



Chapter
X

CORPORATE GOVERNANCE IN THE CARIBBEAN

Introduction

Corporate governance issues in the Caribbean must inevitably take into account developments in the rest of the world and the lessons to be learnt. Nevertheless there are certain problems peculiar to small and micro states and relatively small companies relating *inter alia*, to issues such as the rights of shareholders, equitable treatment of shareholders, majority and minority and the role of the various stakeholders, bearing in mind that there might be conflict of interest. Robert Monk defined corporate governance in the following way:

“Corporate Governance” refers to the “relationship among various participants in determining the direction and performance of corporations. The primary participants are (1) the shareholders, (2) the management (led by the chief executive officer), and (3) the board of directors”¹

On the same issue, Oliver Fremond and Mierta Capaul said *“corporate governance is about the definition of property rights of shareholders and the mechanisms of exercising such rights”²* In trying to satisfy the needs of the various stakeholders whose objectives might not always be synchronous, corporate governance has to be guided by the need for equity within the organization and the wider community. Other issues, such as disclosure, transparency, discipline, independence, accountability, fairness, social responsibility and the role and function of the board of directors of listed companies are critical to the development of corporate governance. An overview of efforts at both the regional and the domestic level to craft corporate governance codes will be provided.

Corporate governance principles have engaged the attention of the UK and North America for some time and the Organization for Economic Cooperation and Development (OECD) has crafted a set of principles that are meant to guide the corporate world. In addition, the Enron phenomenon has added a new dimension to the issue and a greater sense of urgency. These form the backdrop for determining how closely the Region approximates to what exists in the developed world, bearing in mind the pervasive nature of global competition.

Corporate governance practices developed differently in different countries and the principles and practices of any country are the product of a particular development experience at a particular time. Any attempt therefore to transplant wholesale one system to another country has at best a modest chance of success with the greater risk of it being rendered unworkable. The challenge therefore is not only to establish appropriate rules of corporate governance for publicly traded companies but to develop models of governance that address all economic structures.

A. Development of International Best Practice

A review of the corporate governance literature shows the historical and contextual nature of corporate governance. A combination of factors has helped to shape and influence corporate governance systems around the world. One of the most significant cases of a single incident having a strong negative impact on the public's confidence in private corporate governance was the failure of the Mississippi Company in 1720 when France was 'rescued' from financial ruins by a Scotsman John Law, who took over of all its debts in return for a monopoly on trade with Louisiana. Law's company failed with heavy losses borne by the French Government and its wealthy citizens. So traumatised were the French that they banned joint stock companies and stayed away from the financial markets.³

Interestingly enough, however, the British who had at just about the same time their own bad experience with the South Sea Bubble⁴, did not respond similarly and this has been explained as being partly due to different legal systems. In Britain (a common law country) financial crises were met by legislative action to protect investor rights while in the civil law European countries the banks and state investment programmes became a substitute for capital markets. As Morck and Steier observed "*Common law countries' courts and governments sought to protect the weak from the strong; civil law countries' governments sought alternative ways of implementing the public policy goal of efficient capital allocation.*"⁵

1. The Underpinnings of the Joint Stock Company Form

The rise of corporate governance is rooted in the development of the joint stock company form in which, for the first time, management and ownership were not vested in the same persons. The equity in a company and dividends accrue to the shareholders, but the day to day running of the organization is performed by professional managers with the oversight of directors. By law, the directors are appointed by the shareholders who, unless they are also full-time employees of the company, are precluded from taking an active part in the management of the entity. This remains valid, notwithstanding the feature in the Companies Act of a number of territories which provides for directors' and, by extension, management's action, to be subject to a unanimous shareholders' agreement – an innovative concept imported from Canada but one which is hardly applicable to public companies.

The challenge of corporate governance is to reconcile the competing interests and agendas of managers and directors on the one hand, and owners and other stakeholders on the other in a transparent, fair and open process that is potentially adversarial.

Law, in the form of companies' legislation, has been the primary vehicle for addressing and resolving these conflicts with the [United Kingdom] Joint Stock Companies Act of 1844 being the watershed event. Prior to that legislation, companies were created by and operated under Royal Charter and four hundred years ago, the British East India Company in the UK and the Dutch East India Company in Holland were granted charters with permanent capital and shares of unlimited duration. Neither the law nor commerce had yet invented an appropriate vehicle for the undertaking of commercial exploitation of the colonising conquest of other countries.

In 1720, the British Government passed the Bubble Act - following the crash of the South Sea Company - forbidding unchartered companies from issuing stock, thus forcing all companies wishing to raise capital to first obtain a Certificate of Incorporation requiring an Act of Parliament. Joint stock companies in France fared even worse following the crash of Law's Company in 1720 and were banned, returning France to the earlier system whereby the economy was run on religious directives.

Companies legislation in CARICOM countries all have their origins in the repeal of the Bubble Act in 1825 which had severely impaired the growth of privately own companies and the economy. Still hesitant to open the floodgates to the private company form, the UK Parliament passed the Chartered Companies Act of 1837 which included a provision of limited

liability. However, owing to the cost and difficulty of acquiring a charter, this form of company was not common and in

1844, the Joint Stock Companies Act was passed, prohibiting large unincorporated businesses - for example, a partnership could have no more than twenty partners and a private company no more than fifty members-and allowing for joint stock companies to be created by registration.

2. The U.K. and German Experience

Reform of corporate governance has largely been a reactive exercise which the Institute of Chartered Accountants in England and Wales (ICAEW) admitted as much when it wrote: *“Initial corporate governance developments in the UK began in the late 1980s and early 1990s in the wake of corporate scandals such as Polly Peck and Maxwell.”*⁶

Perhaps the most famous work on Corporate Governance in the western world is the Adrian Cadbury’s Report⁷. The report presented a code of best practice that companies should adopt for good corporate governance.

