TOWARDS A CARIBBEAN-WIDE CORPORATE GOVERNANCE FRAMEWORK

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ABSTRACT

The problem of corruption, fraud and greed amongst corporate fiduciaries has heightened expectation of the global public for corporations to demonstrate greater level of accountability, transparency, and integrity in the way they do business. The rapid pace of globalization makes the need for reforming corporate governance in the Caribbean urgent. In Latin America and the Caribbean, businesses must persuade investors and creditors that they can confidently invest in the region. This means displaying clearer relationships between participation and control, more transparency, consistent and detailed financial statements, as well as maintaining good relations with financial markets. This paper explores emerging global corporate governance trends and Caribbean developments. It reflects a comprehensive review of relevant literature and provides highlights of inconclusive research findings of four case studies being conducted in Jamaica. In addition, the research for this work benefited from the joint views and opinions of 120 delegates drawn from 24 countries across the Caribbean, who met at the first Caribbean Corporate Governance Forum held in September 2003. Many conclusions can be drawn from thoroughly assessing the issues of this paper, one of which is the urgency for the initiation and implementation of a Caribbean-wide Corporate Governance Framework.

Key words: Corporate governance, Caribbean, trends, case studies, reform

BACKGROUND

In any country, the critical role of accurate information and disclosure means that thorough, reliable and prudent business and financial reporting are essential to encourage good corporate governance. It was the failure of many Jamaican companies to disclose accurate information on credit lines, on business risks, and on highly leveraged investments that were partially responsible for the financial meltdown of the 1990s (Hilton, 1999). This crisis demonstrated to the Caribbean, and indeed the world that investors and Governments have to take corporate governance more seriously.

The Jamaican crisis as well as what has happened in Asia and post-Soviet Russia- exposed another weakness in the way policy makers have been approaching economic development. Without binding rules and structures that govern all players, chaos would most certainly follow. Developing countries like those in the Caribbean need economic order and stability, not chaos.

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Concerns about weak or inadequate corporate governance systems are not limited to developing economies such as those of the Caribbean. Recent events in the United States such as ENRON, WORLDCOM, TYCO and countless others, have shown that corporate failures as a result of corporate misdeeds are occurring in jurisdictions with even the most sophisticated systems of checks and balances.

The UK's Cadbury Commission and France's Viénot Commission, as well as the Organisation For Economic Corporation and Development (OECD) have all issued more rigorous guidelines. In the United States, institutional investors have done an exceptional service by insisting that corporate governance standards be raised and that management be made to disclose far more information than was the case less than a decade ago. Against the background of the need for improved corporate governance, the Commonwealth Association for Corporate Governance (CACG) is focusing attention on training and certifying company directors in at least seven developing countries, including Jamaica. Amidst this, the private sector needs to create its vision of a framework structure for good corporate governance. Many Governments and international organisations have already taken the lead in doing this without adequate input from the private sector.

INTRODUCTION

According to Tricker (1984), "Whilst management processes have been widely explored, relatively little attention has been paid to the processes by which companies are governed. If management is about running businesses, governance is about seeing that it is run properly. All companies need governing as well as managing". It should follow that there is a clear distinction between corporate management and corporate governance.

Cochran and Wartick (1998), sees corporate governance as an umbrella term covering many aspects related to concepts, theories and practices of boards, concentrates on the relationship between boards, shareholders, top management, regulators, auditors and other stakeholders. Cadbury (1993:9), states "corporate governance is the ability of board of directors to combine leadership with control and effectiveness with accountability that will primarily determine how well…companies meet society's expectations of them". Vance (1983) opined that corporate governance ensures that long-term strategic objectives and plans are established…proper management structure (organizations, systems and people) is in place to achieve those objectives, while making sure the structure functions to maintain the corporation integrity, reputation and responsibility to its various constituencies.

In developing economies, corporate governance ought to be focused on supporting strengthening and improving institution's judicial, legal and regulatory systems in order to better enforce contracts or protect property rights. This role of corporate governance extends further to ensure a process of recourse for stakeholders in circumstances where corporate directors are involved in unethical and self-interested behaviour. Corporate governance in all types of economies and companies should focus on ensuring disclosures through periodic reporting (monthly, quarterly or annual reports) of relevant information to shareholders and creditors, including business risk analyses, building a system of rules and voluntary practices to govern a company's board of directors, establishing independent audit committees made up of outside board members, and monitoring and controlling management.

Further, corporate governance refers to any set, or a combination of rules, voluntary practices or regulations which can control and govern the relationship between the company's shareowners, board of directors, management and its wider constituents. In addition to providing checks and balances between the interests of shareowners, directors, and professional managers, sound corporate governance should ensure that the company fulfills its primary goal of existence, honors corporate obligations, including corporate social responsibility, while continually renewing itself.

GLOBAL CORPORATE GOVERNANCE TRENDS

Table 1 highlights some of the most current and highly debated issues in corporate governance globally. In table 2, board model types, board size, non-executive directors and the matter of the separation of Chairman and CEO positions are highlighted.

After extensive review of the OECD Principles (1999) that has chronicled developments in more than 30 of its member-countries, two of the many conclusions drawn were: firstly, is how differences among cultures, traditions, social institutions, laws, and stages of economic development have helped to determine corporate practices. Secondly, is the fact that even the largest multinational companies and major players in the global capital markets are having more and more in common. For them, the question is not whether they will grapple with the same corporate governance issues, which their Anglo-American counterparts have been facing, but when, and how they will evolve a governance system, which meets the needs of largely Anglo-American, dominated global capital markets.

