Division, may appeal to the court against the decision.

(2) Where an appeal is made in accordance with sub-section (1)—

- (a) section 337H 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 registration**

337H.—(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 328(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 sub-section (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 purpose of sub-section (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 sub-section (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 sub-section (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**

337I. The Minister may make regulations for giving effect to this part 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 337H is to be made, dealt with or prosecuted.”

5. Sub-section (1) of section 344 of the principal Act is amended as follows—

in paragraph (n) by inserting the word “beneficial” before the word “ownership” where it appears.

Amendment  
of section  
344 of  
principal  
Act.

Passed by the House of Representatives this 9th day of May, 2014.

RAPHAEL DONALD  
*Acting Clerk to the House of Representatives.*

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Passed by the Senate this 23rd day of May, 2014.

RAPHAEL DONALD  
*Acting Clerk to the Senate.*

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