The Code of Best Practice included the following:

- Audit committees should be established for all companies listed on the stock exchange.
- Directors’ service contracts should not exceed 3 years, without shareholder approval.
- Directors’ total emoluments and those of the chairman should be fully disclosed and split into salary and performance related elements; and
- Executive directors’ pay should be subject to the recommendations of a remuneration committee of wholly or mainly non-executive directors.

The Cadbury Report points out that “effective accountability” is the essence of good governance and is required if boards of directors are to discharge their responsibilities in a manner that will drive their companies forward and make them more competitive. The Cadbury report states:

“By adhering to the Code, listed companies will strengthen both their control over their businesses and their public accountability. In so doing, they will be striking the right balance between meeting the standards of corporate governance now expected of them and retaining the essential spirit of enterprise. Bringing greater clarity to the respective roles and responsibilities of directors, shareholders and auditors will also strengthen trust in the corporate system. Companies whose standards of corporate governance are high are the most likely to gain the confidence of investors and support for the development of their businesses.”

Box X.1: Inclusions in the London Stock Exchange

The London Stock Exchange implemented certain recommendations that were made in the Cadbury report including:

- Remuneration committee:
- Boards of directors should set up remuneration committees of exclusively non-executive directors to determine (within terms of reference):
 - the company’s policy on executive remuneration;
 - specific remuneration packages for each executive director.
- The remuneration committee’s chairman should attend the AGM to answer shareholders’ questions about directors’ remuneration.
- Disclosure and approval
- The remuneration committee should make a report each year to the shareholders on behalf of the board (part of which should be annexed to the annual report and accounts).
- The accounts are to include specific details of remuneration for each named director, including salary, bonuses, share options and pension entitlement.
- Remuneration policy: Remuneration committees must provide the packages needed to attract, retain and motivate directors of the quality required but should avoid paying more than is necessary for this purpose.
- Service contracts and compensation
- Remuneration committees should consider what compensation commitments their directors’ service contracts would entail in the event of early termination, particularly for unsatisfactory performance.

Source: *Compiled the Cadbury report*

Other reports in the UK have made similar recommendations, including the Hampel Report which identified a number of principles. These are stated in Box X. 2 and Box X.3 below.

Box X.2: Principles of Corporate Governance

- Companies should include in their annual reports a non-mandatory narrative account of how they apply the broad principles of corporate governance
- **Directors**
- executive and non-executive directors should continue to have the same duties under the law;
- the majority of non-executive directors should be independent and, to be effective, should make up at least one third of the membership of the board. This applies to all sizes of company;
- there are no compelling reasons to move away from the unitary board system;
- the separation of the roles of chairman and chief executive should not be a firm rule, but separation is to be preferred. Companies should justify a decision to combine the roles;
- there should be a lead non-executive director other than the chairman, who should be identified in the annual report; companies should set up a nomination committee to make recommendations to the board on all new board appointments; all directors should submit themselves for re-election at least every three years and companies should make any necessary changes in their Articles of Association as soon as possible.
- **Directors' remuneration**
- no further refinement to the Greenbury Code provisions relating to performance related pay is necessary, but remuneration committees should use their judgement in devising schemes appropriate to the specific circumstances of the company;
- it is permissible for non-executive directors' remuneration to include company shares, but this should not be universal practice;
- there is a strong general case for setting directors' contract periods at one year or less, but in some cases periods of up to two years may be acceptable;
- there are advantages in dealing with a director's early departure by agreeing in advance the payments to which he or she would be entitled in such circumstances;
- remuneration committees, chaired by non-executive directors, should develop policy on remuneration and devise remuneration packages for individual executive directors;
- these should then be recommended to the board for approval. It is expected that the board would endorse the committee's recommendations in all but a few cases. The board as a whole should devise remuneration packages for non-executive directors; the requirement to include in the annual report a general statement on remuneration policy, together with disclosure of individual remuneration packages (including those of overseas directors) should be retained. Reports to shareholders on remuneration should be made in the name of the board as a whole.

Source: *Compiled from website*

Box X.3: Stakeholders and the AGM**Role of Stakeholders**

- Institutional investors have an obligation to their clients to adopt a considered policy on voting their shares, but voting should not be compulsory;
- boards should provide a full business presentation at the AGM with a question and answer session. In addition a resumé of discussions at the AGM should be made available to shareholders on request;
- shareholders should be able to vote separately on each substantially separate issue; and the practice of “bundling” unrelated proposals in a single resolution should cease.
- Accountability and audit
- The audit committee should keep the nature and extent of non-audit services under review;
- auditors should report on internal control privately to the directors. This allows for an effective dialogue to take place and for best practice to evolve in preference to prescription;
- directors should maintain and review controls relating to all relevant control objectives and not merely financial controls

Source: *Compiled from websites and other reports*

Germany and certain other Continental European countries have at the heart of their governance arrangement co-determination, so called because of the involvement of workers in the management of companies.

The German Corporate Governance Code has as its objectives, the recognition and clarification of the rights of shareholders, the providers of risk capital to the company. The Code provides for a dual board system which is prescribed by law for German stock corporations.

The Management Board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise. The Chairman of the Management Board coordinates the work of the Management Board.

The Supervisory Board appoints, supervises and advises the members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the Supervisory Board coordinates the work of the Supervisory Board.

The members of the Supervisory Board are elected by the shareholders at the General Meeting. In enterprises having more than 500 to more than 2000 employees in Germany, employees are also represented in the

Supervisory Board, which then is composed of employee representatives to one third or to one half respectively. For enterprises with more than 2000 employees, the Chairman of the Supervisory Board, who, for all practical purposes, is a representative of the shareholders, has the casting vote in the case of split resolutions. The representatives elected by the shareholders and the representatives of the employees are equally obliged to act in the enterprise's best interests.