The Ten-Factor Matrix (table 1) summarizes the ten most emerging issues in global corporate governance. These are briefly mentioned hereunder:

- Corporate Governance Codification: OECD through a World Bank funded programme has been promoting the development of National Codes of corporate governance Best Practices in all its member countries since 1999;
- Board Models: Two-tier versus One-tier Board Models;
- Board Size and balance between outside and inside directors: a global shift towards smaller boards has been emerging and at the same time a greater focus is on increasing the number of non-executive directors either in majority or at least 50% of board composition;
- The Chairman and CEO duality or non-duality;
- Establishment of key board committees such as Audit, Selection, Remuneration;
- Rule based Governance versus market-oriented, i.e. governance-enforced versus governance volunteered--the emphasis is on governance volunteered but there is also the enforcement of specific disclosure rules, board composition as it relates to independent directors, and that an outside independent director chairs the Audit committee. These developments are becoming the norm rather than the exception in many countries;

- Corporate governance becoming incorporated into the rules governing stock exchanges;
- Issues of Annual General Meeting (AGM), Proxy voting and the publication of executive pay: electronic voting is now accepted and practiced in countries such as Canada and Czech Republic;
- Shareholder activism: no longer concentrated in the USA. It has now spread throughout the globe and is gaining strong presence in parts of Europe and Asia;
- Employee rights and representation: employees continue to have board representation mainly in countries where trade unions are highly developed – USA, Germany, France. There is much to be desired in this matter on a global level.

There is no law, except the social governance model in Germany, which predicates direct representation by employees in the governance of corporations. In the two-tier board model of Germany, 50% of membership of supervisory board must come from the ranks of ordinary workers through trade union representation.

While China was not included, it should be noted that the Chinese Government has developed and has been enforcing the Company Law of the Peoples Republic of China of December 23, 1993. The Chinese Company Law (1993) replaces all previous legal documents and was to override all local legislation in the provinces. The new Law draws from various nations (British/Hong Kong, German, American) and is designed to guide China's economy from state ownership to a mixture of state and private ownership.

The pace of corporate governance developments in the Caribbean has been much slower than that of leading world economies, there has been a tendency towards reform, albeit mainly driven by actions of independent private enterprises.

From further analysis of the Ten Factor Matrix, there is an overwhelming application of corporate governance principles to Stock Exchanges. On this issue, no Caribbean Stock Exchange has been proactive enough. This must be considered for implementation in any attempt by the Caribbean to improve corporate governance.

In the United States, Canada, Britain and many others shown in Matrix, shareholder activism has been playing a significant role in corporate governance development. Unfortunately, shareholder activism is absent in the Caribbean, worse, all Caribbean Stock Exchanges are control or dominated by institutional investors in majority.

Table 1: The Ten-Factor Matrix of Global Corporate Governance Trends

Countries	**Key Global Corporate Governance Trends**									
	Corporate Governance codification	**Board Models Unitary (1) vs. Two-tier (2)**	**Shift towards Board size reduction & NED in Majority**	**Separation of Chairman & CEO duality roles**	**Audit, selection, remuneration Committees to comprise only of NXD &/or independent Directors**	**Governance volunteered (gv) or governance enforced (gy)**	**Corporate governance influencing stock markets rules**	**AGM, Proxy (mb,ev) & publication of executive pay**	**Shareholders' activism growing**	**Employee rights & representation**
Australia	✓	**U**	✓	✓	✓	**ge**	✓		✓	**-**
Belgium	✓	**U**	✓	✓	✓	**ge**	✓	**ev, mb**		**-**
Canada	✓	**U**	✓	✓	✓	**ge**	✓	**ev, mb**	✓	
Czech Re.	✓	**U**	**-**	**-**	**-**	**ge**	✓	**-**	**-**	**-**
Denmark	**-**	**U**	**-**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
France	✓	**20%tt 80%U**	✓	✓	✓	**ge, gv**	✓	**-**	**-**	✓
Germany	✓	**tt**	✓	✓	✓	**ge, gv**	✓	**ev**	✓	✓
Greece	✓	**U**	✓	✓	✓	**gv**	✓	✓	**-**	**-**
Ireland	✓	**U**	✓	✓	✓	**e.g.**	✓	**-**	**-**	**-**
Italy	✓	**U**	✓	✓	✓	**gv**	✓	✓	✓	**-**
Japan	✓	**U**	✓	**-**	**-**	**gv**	✓	**-**	✓	**-**
Korea	✓	**U**	✓	✓	✓	**gv**	✓	✓	✓	**-**
Mexico	✓	**U**	✓	✓	✓	**gv, ge**	✓	**-**	✓	**-**
Netherlands	✓	**TT**	✓	✓	✓	**ge, gv**	✓	**mb**	✓	**-**
New Zealand	✓	**U**	✓	✓	✓	**gv, ge**	✓	✓	✓	**-**
Poland	**-**	**U**	**-**	**-**	**-**	**ge**	✓	**-**	**-**	**-**
Portugal	✓	**U**	**-**	**-**	**-**	✓	✓	✓	✓	**-**
USA	✓	**U**	✓	**-**	✓	**ge**	✓	✓	✓	✓
UK	✓	**U**	✓	**-**	✓	**gv, ge**	✓	✓	**-**	**-**
Developing Nations*	✓	**U**	✓	**-**	✓	**-**	✓	✓	**-**	**-**
Caribbean**	**-**	**U**	✓	**-**	✓	**-**	**-**	**-**	**-**	**-**