While, theoretically, this model is very different from the more generally known single management body (Board of Directors), there is convergence in practice because of the intensive interaction of the Management Board and the Supervisory Board in the dual system.

The German model has operated very successfully for more than fifty years but is being criticized as being too unwieldy - there can be more than two dozen directors sitting around the boardroom table - and inefficient with worker representatives viewing their primary role as the preservation of jobs rather than efficiency, profitability and international competitiveness.

3. The North American Experience

In the aftermath of the corporate failures in the USA and more notably, that of Enron Corporation, a number of steps were taken to ensure that the corporate sector, including those of accounting and auditing, were made more impregnable. The experience of Enron Corporation, whose main activity was the provision of products and services related to natural gas, electricity and communications to wholesale and retail customers through subsidiaries and affiliates is central to issues relating to the failure of corporate entities in the developed world. The Group's activities at the height of operations were divided into five segments: transportation and distribution, wholesale services, retail energy services, broadband services and other. The Group operated in the United States, Canada, Europe, Japan, Australia, South America and India. And seemingly *"epitomised the triumph of the new economy."*¹⁰ However, it achieved a status of notoriety within a few years of being hailed by one of the top management gurus and business writers, Gary Hamel as *"one of the grey-haired revolutionaries – the rarest breed of all – that have managed to re-invent themselves and their industry more than once."* According to Hamel, *"their grey hair comes not from years, but from the experience of having lived through several strategy lifetimes."*¹¹

As if to prove however that Enron was not an aberration, a long list of “blue chip” companies soon hit the headlines in the American press, not for their outstanding performance or how they were effectively outperforming their European and Japanese counterparts, but how cavalierly they conducted their business, engaged in innovative accounting practices and misled their employees, shareholders, regulators and the press. Among those that followed Enron were WorldCom, Global Crossing, Adelphia, Tyco and Waste Management; all substantial public companies.

While the USA press put the spotlight on weaknesses in the accounting profession and the quality of Corporate Governance in public companies in that country’s sections of the international press and of the accounting profession outside of North America placed the blame, at least in part, to:

- American greed, facilitated by a close and impenetrable network of directors and auditors.
- The carelessness of the investment banking community (Wall Street).
- Inattentiveness of the financial press; and
- An investing public beguiled by astronomical and unsustainable returns.

While this was happening, similar episodes were taking place in Europe for example Parmalat in Italy, followed by Ahold in Holland in 2004. The recent corporate failures have served to place ‘good governance’ at the top of the international agenda, with a number of countries scrambling to put in place corporate governance codes. With the need to ensure that investor confidence is restored, the search for solutions ensued as governments and regulators sought to fix real and perceived problems which threatened to bring an end to one of the most extended periods of sustained economic growth on record. Among the initiatives taken after the string of high profile corporate failures was the passage of new laws including the Sarbanes-Oxley Act in the US , and changes in the regulatory environment governing the market for securities, particularly, the accounting profession whose leading member, Arthur Andersen, was one of the more prominent casualties of the misfortune resulting from the failure of Enron and others .

The Sarbanes-Oxley Act, perhaps the most significant piece of securities legislation since the Great Depression inspired Securities and Exchange Act of 1933, was signed into law on 30 July 2002 and contained significant legislative changes to financial practice and corporate governance regulation. The Act introduced stringent new rules

with the stated objective being “to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws”. Among the consequences of the Act was its extra-territorial application to USA listed companies operating outside of the USA, with the auditors of the overseas subsidiaries having to comply with the independence rules prescribed under the Act.

Table X. 1: The 15 Largest US Bankruptcies Since 1980¹²

Company	Bankruptcy Date	Total Assets Pre-Bankruptcy (US\$Mn)
Worldcom, Inc.	07/21/2002	103,914
Enron Corp.*	12/2/2001	63,392
Conseco, Inc.	12/18/2002	61,392
Texaco, Inc.	4/12/1987	35,892
Financial Corp. of America	9/9/1988	33,864
Refco Inc.	10/17/2005	33,333
Global Crossing Ltd.	1/28/2002	30,185
Pacific Gas and Electric Co.	4/6/2001	29,770
UAL Corp.	12/9/2002	25,197
Delta Air Lines, Inc.	9/14/2005	21,801
Adelphia Communications	6/25/2002	21,499
MCorp	3/31/1989	20,228
Mirant Corporation	7/14/2003	19,415
Delphi Corporation	10/8/2005	16,593
First Executive Corp.	5/13/1991	15,193

Table X.1 shows the 15 largest bankruptcies in the USA since 1980. The interesting thing to note is that the failures were not confined to any one particular sector. This indicates that, if poor governance was the cause of the failures, it tends to exist in all sectors including manufacturing, air transport and financial services. The sums involved are large by any estimation and include a wide cross section of share holders. The failure of these companies has pushed corporate governance into the mainstream of both economics and accounting as it not only involved finance / accounting issues but also the potential to bring on an economic crisis. What these failures showed is that improper practice, buttressed by inactivity of shareholders, can have long run effects well beyond the survival of the firms involved.