Source: Kerr, V.L. (2002). First published in the *Financial Gleaner (Daily Gleaner)*, Friday October 31, 2003, p. 4

Keys: U-unitary; TT –two-tier; NED –Non-Executive Director; gv -governance volunteered; ge-governance enforced; mb –mail ballots; ev – electronic voting; * South Africa, Ghana, Kenya and India are the more advanced in Corporate Governance Issues; **Jamaica being the most advanced (corporate governance) is used as a model for the Caribbean.

CASE STUDIES FROM JAMAICA

Grace, Kennedy & Company Limited, a leading Caribbean conglomerate with Headquarters in Jamaica, slashed its board size from a massive 22 to 12, which took effect January 1, 2002. This reduction in board size has been the most radical move by any Caribbean company to implement corporate governance self-regulating practices. Douglas Orane, Chairman & CEO states: "a smaller board will cause us to be more nimble in the ability to make decisions".

Board sizes

Whilst Grace, Kennedy's intention was to improve the ratio of non-executive versus executive directors, smaller boards made it possible for each director to become more intimately involved in board committee matters, thus adding greater value to the organisation.

Table 2 shows amongst other things, the current trend of board sizes around the world. While the practical consideration of board sizes is very important, the theoretical implication deserves closer analysis. According to Herman (1991), large boards are 'weak' boards since these boards made in-depth discussion unlikely, and increased the prospect for diversity and fragmentation. Douglas Orane when asked why his company has decided to reduce board size from 22 to 12 members, states:

> This is a move to get more inline with global corporate Governance trends…we are improving by using world Best Practices. A smaller board will cause us to be more nimble in the ability to make decisions…to balance the ratio of outside directors for checks and balances. The new board structure will provide greater access to detailed information on subsidiaries, with a new policy of inviting younger managers ton make presentations to the board. (Douglas Orane, personal interview)

Research conducted by this author into 42 publicly listed Jamaican companies using data from the Jamaica Stock Exchange Year-book 2002, confirmed average board size to be 8, with a range from 4 to 22. The statistical outlier at that time was Grace, Kennedy with a board size of 22, and the next largest board had 16 members. Given the fact that average board size of Jamaican companies in year 2000 was 8, supported by averages in table 2, Grace, Kennedy's move has been empirically justified. While the average board size of Jamaican listed companies was 8, it should be noted that the average turnover sales of the corporations studied in the countries highlighted in table 2, was in excess of twenty times that of Grace, Kennedy, and other Caribbean companies of similar sizes.

Table 2: Board Size and Type in 15 Countries

Country	Model of Board U: Unitary TT: TWO-TIER	Board Size (1)	Non-Executive Directors (1)	Separation of Chairman/ CEO (1)
Australia	U	8	75%	High
Belgium	U	15	78%	High
Brazil	U	6	60%	Low
Canada	U	13	80%	66%
France	U 80% TT 20%	13	82% 92%	0% 100%
Germany	TT	15	100%	100%
Italy	U	11	73%	100%
Japan	U	No info	5%	100%
The Netherlands	TT	7	100%	100%
South Africa	U	13	60%	50%
Spain	U	12	71%	37%
Sweden	U	9	85%	High
Switzerland	U (2)	9	89%	63%
UK	U	12.5	50%	90%
USA	U	13	77%	15%
Jamaica	**U**	**8**	**Over 60%**	**Over 90%**

(1) Figures are averages for large and most represented companies in each country
(2) Two-tier boards in banks
Source: Spencer Stuart Board Index (1997), emphasis added on Jamaica.

Younger Managers

Probably the most interesting and potentially beneficial element in Grace, Kennedy's recent initiative is in its new policy of inviting young managers to make presentations at board meetings. This move will now give the long awaited opportunity to many young, bright, innovative, talented and "globally-focused" managers a chance to prove their worth and to become more visible in the eyes of directors. In many companies, younger managers would become frustrated of not given a chance at the boardroom podium, where if they excel, the possibility would be higher to get a green light to move that well-crafted and packaged project. In other cases, immediate bosses become served as obstacles to the progress of the talented young manager by not providing the deserved recognition and internal and external exposure.

This strategy of an occasional presence at the boardroom podium and/or the white board should help the members of the succession planning committee to spot talents and to encourage challenges. In many companies where younger executives were allowed to sit on sub-committees, senior members had a chance to provide on-the-spot executive mentoring and to build closer working relationships with those in whom the implementation of strategic directives are vested. In addition, this provided board members the opportunity of instilling early coaching, and the importance of company loyalty, which ultimately could lead to a smoother transfer of executive power to younger managers.

Table 3 below summarizes finings of four case studies of publicly-listed Jamaica companies, and addresses the issues of board size, percentage of external directors, percentage of independent directors, the duality or separation of the roles of Chairman and CEO, selection of directors, lead director, sub-committees, CEO evaluation, board appraisal and percent equity paid directors.

Table 3: Corporate Governance Features & Board Practices In Selected Jamaican Companies

Features & Board Practices	**Grace, Kennedy & Company Ltd.**	**Bank of Nova Scotia**	**Capital & Credit Merchant Bank Limited**	**Jamaica Producers Group Limited**
Board Size	Reduced board size from 22 to 12 in 2001 to make it nimbler and more effective in decision-making	16	6	13
% External Directors	54% directors were external in 2003 vs. 27% prior to 2001	13 of 16 were external, i.e. 81%	4 out of 6 or 662/3 %	9 of 13 or 69%
% Independent Directors	30% of directors were independent	10 out of 16 or 62 %.	4 out of 7 or 57%	6 of 13 or 46%
Duality or separation of Chairman/CEO position	Chairman/CEO one in the same, and key roles were separated.	Roles and position separated—chairman was external but not independent	Non-duality	Non-duality of position
Selection of Directors	Board members recommended prospects to shareholders at AGM	CEO made suggestions for candidacy.	By shareholders	Nominated by CEO or Chairman and then recommended to Shareholders at AGM
Existence of Lead Director	A lead directors was appointed	No lead director	None	No lead director
Existence of Board Sub-committees	There were audit, corporate governance and compensation committees. All headed by external directors.	Executive committees of the Board, Audit, HR, Pension	Audit, Corporate Governance & Compensation, Risk Management, Credit & Investment.	Corporate Governance, Audit and Remuneration or Compensation
CEO Evaluation	Compensation committee and external consultant	Chairman provided feedback	The Board of Directors evaluated CEO annually	Done by the Board of Directors
Board Appraisal	Being considered, attempt made at peer evaluation	No board appraisal	None	None

% Of Directors pay in equity	None. Directors received stock options and a fee for each meeting attended.	None. Directors received a fee for each meeting attended.	None. Directors received a fee for each meeting attended.	None. Directors received a fee for each meeting attended.

Source: Kerr, V. L. (Preliminary findings, inconclusive doctoral research project)

Findings of the cases studied in table 3 show a 68% average composition of non-executive directors; all boards have at least 3 sub-committees, with audit and corporate governance among the most common; average board size of 12 was 50% larger than 8 (average of all stock market listed). The three largest companies based on board sizes above, are among the largest boards of all 42 listed on the Jamaican Stock Exchange. However, the more worrying facts in analyzing table 3 data, are that only 25% (1 out of 4) firms compensate non-executive directors with stock options, zero percent conducts formal evaluation of directors, and in 75% (3 out of 4) cases, there is no structured program for evaluating the Chairman, and only 25% (1 out of 4) of companies have had actually appointed lead director.

The Separate Roles of Chairman & CEO

To overcome the influence and power of chief executive officers over outside directors and to ensure that corporate boards act as effective monitors, it has been proposed that corporations split the position of Chairman and CEO (The Hampel Report, 1998, Higgs Report 2003). As Chairman of the board, the CEO has at his or her disposal substantial influence and power over the non-executive members. But the Chairman and CEO power and influence is even greater importance over those executive directors who report to him or her on a day-to-day basis.

As shown in table 2, the Chairman and CEO roles are mostly separated in many countries with unitary boards (Australia, Belgium, Italy, Japan, Sweden and the UK). In other countries such as Brazil, France and the US, separation is non-existent. In a few countries, both systems are commonly found (Canada, South Africa, Spain and Switzerland). A unitary board is similar to the Jamaican board structure, where board is presided over by a Chairman to whom the CEO reports. A two-tier board, in contrast, is where there is an advisory or supervisory Board, usually comprises of 100% non-executives and they provide supervision to a management board (like the unitary structure). In all countries, the law provides boards the flexibility to assign the two positions of Chairman and CEO to the same or different persons. The decision of the Board may vary over time depending on circumstances (like a crisis or in succession context) and on personalities. The only exception is France, where since World War II, the principle of Chairman also being the CEO has been enacted into the law.

In the UK, and particularly after the Cadbury Report, the trend has definitely been towards an increasing number of cases where the roles of the Chairman and Chief Executive are separated (75% of top 100 companies today). The Cadbury Report advocates that where the two roles are combined, there should be a recognized senior, strong and independent element on the board. Subsequently, the Hampel Committee has concluded that the separation of roles need not be a stringent rule, that separation was to be preferred though, and that companies should justify a decision to combine the roles.

Going further than The Cadbury Report, the Hampel Report (1998) also known as the Combined Code (or Cadbury II), asserts that whether or not the roles were combined, there should be a clearly identified lead non-executive director, or lead director.

In the US, the norm is that of vesting the two roles in one person. American investors have mixed feelings on the subject; many of them are more in favour of splitting of the two roles. They just do not consider it as a serious issue and rely for objectivity and independence of boards, on a largely predominance of outside directors (Spencer Stuart, 1997).

Having made the above points, it is now up to the Caribbean corporations to decide what model or combination of models of corporate governance are most suitable for their situation. In the final analysis, board behaviour and conformance should be assessed against the sustainability of satisfactory profitable performance, and the corporation's commitment to, and 'quality' of corporate social responsibility–environmental protection, the health and safety of employees and community, bio-diversity, communications, adequate disclosure, employment practices and business integrity.