As far back as 1994, Canada recognized the importance of good corporate governance. In a report entitled “Where were the Directors”, the Toronto Stock Exchange Committee on Corporate Governance noted “*in Canada’s complex market economy, the corporation is one of*

the principal vehicles for risk taking and one of the major sources of change. The performance of our corporations is therefore of vital interest to us all. Well functioning corporations are a key agent of wealth creation and social progress. Dull under performing and uncompetitive corporations represent mismanaged resources and can impede social progress”¹³

The report recommendations concentrated on the structure of the board of directors and enhanced disclosure requirements. The following areas which are outlined below were specifically addressed:

- The role of the board of directors including their involvement in strategic planning, risk management, internal control and management information systems and succession planning;
- The structure of the board of directors, covering the requirement that the majority of members be unrelated to the corporation, selection of new members, orientation for new members, board size, independence and the requirement for position descriptions and director's compensation;
- The role of the audit committee including the requirement that members be outside directors, responsibilities overseeing internal controls and the relationship with external and internal auditors; and
- Enhanced disclosure requirements.

Box X. 4: Guidelines for Improved Corporate Governance in Canada

The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation and, as part of that overall stewardship should assume responsibility for a number of matters including the adoption of a strategic planning process and succession planning, including appointing, training and monitoring senior management. In addition, Dey recommended that the board of directors of every corporation should be constituted with a majority of individuals who qualify as unrelated directors. In making sure that there is independence, he also called for the board of every corporation to appoint a committee of directors composed exclusively of outside directors and to ensure that the board functions independently of management.

Source: Dey

4. The OECD Principles of Corporate Governance

“The OECD has worked to promote use of the Principles since they were first adopted in 1999 to support good corporate governance policy and

practice both within OECD countries and beyond. Policymakers, investors, corporations and stakeholders worldwide have used the Principles to tackle a broad set of relevant issues common to all, such as the need for transparent reporting, informed shareholders and accountable boards.”¹⁴ The OECD principles focus on broad corporate governance features rather than detailed prescriptions, and so can be adopted to varying legal, economic and social conditions .

Box X.5: The OECD Principles

In May 1999 ministers representing the 29 governments which comprise the Organization for Economic Co-operation and Development (OECD) voted unanimously to endorse the OECD Principles of Corporate Governance

Corporate Objective: The overriding objective of the corporation should be to optimize over time the returns to its shareowners. Where other considerations affect this objective, they should be clearly stated and disclosed. To achieve this objective, the corporation should endeavor to ensure the long-term viability of its business, and to manage effectively its relationships with stakeholders

Communications and Reporting: Corporations should disclose accurate, adequate and timely information, in particular meeting market guidelines where they exist, so as to allow investors to make informed decisions about the acquisition, ownership obligations and rights, and sale of shares.

Voting Rights: Corporations' ordinary shares should feature one vote for each share. Corporations should act to ensure the owners' rights to vote. Fiduciary investors have a responsibility to vote. Regulators and law should facilitate voting rights and timely disclosure of the levels of voting

Corporate Boards: The board of directors, or supervisory board, as an entity, and each of its members, as an individual, is a fiduciary for all shareowners, and should be accountable to the shareowner body as a whole. Each member should stand for election on a regular basis.

Disclosure: Corporations should disclose upon appointment to the board, and thereafter in each annual report or proxy statement, information on the identities, core competencies, professional or other backgrounds, factors affecting independence, and overall qualifications of board members and nominees so as to enable investors to weigh the value they add to the company.

Corporate Remuneration Policies: Remuneration of corporate directors or supervisory board members and key executives should be aligned with the interest of shareowners

Operating Performance: Corporate governance practices should focus board attention on optimizing over time the company's operating performance. In particular, the company should strive to excel in specific sector peer group comparisons.

Extract from OECD website

B. Caribbean Corporate Behavioural Characteristics

1. The Problematique

In its search for good corporate governance the Caribbean is not responding to any major corporate failure and therefore the approach tended to be slow with little pressure coming governments, the academic community, the press and civil society, unlike the developed world where the development of corporate governance codes have been the result of failures and public demands for reform.

In small developing countries, particularly the case of Jamaica and Guyana, a state-owned entity can still play a significant role in the economy and therefore adequate corporate governance is required, not dissimilar to that applicable to publicly traded companies. Jamaica has sought to promote and enforce corporate governance with the Public Bodies Management and Accountability Act 2001.¹⁶ The Act sets out guidelines for public bodies, including corporate plans and audit committees, but does not go far enough to address some of the other critical governance issues which are likely to operate in a public entity. Another significant limitation of that Act is that while the concept of 'public bodies' includes an authority or any government company, it specifically excludes a statutory body which is often subject to the more traditional kind of governance arrangement whereby the subject Minister has oversight responsibility, makes all the key appointments and often interferes in the day-to-day operations of the entity. In Guyana, there is the Public Corporations Act that was passed in an era associated with political control, but under recent legislation (the Audit Act) public corporations, while subject to audit by the Office of the Auditor General, are subject to auditor rotation, a principle which the international accounting and auditing profession has strongly resisted.

Corporate governance problems and peculiarities of small developing countries are reflected in the following characteristics:-

- Small pool from which to chose directors ;
- The concept of the independent director is hard to apply;
- Small number of public companies ;
- Relatively large number of private companies ;
- Active role of the State in economic activities;

- Dominance of large family owned firms;
- Preference for commercial bank financing ; and
- Legal, statutory and regulatory framework that is under-resourced

Up to recently there was no formal mandatory framework of corporate governance in any of the territories with often poorly administered Companies Acts being the major drivers. However, the countries of the Organisation of Eastern Caribbean States are in the final stages of releasing a Code of Principles¹⁷ while, in Jamaica, the Private Sector Organisation in the latter half of 2005 published a Code of Corporate Governance based on the 2003 Combined Code of the Financial Reporting Council of the United Kingdom.¹⁸ However, the rest of the Caribbean has not been inactive and have held seminars and workshops initiated by the central banks, the private sector and the accounting profession, promoting awareness of the importance of good corporate governance.