Does Chairman/CEO Duality Impact Company Performance?

While there is strong theoretical support for separation of both roles, more than often, opponents of this view assumed that the duality often led to selfish actions and abuse of executive power. Proponents are of the view that CEO/Chairman duality fosters strong and unified leadership, rather than as weakening the board's independence from management and its monitoring role. Many empirical studies while sometimes supporting the CEO's role sometimes call it into serious question. For example, Daily and Dalton (1997), found that CEOs who are also Chair of the board are not necessarily more independent of management from board influence than CEOs who are not. Other prominent authors such as Balinga, Moyer, Rao and Heracleous (1996), found no significant relationship between duality statuses, from duality to non-duality.

In Jamaica, and just from observational deductions, there are many examples where Chairman/CEO duality has proven very successful --Capital & Credit Merchant Bank Limited (with Ryland Campbell—10 year old bank); United General Insurance Group (with Neville Blythe); Superclubs (with John Issa) and Grace, Kennedy & Company--from Mr. Luis Fred Kennedy, then Chairman & Governing Director, through Carlton Alexander and A. Rafael Diaz to Douglas Orane.

Does Executive Director/ Non-executive Composition Impact Firm Performance?

The Cadbury and its successor reports (Greenbury, 1995; Hampel 1998 and Higgs 2003) suggest that the Board should include non-executives (outsiders) of sufficient quality and caliber. A study by Bhagat and Black (1999), found no evidence that increasing outsider Board representation can improve firm performance; that firms with a super-majority of outsiders performed worse than other firms; and that firms with a higher proportion of inside directors perform as well as firms with a number of outsiders. Results of a review of several empirical works carried out by Wagner, Stimpert and Fubara (1998), proved inconsistent. After a meta-analysis of 29 studies they found that both the greater relative presence of board outsiders and insiders were empirically associated with higher company performance. There was a curvilinear relationship shown to hold for asset measures of performance but not for return on equity measures. In yet another recent meta-analysis of 37 samples involving 7,644 organizations, it was found that board composition explains less than one percent of a firm's financial performance; and that a weak influence on performance occurred when there are either relatively more insiders or outsiders on the board (Heracleous, 2002).

Good corporate governance has been recognized as a source of competitiveness and is critical to economic and social progress. With globalization, companies need to tap into domestic and international capital markets in ways that would have been inconceivable less than a decade ago.

Increasingly in the Caribbean, individual investors, funds, banks, and other financial houses have been basing their decisions not only on a firm's outlook, but also on its reputation and governance. This increased tendency to access capital, domestic and foreign, has been signaling key business players that the time for corporate governance reform is more urgent now than ever.

FACTORS AGAINST A CARIBBEAN-WIDE FRAMEWORK

The following factors may limit any attempt to establish a Caribbean-wide structure of governance:

1. There is a dearth of empirical literature. There has been no previous work undertaken to determine basic corporate governance features of Caribbean boards. This lack of understanding of board practices and structures will limit efforts geared towards the development of national and regional corporate governance Codes. This gap in the literature may soon be addressed by a current study being conducted amongst 100 companies in Jamaica.
2. Ownership and control issues. The predominantly family owned larger Caribbean businesses could be a major factor against the successful implementation of corporate governance principles in the Caribbean.
3. Limited human resource competence in corporate governance from a multi-disciplinary perspective. This will require extensive awareness building to include both Government and the private sector.
4. Many corporate governance structures are either underdeveloped or being too divergent in maturity and development. Standards of best practices will have to be unified before any one model can be achieved across the Caribbean.
5. The emphasis on individual island-state by their respective stakeholders, rather than seeking a Caribbean-wide focus continues to plague regional progress and will certainly affect cooperation in forging a regional governance framework.
6. There is no existing national Code and there is no Caribbean model of corporate governance. Therefore, it is likely that any model emerge would be one adopted from elsewhere. Consequently, this may not serve the Caribbean's best interest.

In addition to the above factors, more than 120 delegates representing 24 Caribbean countries met at the Headquarters of the Eastern Caribbean Central Bank, St. Kitts where the first Caribbean Forum on Corporate Governance was held, 3rd-5th September 2003. From the deliberations, the following challenges were identified as having important implications on any future agenda of a Caribbean-wide corporate governance framework:

1. The judicial systems are poorly equipped to address healthy governance practices.

2. The ownership structure of corporate sector is very complex.

3. The high level of interlocking directorship amongst publictly-listed and private sector, and Government, particular occurring in the financial sector.

4. Governments have been known to have intervened and interfaced with boards and this has hindered their effectiveness.

5. There is minimal investor participation in companies.

6. Transparency in the management of companies is lacking.

7. There is little regard for the rights of minority shareholders.

8. There are limited/scare human resource capabilities in the relevant areas.

9. Companies' ability to innovate, set trends and attract talented people is limited.

10. There is a tendency for organization to resist change.

In spite of these challenges, an effective corporate governance framework can be designed to ensure improved social responsibility and allow for greater transparency, accountability and business prosperity within the Caribbean. According to the report of the Caribbean Corporate Governance Forum, these should include:

1. "Enhanced self-regulation of companies (especially in newly privitised utility and public companies);
2. positive societal recognition due to a transparent internal governance structure;
3. corporate governance would allow for directly tackling the supply side of corruption".

In order to achieve the above, the following are edited suggestions proposed by the Caribbean Forum:

1. to establish regional codes to demonstrate intent and emphasis on better corporate governance;

2. to establish regional and national professional institutes to promote corporate governance standards;
3. to encourage training and professional development among corporate directors;
4. to incorporate corporate governance in national development and finance policies;
5. to encourage and develop a regional strategy to promote better corporate governance in public and private sector;
6. to establish a well defined power sharing and accountability regulations;
7. to develop a system that ensures board member independence and protection of shareholder and stakeholder interest; and
8. to establish a clearly defined code of values, professional conduct and ethical standards by market participants.

It is instructive to note that the Forum recognised that corporate governance must not be viewed as another 'set of rules' imposed from outside for someone else's benefit, but as a framework based on Caribbean values designed to meet Caribbean needs.

Source: Report On The Caribbean Corporate Governance Forum,
St. Kitts, 3-5 September 2003

ROLES OF THE PRIVATE SECTOR IN CORPORATE GOVERNANCE DEVELOPMENT

Any effort by the private sector must move beyond thinking and talking about the need for reform in the Caribbean to:

- identifying specific issues and problems and develop unique programmes and institutions to strengthen corporate governance;
- developing global, regional and national codes of best practices must be carefully studied, analyzed and the most important and relevant elements borrowed and/or adopted to satisfy local systems of governance; and
- to recognizing and drawing on the talents of locally available expertise before gobbling up expatriates with the premise that they know our problems best and not ourselves.

Suggestions for the Private Sector

In addition to attempting to softening those factors against a Caribbean-wide corporate governance framework, as identified earlier in this paper, the planning and formulation of relevant corporate governance guidelines for the Caribbean must include, in no order of priority, a mix of the following important considerations:

- self-assessment of the state of member institutions before any sound and meaningful agenda can be developed and implemented;
- knowledge on best practices must be disseminated;
- Government and the public must be convinced on the merits of good corporate governance and the urgent need for reform;

- encourage Government to develop their capacities to implement reform and the capacity of self-regulatory bodies to develop and execute their own regulations;
- build consensus for policy, regulatory, and legal institutional structures;
- frame corporate governance strategies against the transient and vulnerable state of most Jamaican economies to globalization; the internationalization of local firms, and the realities of the increased regulatory demands of international financial markets and systems;
- be prepared to address corporate governance issues that go beyond the Caribbean;
- be open to draw on local and emerging expertise; and
- train the various professionals and agents who are essential to bring about a culture of compliance –not to be difficult to achieve as training has begun, and there is a growing tendency towards greater awareness building and compliance. However, corporate governance is multi-disciplinary, it requires the contribution of intense academic and scholarly intervention; equally the practitioners must play they role.

The suggestions above are inexhaustible. To lobby Government and members of the private sector Singapore, Malaysia, New Zealand, and many others were able to develop and establish corporate governance guidelines and regulations within a few years because their Governments were fully on board from the very beginning. The level of mistrust of politicians and lack of political will were less problematic than the reality in the Caribbean. Further, these countries each appeared to have had what could be called a "Country Strategy" on corporate governance. These Governments understood their role as facilitators too well, and were never seen as obstacles to progress.

It must be stressed that most of the successful National Corporate Governance Codes were developed with the respective private sector groups playing a lead role. The conceptualization and in-depth planning and strategizing were left up to the able private sector groups. Where is the Private Sector? What really are their concerns regarding corporate governance? Why has the Private Sector not concentrating more on building synergy with Government and at the same time developing an agenda for the way forward for Jamaica?

SOME SPECIFIC RECOMMENDATIONS

1. A Caribbean Shareholders' Association

There is no unified voice in the Caribbean to champion the rights of the small individual investor. Hence, there is a need for a movement of some sought probably similarly to the UK Shareholders Association (UKSA). The UKSA is a leading independent organization representing the views of individual shareholders. Since its founding in 1992, at which time it was the only such body in the entire World, it has represented the views of individual investors to Government, the London Stock Exchange, Boards of British Companies, regulators and the media. The UKSA ensures that company managers interests are properly aligned with those of shareholders, empowered and educated individual investors whose interests are respected by Government, and who can operate on a level footing with institutional investors. The cry of the common shareholder is for too long been ignored. As the small shareholder pleas, corporate governance structures are still failing to provide the medium through which recourse can be obtained for losses suffered as a result of the "freezing" of their investments.

In countries such as Britain and the USA, boardroom "Cowboyism" is being challenged and toppled by radical investor movements. In the USA, radical institutional investors such as CalPERS[1], CalSTRS[2], TIAA-CREF[3], NYC[4] and SWIB[5] are known for their militancy in achieving boardroom reforms. These institutional investors have achieved much over the last ten years in determining the structure and composition of many boards. CalPERS famous corporate governance programme in the USA targeted corporations such as IBM, General Motors American Express, Kmart and Sears. Some studies indicate that shareholder activism indeed may pay off. CalPERS- for example-- claims that an investment of some USD 500,000 in shareholder activism leads to additional earnings of tens of millions of USD dollars annually.