Public companies make up only a small part of the population of corporate entities in the Region (see Table X.3) with the state, private companies, commercial banks, insurance and trust companies, credit unions and other private entities and groups playing a major role. Yet with few exceptions the pursuit of corporate governance has been seen in the context of public companies only. (See Chapter IX)

A number of financial institutions, utilities, credit unions and other entities which have a large customer base or use public assets are often incorporated or registered under legislation which does not prescribe standards of corporate governance. Additionally, wealthy families have significant holdings in a number of public companies and, also, in the pyramidal business structure which differs from the conglomerate in that at the top of the pyramid is a privately-held family company operating outside of the public domain and attention. A good example would be CL Financial Limited, which contains a number of companies, some of which are public and others strictly private, Goddard Enterprise of Barbados, the Matalon Group of Companies in Jamaica and the Beharry Group in Guyana.

Among the subsidiaries, there may also be a large number of private companies and sub-holding companies which are not subject to the rules of disclosure applicable to public companies. Pyramid type companies are generally associated with the intermediate stages of economic and market development common in developing countries. However there are also a number of large pyramidal type family controlled business groups in Canada, Japan, and Europe. One explanation is that the pyramidal

business groups of companies survive in developed countries because they lock in the corporate governance power of an elite family over capital assets worth far more than the family fortune. That power brings intangible benefits that such families are loathe to surrender.

Table X.2 shows that certain well known companies have significant share ownership in other reputable companies, with instances of director representation. Cross share ownership also sometimes obtain. This phenomenon may increase the problem of exercising effective corporate governance...

Table X.2: Institutional Shareholders in the Caribbean

	Percent of Company	Institutional Shareholder Shareholding	Board Representative		
			Yes	No	NA
Grace Kennedy Ltd.	Insurance & Trust Co., PF.	25			Y
	Investment Companies	5			Y
ANSA McAL Ltd.	ANSA Investments Ltd.	49	Y		
Neal & Massy Holdings Ltd.	RBTT Nominees Services Ltd.	12	Note (1)		
NCB Jamaica Ltd.	AIC (Barbados)	70	Y		
Republic Bank Ltd	CLICO	31			Y
	Trintrust Limited	17			Y
	Clico Investment Bank Ltd.	11			Y
	First Caribbean Bank Ltd.	9			Y
Eastern Caribbean Holding Co.	Government of Saint Lucia	20	Y		
	Republic Bank Ltd.	20	Y		
	National Insurance Corporation	11	Y		
Barbados Shipping & Trading Co. Ltd.	Neal & Massy Holdings Ltd.	20	Note (2)		
	Sagicor	15			Y
BWIA West Indies Airways Ltd.	Government of Trinidad	97			Y
Guardian Holdings Ltd	RBTT Insurance Holdings Ltd.	20	Note (1)		
	Tenetic Limited	17	Note (3)		
Jamaica Money Market Brokers Ltd	CLICO Investment Bank Ltd.	28			Y
	Trustees JMMB ESOP	12			Y
	CLICO	8			Y
	Concise Limited	13	Y		
	JVF Limited	11	Y		
RBTT Financial Holdings Ltd	National Insurance Board	15			Y
	Guardian Holdings	13	Note (1)		
Trinidad Cement Ltd	Institutional Shareholders	30			Y
	Sierra Trading	20	Y		
	National Insurance Board	10	Y		
FirstCaribbean International Bank Ltd	CIBC** Investments (Cayman) Ltd.	43	Y		
	Barclays' Bank PLC	43	Y		

Source: field survey

Note (1) - They have four common directors.

(2) - They have three common directors.

(3) - The Chairman (Arthur Lok Jack) and a Director (Imtiaz Ahmad) have beneficial interests in Tenetic Limited.

2. Corporate Failures in the Caribbean

While there has not been any recent major public company related corporate governance failures in the Caribbean, even though it is not uncommon for directors of public companies to be drawn from private companies, bringing with them the private company culture of “non-governance”. But this is not true of state-owned and private companies, using the loan losses reported by commercial banks as a guide.

Countries in the Caribbean have had their own experiences with failures, including Trinidad and Tobago which experienced problems in the financial system during the eighties and then more significantly in the period 1989-1993 when three financial houses – National Commercial Bank, Trinidad and Tobago Cooperative Bank and the Workers Bank became insolvent and were placed under Central Bank supervision. Antigua and Barbuda also had a similar experience when one financial house had to be rescued by the Antigua Barbuda Investment Bank while Jamaica and Guyana have had fairly spectacular failures in the sector. In the case of Guyana, two state-owned as well as one small public company were involved, while in Jamaica the Government had to intervene in five commercial banks, nine merchant banks and five insurance companies.

The Financial Sector Adjustment Company Limited (FINSAC) of Jamaica was established in 1997 in an attempt to restore stability to that country’s financial sector after the sector collapsed in the mid 1990’s. Some of the governance problems reported by FINSAC in the banking sector were:

- Absence of or failure to comply with proper internal control procedures;
- Poor risk management and inadequate portfolio diversification;
- High and increasing levels of non-performing assets;
- High operating costs;
- Poor quality of management and strategic planning;
- Failure to exercise due diligence and care;
- Unusually high appetite for risk;
- A high incidence of connected party lending; and

- Breach of fiduciary duty and outright fraud.