In another study, CalPERS-targeted companies outperformed Standards & Poors (S&P) Indexes by 52.5% over 5 years prior to trailing S&P by 66% before CalPERS intervention (Wishire Associates, 1995 study of 42 firms). Similar study by Michael E. Smith of Economic Analysis Corporation of Los Angeles (1987 to 1993) concluded that CG activism increased the value of CalPERS holdings in 34 companies. Even though these figures are very significant, it is hard to know how much of the stock price improvement can be casually attributed to CalPERS involvement and more effective governance; and the study has not been under rigorous academic peer review before publication, to give assurance of its methodological quality. (Heracleous, 2002, www.calpers-governance.org)

2. Towards Improved Corporate Governance Disclosures

As regulatory barriers between national economies are removed and global competition for capital increases, investment capital will be directed to those countries and corporations that have adopted efficient corporate governance standards. These standards include acceptable levels of investor protection and board practices as well as satisfactory accounting and disclosures.

A reliable framework of corporate governance must include and ensure the full, timely and detailed disclosure of information on all material issues to include the establishment of internal audit committee. Transparency and disclosure include disclosure of information on financial operating results; ownership structure; members of board of directors and management; qualitative and quantitative matters concerning employees and other stakeholders within and outside the company.

Banking Acts set out disclosure requirements for the deposit-taking entities they regulate. These requirements include quarterly financial statements among other reports. The Stock Exchanges of the Caribbean require their members to submit quarterly and annual financial reports and stipulate punitive actions such as temporary or permanent de-listing where they fail to meet these requirements. The Companies' Acts set out

[1] California Public Employees' Retirement System, California State Teachers
[2] California State Teachers Retirement System
[3] College Retirement Equities Fund
[4] New York City Funds
[5] State of Wisconsin Investment Board

standards of disclosure requirements. Guidelines from the Institute of Chartered Accountants of the Caribbean address issues of financial, auditing and accounting standards for its member-companies and practitioners and non-practitioner members. In spite of these rules and voluntary disclosure expectations, many Caribbean firms still refuse to comply in full or part.

For example, the Business Observer (Jamaica) of July 24, 2002, Electronic Version:

> Not a single company secretary was willing to provide clarification of details, or to provide basic information or even to engage the newspaper on the issue. Even though the companies are required to state the full packages of their executives, it is not clear if there is consistency among the companies in their interpretation or application of this rule. It is possible that some of the salaries that were reviewed do not reflect the total emoluments of executives, and that critical items, like stock options, housing, and pension may have been omitted in some instances. Additionally, it is not known how some companies may have treated cost items like personal bodyguards provided to their executives.

In the spirit of good governance and to improve corporate disclosure amongst Caribbean companies, particularly listed-companies, Central Banks, Stock Exchanges and Securities Commissions should independently or in collaboration, establish a set of specific disclosure requirements for adoption by publicly-traded companies.

3. Directory of Corporate Directors

Another move that could significantly improve the quality of corporate governance disclosures across all companies in the Caribbean is the initiation and publication of a directory of corporate directors. In US, Canada, Britain and several other countries Institute of Directors, Stock Exchanges and other regulatory or quasi-regulatory bodies publish directories of board directors. Such a directory provides the name of individual directors; their level of interlocking across companies, among other things. In the Caribbean, and in the absence of a directory of corporate directors, the Stock Exchanges are well poised to undertake such a potentially useful initiative, which could include its members and non-members.

Director interlocking is where one director holds several directorships in related and unrelated companies. Given a specific director’s stockholding (which normally would be included or indicated for each company s/he is a director of), the public would be able to determine a particular director's interconnection and possible influences. The directory of corporate directors has become a very important corporate governance tool in Britain, particularly after the debacle of Maxwell Communications Group in the 1980s. For better or worse, the late Robert Maxwell and the demised Maxwell Communications, PollyPeck and others, have opened a new chapter on the need for and importance of adequate corporate governance disclosure in advancing ethics and integrity in both private sector and public businesses. Any move to consider the establishment of a directory of corporate directors in Caribbean could be, indeed, a bold step forward for the integrity of corporate disclosure.

4. Annual Reports

Adequacy of corporate disclosures should take into consideration the quality of information and how the information is presented in annual reports. It is indeed appalling to see the shabby state of some annual reports. The information presented has not always be in font sizes and languages easily read and understood by many senior shareholders (older). Firms with ultra-conservative presentation of information in annual reports should give consideration to their wide shareholder base; ensure that the language is as simple as possible--legible and can be understood by the average literate shareholder. Some of our annual reports are just too small and void of creativity. It can be accepted that it would be difficult for any company to adequately satisfy the taste, preference and expectations of all its members. However, an effort should be made to ensure the information content of annual reports be attractively presented, and generally more reader-friendly.

Senior executives and directors need to recognise that shareholders are only given a comprehensive statement once per year. Therefore, it is the responsibility of the managers--hired hands (the agents) - to ensure that shareowners receive a statement presented at the highest standard and in a non-discriminate manner.

JUSTIFYING THE CALL FOR A CARRIBBEAN-WIDE CORPORATE GOVERANCE FRAMEWORK

The question confronting the Caribbean at this time is not whether –but when –businesses that want to succeed in the new global economy will begin to reshape their corporate governance. The urgency stems from a rapid pace of convergence of international financial standards, which is converging very quickly. Ownership and control structures have been giving way to professional employees not only in Jamaica as preliminary research findings have shown, but there has been a trend of this sort throughout other Caribbean and Latin American countries. Studies have also reported this trend in parts of Asia, e.g. in Singapore (Mak, Y.T. and Chng, K., 2000). Domestic and international investors, creditors, multilateral institutions, and international organizations are pressing for better corporate governance.