**Box X. 6: Fixing Failed Firms Should be Based on Economics, not Revenge:
Unprecedented Corporate Failures**

In Guyana the debate on insolvents and bankrupts has hardly begun despite the spate of receiverships during the year. Never in the history of Guyana has there been so many business failures in so short a period of time. No type of business has been spared - whether in the public or private sector, in mining, rice, gold, trading or financial services. The combined effects of these failures are a matter of national concern, not only that of the business sector which itself seems unsympathetic to the plight of their colleagues. In Guyana, to the extent that the law on corporate failures is an issue, we still seem steeped in the distant past, one that gave to the creditor unfettered right to move against the debtor and said that to offer protection to the debtor is undue interference in a contractual relationship. The law reflects a form of inverted morality that insists that the borrower repay his debt regardless of the circumstances or the consequences on the economy of putting the debtor out of business. The socialist legacy tells us that the poor always repay their debts and that it is only the "fat cats" and those who have shipped tons of money abroad who are now crying out for help. Yet it is these same reformed socialists who advocate entrepreneurship and investments - conditions which inevitably result in some failures.

Both our insolvency and bankruptcy laws are rooted in the British legal system and it is no surprise that the first reaction to a failure is to blame the borrower (investor or entrepreneur) for any number of reasons. Indeed the Minister of Finance is reported to have attributed many of the business failures to mismanagement and capital flight, an oversimplification if ever there was one.

Like the rest of the Caribbean, most bankruptcies in Guyana are in the nature of corporate insolvencies and are dealt with via receiverships, a remedy of the secured creditor for enforcing his security

Extract from Stabroek News Business Page – December 23rd, 2001

Box X. 7: Melt Down in Trinidad and Tobago Financial System

1984 The inspector of banks was appointed receiver of the assets and undertakings of international Trust Limited

In 1986, as a result of lessons learnt from the NFI crisis, several amendments were made to the Central Bank Act and the Financial Institutions (Non-Banking) Act. The amendments conferred special emergency powers on the Bank to intervene in financial institutions to protect the interests of depositors and creditors. They also established the Deposit Insurance Corporation as a subsidiary of the Bank. The amendments were quite timely as the Bank utilized them that same year to close five NFIs. The Bank was also called upon to intervene in the Trinidad Co-operative Bank in 1986 and in the Workers' Bank in 1989.

1986 Central Bank assumed control of the Trinidad Cooperative Bank Limited in order to restructure the business and reconstruct its capital base
The following four non bank financial institutions were closed as a result of financial failure Trade Confirmers Ltd, commercial Finance Company Ltd, South western Atlantic Investment Trust Company Ltd and Summit Finance Corporation (Trinidad and Tobago) Ltd

1988 MAT Securities limited whose operations resumed in 1987 after being suspended in 1986 was ordered to suspend its operations on 23 September 1988 and its business was subsequently wound up

1989 The Central Bank ordered the suspension of the business of Workers Bank Limited and its subsidiary, Workers Bank Trust Company Limited for a period of 30 days

1991 Central bank ordered the Bank of Credit and Commerce International (Trinidad and Tobago Merchant bankers) Ltd to suspend operations
the central bank suspended the business of Principal Finance Company Limited and Caribbean Mortgage and Funds Limited

1993 The central bank assumed control of the National Commercial bank in order to effect a merger of the country's three indigenous banks. the operations of National Commercial bank, Workers bank (1989) ltd and the Trinidad Cooperative Bank were merged to form a new entity, First Citizens Bank Limited

In 1993, the Bank moved to merge the three indigenous institutions – National Commercial Bank, Workers' Bank and Trinidad Co-operative Bank – to form the First Citizens Bank (FCB). These actions were designed to avoid losses for depositors and forestall systemic problems in the banking system. The role of the Bank in the formation of FCB is considered as a major achievement in the Bank's history and represents a shining example of an innovative and successful restructuring exercise in the Caribbean.

From its inception, the Bank saw itself as having a developmental role. Consistent with this orientation, from the start of the decade of the 1980's, the Bank became involved in a number of institution-building initiatives. Thus, for example, the Bank worked to establish the Trinidad and Tobago Stock Exchange and the Trinidad and Tobago Unit Trust Corporation in 1981. In 1986, in collaboration with the commercial banks, life insurance companies, the National Insurance Board and the International Finance Corporation, another familiar institution was established: the Home Mortgage Bank

Box X.8: Conditions Prior to Response to Financial Sector Crisis in Jamaica

The Financial Sector

- Rapid expansion of financial sector following liberalisation.
- Emergence of large financial conglomerates, which diversified out of core business and were plagued by connected party transactions.
- High levels of NPLs.
- Declining profitability in the sector.
- Deterioration in the banking system's capital base.
- Mismatch of assets and liabilities.
- Liquidity problems in the life insurance and banking industries precipitated by the imprudent over-investment in real estate and equity, and the subsequent collapse of these markets.
- Impending panic within the domestic financial system, as problems within numerous institutions were revealed.

Policy response

Initially liquidity support provided through the central bank.

- The government intervened in the distressed institutions usually through capital injections, in exchange for equity, board seats and assets. Occasionally institutions were closed.
- Deposits were protected, and repeated assurances were given as to the government's support of the financial system.
- A financial restructuring agency – FINSAC was created to aid in the restructuring of the sector.
- Creation of 'good bank/bad bank scenario' to relieve banks of NPLs.
- The consolidation and rationalisation of the sector through mergers, closures, and sale to overseas entities, as appropriate.
- Regulatory and supervisory reform.
- The divestment of equity and assets acquired by FINSAC to the private sector.
- Attempts to prosecute and pursue civil action against those responsible for the demise of the institutions.

Effect

Within the financial sector. Apart from a 'flight to quality' within the domestic system, there was no wholesale financial panic, nor international capital flight. The relatively smooth operation of the financial sector was preserved, as depositors' confidence in the system was bolstered.

- Possible moral hazard, which may have fostered greater incentives for risk taking and imprudence by savers and lenders. (Attempts to avoid this in the future include the creation of a Deposit Insurance Scheme).
- Leaner, more efficient financial sector.
- Improved regulatory and supervisory structure.
- Exposure of numerous financial institutions to the perceived threat of public debt insolvency.