The reward for good corporate governance is a prosperous economy with a citizenry that supports economic growth. It is worth some effort to get there. A recent survey by McKinsey and Company (2000), found that investors are willing to pay a premium for companies that demonstrate sound corporate governance systems. Although the downside of this study is that it reported the perception of investors rather than what investors actually do. However, it serves to stir the importance of corporate governance on a global scale.

The World Trade Organisation (WTO) and the International Monetary Fund (IMF) have pressed Governments and their domestic corporate clients, to develop international standards that will help companies grow across borders. Most encouraging is the recent adoption of International Financial Reporting Standards (IFRS) by the Institute of Chartered Accountants of Jamaica (ICAJ). The most recent effort has been supported by a series of workshop. Hopefully, this will see Jamaican and other Caribbean companies responding to a global compromise and a set of common accounting standards to ensure greater accountability and transparency.

Before committing resources, investors and institutions all over the world, want to be able to analyze and compare potential investments by the same standards of transparency, clarity and accuracy in financial statements. They want to have risk assessments. More and more, Caribbean companies are seeking global reach by attracting new capital and are listing their shares on regional stock exchanges.

Grace, Kennedy & Company Limited, Jamaica Money Market Brokers Limited, the Capital & Credit Merchant Bank Limited, Guardian Holdings Limited, and many other Caribbean and Latin American conglomerates, are some of the examples. Being credible businesses that can withstand the scrutiny of international investors is more than just a matter of global marketing- it has become essential for local companies to grow and prosper. Good corporate governance not only stimulates healthy growth, but it is a shield against widespread financial crisis. The Jamaican financial crisis of the 1990s underscored the urgency for businesses to transform the way they govern themselves.

CONCLUSIONS

Re-shaping corporate governance adequately will not happen overnight. Many business leaders believe that by adjusting a few procedures here, adopting a few rules there, and hiring a corporate relations specialist, or even to include a few sentences on corporate governance in annual reports is adequate. For example, in Jamaican recently, an IPO placed a statement on its corporate governance in its Initial Offer Document, yet the said company failed to report on its corporate governance in its first Annual Report as a listed company. Where is the commitment to good corporate governance?

The concept of corporate governance is new. In the Caribbean it is only now given increased attention by a few. Any effort towards a Caribbean-wide agenda will need capacity strengthening –to develop Caribbean own expertise which will intern disseminate knowledge and conduct critical training as well as to build awareness and promote conformance. Except at the Centre For Corporate Governance & Competitive Strategy (GovStrat), Jamaica, it is hard to find expertise in the field of Caribbean corporate governance.

There is no 'one size' corporate governance model that fits all. What is important at the end of the day is that firms leaders should practice what they preach. The affairs of the firm should be conducted and communicated, where necessary, to shareholders and the public, in a manner rendering absolutely no doubt about integrity and capabilities of its directors and managers. Frequent and transparent financial and other information should be available and accessible to all stakeholders--shareholders, employees, investors, the press, community, suppliers, creditors and others. All regulatory requirements, information specific to shareholders should be generated and disseminated in a timely manner, and to be understood by all.

One lesson learned from the Jamaican financial crisis is that poor corporate governance can create huge liabilities for both individual companies and society. Foreign direct investment (FDI), part of the overall flow of private finance worldwide, has grown especially important in globalisation. Money flowing into stock markets and other short-term equity investments is significant, but recent experiences of the Jamaican financial crisis and elsewhere have shown that such flows can reverse quickly and easily, with devastating effect. To meet the urgent demand of convergence and capital investments, Caribbean firms must first embrace and conform with international financial reporting standards, specifically, and corporate governance best practices, in particular: they must be transformed, not just dressed up a bit.

If a consensus on a common Framework Model of corporate governance is to be achieved, it will most likely take several years if not decades. For one, corporate governance is still little understood throughout individual territories. Secondly, there is not a single Caribbean model available to be emulated or adopted. This means that there will be several learning curves to be established; individual countries will most like be motivated to look at each individual unique situation, and to determine what is best. Thirdly, is that while there is no existing model, the problem is further compounded with a dearth of empirical data, and this will most likely affect the way planning for future development will proceed. Any sensible attempt to establish a corporate governance framework must be preceded with a thorough assessment of existing corporate governance features in each of the territories of the Caribbean—this will require time, resources and the appropriately trained and skilled human capacity. The Caribbean presently lacks the needed human capacity which will be required to champion corporate governance development.

The way forward therefore must see all stakeholder groups knocking heads—private sector, regulators, watchdog groups, the legal framework, institutional investors, academics and others. They must design strategies, establish timelines and put a realistic programme of activities on the road. At least there is some initiation in Jamaica through the Private Sector Organisation of Jamaica, and as recently as September 2003, with the first Caribbean Corporate Governance Forum.

Finally, for any institution to survive, compete effectively and be profitable in the newly converging global financial architecture, company Directors must take responsibility for their own corporate governance. Information on their corporate governance must be readily available to consumers even if regulatory bodies have not required such disclosure along the lines of the Toronto, New York and London Stock Exchanges.

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