3. Regulatory Concerns of Member States

"Corporate governance is concerned with holding the balance between economic and social goals and between individual and communal goals...the aim is to align as nearly as possible the interests of individuals, corporations and society."¹⁹

The Caribbean's initiatives to date have been limited to some country efforts in the areas of training of directors in Jamaica and Barbados and the development of specific codes as is the case in The Bahamas and Barbados. One significant Caribbean response to seeking a regional consensus on corporate governance issues was the workshop on "Towards a Caribbean Governance Programme" held in Trinidad and Tobago in 1999. However, this exercise failed to energise the debate towards building a unified corporate governance movement for the Caribbean. The first ever Caribbean-wide Corporate Governance Forum²⁰ (CCGF) was held over the period 3-5 September 2003 at the Headquarters of the Eastern Caribbean Central Bank (ECCB), St. Kitts and Nevis. At the conclusion of the abovementioned 2003 forum, draft recommendations for a Caribbean Code of Corporate Governance in Securities Markets were issued. The code covered some key issues, namely:-

- The Board of Directors (functioning, board committees, etc.)
- Remuneration of Directors, including Executive Directors (level, disclosure, etc.)
- Role of Shareholders (meetings, voting, etc.)
- Financial Reporting, Transparency and Audit (standards, liability, independence, etc.)
- Other Stakeholders
- Ethics

The CCGF focused on corporate governance reform and reviewed the proposed Caribbean Corporate Governance Principles for region-wide adoption. There were recommended six major principles.

This principles-based approach was very different from the initial focus on a code and it was expected that this approach would accelerate the process since it is always easier to agree on broad outlines than exhaustive details. The approach appears to align with that of the OECD. A number of other Member States have taken steps to draft corporate governance codes/ principles

During 2003 the Central Bank of Barbados held a conference on Corporate Governance which aimed specifically at the financial services sector. Although standards and best practices were examined by the Conference, no corporate governance principles were issued by the sector.

In 2004, the Central Bank of The Bahamas issued "*Guidelines for the Corporate Governance of Banks and Trust Companies.*" In commenting on the 2003 CCGF, different views were proffered. In some cases it was noted that the Guidelines were overly prescriptive, while others thought

that they were not precise enough in their requirements and yet there were others who were concerned about the penalties for non-compliance. The effort in respect of other public companies, however, has not been as successful – while issuers have to comply with the rules and regulations of the Securities Commission and the Bahamas International Securities Exchange, no Corporate Governance rules have been issued.

Box X. 9: Principles of the Caribbean Corporate Governance Code

Principle I: The corporate governance framework within the Caribbean should encourage the development of transparent and efficient markets, have its basis in the rule of law and ethical standards to foster the division of responsibilities among supervisory, regulatory, and enforcement bodies.

Principle II: The corporate governance framework should protect and facilitate the exercise of shareholders rights.

Principle III: The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

Principle IV: The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between entities, including family owned businesses and state-owned/controlled enterprises, and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

Principle V: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters relating to the entity, including its financial situation, performance, ownership, and governance.

Principle VI: The corporate governance framework should ensure the strategic guidance of the entity, the effective monitoring of management by the Board, and the Board's accountability to the entity and to stakeholders.

Source: CCGF, 2003

In August 2005, the Securities Exchange announced that in an effort to promote timely and consistent disclosure by its listed companies, it had completed the first in a series of Continuing Obligations Filing Forms. Keith Davies, CEO of the Exchange, stated that *“Over the last several years we focused heavily on simply getting companies to understand their filing obligations and then to comply with them. In fact, we did a very good job, because companies began to comply, but in many different ways via emails and letters sent via fax or regular mail. So I took the affirmative step to standardize the filing process and the result is this set of new forms.”*

In Guyana, the Securities Council in 2003 issued the broad guidelines developed at the first CCGF as its Recommendations for a Code of Corporate Governance. After two years however, the Council has not finalised the Code in any way and it does not appear to have been a significant influence on the conduct of corporate governance among public companies. Of great concern to the Securities Council and indeed the public have been the several challenges from public companies to any effort by the Council to ensure that reporting entities comply with the Securities Industry Act. Companies have found it easy to persuade the Courts that the Council has not acted properly and in the case of one major company the Court has prevented the Council from further action pending resolution of the case which, could take several years.

The Eastern Caribbean Securities Exchange has been a driving force of the CCGF. Its efforts, along with those by the ECCB, have been propelling this bloc towards having a harmonised set of Corporate Governance provisions. This process also has support from the highest levels of Government in the region with St. Kitts & Nevis' Prime Minister Hon. Dr. Denzil L. Douglas calling for "serious changes in the way that the Private and Public Sectors do business" and for all activities and decision-making in these sectors to be guided by principles of fairness, integrity, morality, and responsibility. He noted that accountability reporting *"must be systematic – regular and accessible – to both shareholders and taxpayers, so that they could be satisfied, and have the opportunity for input for their best interest. New and enhanced Corporate Governance processes must become enshrined in the policies and practices of both Governmental institutions and Private Sector companies and institutions to avert the debilitating fallout resulting from scandals of mismanagement and unethical corporate practices."* Corporate Governance Codes in the rest of the Region have seen slow progress. Each country has in place securities legislation and relatively active monitoring and surveillance of the securities markets. Most of them have explicitly or implicitly adopted International Financial Reporting Standards and International Standards on Auditing but some grey areas of compliance are still noted by commentators, particularly in relation to disclosures.

Not surprisingly, given the role played by banks in the financing of privately owned entities, the banking sector in each of the countries has the highest degree of supervision while other sectors such as insurance, trust business, credit unions and pensions are catching up. Banking is, of course, critical to the regional economies and experience has shown that any failure in the sector would have a negative psychological effect and could potentially disrupt other sectors of the economy. The supervision of banks, however, has been more concerned with protecting customer

deposits rather than shareholders funds or with general matters of corporate governance.

Trinidad and Tobago was one of the early starters in establishing a Corporate Governance Code. In February 2002, for example, Senator Conrad Enill urged the “*Trinidad and Tobago Stock Exchange to establish immediately for all its listed companies a code of good corporate governance, which is consistent with international best practices.*” The draft report on Corporate Governance for Trinidad and Tobago was informed by the review of the Securities Industry Act, 1995, its by-laws and associated legislation. Among the recommendations coming out of the review were new provisions on management discussion and analysis, publication of interim (quarterly) financial statements, certification of annual financial statements by the CEO and CFO, and development of corporate governance requirements, including the functioning, responsibility and composition of boards of directors and the development of audit committee responsibilities. With the exception of the OECS territories, each country seems to have set its own objective and timetable for a Corporate Governance Code. Regrettably, the efforts of the ECCB to have a Caribbean-wide Code do not appear to have won favour throughout the Region and even the efforts of the OECS itself appear to have been diluted into a Statement of Principles rather than a mandatory code. A danger is that the Region may end up with a number of national codes instead of one that could truly be called a Caribbean Code of Corporate Governance. And which could adequately serve the purpose of the CSME.

C. The Role of Institutional Actors and Stakeholders

“Institutional investors are an important shareholder force. Their financial strength, fiduciary responsibilities, access to research as well as voting power enables them to influence Board and Management behaviour. Institutional shareholders should play an active role in engaging the Management and Board in the interest of good corporate governance, at the appropriate forum.”²¹

Outside the Caribbean region, institutional investors -defined as an entity with large amounts to invest, such as investment companies, mutual funds, brokerages, insurance companies, pension funds, investment banks and endowment funds- are major drivers of governance. They are often covered by fewer protective regulations because it is assumed that they are more knowledgeable and better able to protect themselves. They account for a majority of share ownership and have played a leading role in boardroom changes and influencing policies and practices.

In the Caribbean, however, institutional investors have played a somewhat different role- either accepting a passive position on the Board or taking a hands-off approach to the company. In a survey carried out for the purposes of this analysis, one institutional investor indicated that his firm made its investment decision based on the reputation of the members of the Board. Institutional investors are not accorded by the investee company the respect and attention they deserve. No example in the countries surveyed could be found where the institutional investors initiated or succeeded in voting down a motion by the directors, or in removing any directors from the Board.

Who drives corporate governance? In the traditional model, the shareholders elect the Board (and the Board elects the CEO) to ensure that their interests are safeguarded, but it is a commonplace now to suggest that Boards are controlled by management. For example, Roe (1996:6) argues: *“Everyone knew that in the public firm the flow of power was the reverse. The CEO recommended nominees to the board. Board members were often insiders-employees or other CEOs, who have little reason to invest time and energy in second-guessing the incumbent CEO ... the CEO dominating the election and the firm.”*

The belief that managers control boards rather than boards control management has been a dominant theme in both academic and practitioner writings. The lack of accountability of senior managers has been manifest in a number of areas, which have coalesced to bring the corporate governance debate into prominence. Governance is exercised at several levels within the organisation but there are external laws and agencies that prescribe, monitor and enforce governance arrangements within companies. These agencies include the Registrar of Companies who is responsible for administering the Companies’ Act, the Securities Council or Securities and Exchange Commission which administers the Securities Act, the Stock Exchange which makes and enforces rules and various specialised bodies, such as the Central Bank, with responsibility for supervising the banking and financial sector and the Commissioner of Insurance with responsibility for administering the insurance sector.

Internally, the directors hold primary responsibility for governance in the entity though in theory they are elected and may be removed by shareholders. Shareholders expect the directors not only to manage the business with a view to receiving dividends on a sustained basis, but also to provide them with proper information in a timely manner to help in making assessments of management or decisions regarding the company and their holdings. Because of their pre-eminent authority derived from the various legislation and corporate constitutions, the Board of Directors is still seen as a constraint on managers.

'Members' and 'shareholders' are words used synonymously and interchangeably in the corporate environment in the Caribbean. A member acquires this status, carrying with it rights and obligations, by procuring shares in the company and being entered in the register of members, one of the key statutory records under all Caribbean legislation. Like their counterparts from around the world, shareholders in the Caribbean have passively accepted the actions of the Board which are often either controlled by a majority shareholder or a powerful Chief Executive Officer. In general, companies' annual reports include only limited information on shareholders and their profile, providing the minimum required by law. There are some exceptions, one being Grace Kennedy and Company of Jamaica which discloses the number and percentage of the outstanding shares held by category of shareholders. In Jamaica, public companies have been known to list their top ten shareholders, a practice that is useful to potential investors.

Already a regional bond market is emerging with the hub of activity taking place in Trinidad and Tobago. (*See chapter VIII for more details on the regional bond market*) These bond holders require legal covenant recourse. Here the covenants should restrict managers of the company from changing business plans and engaging in riskier activities than explained in the offering documents. Certain activities may benefit shareholders or management but not the debt holders.

With almost every country in the Region having put new companies legislation on its books within the past ten years, shareholders enjoy a number of rights including increasingly favourable minority shareholder protection, special voting on entrenched positions and the right to vote against that special import from Canada, the unanimous shareholder resolution. In contrast to the law, minority shareholders seem to enjoy little rights in practice, with majority shareholders making almost all the decisions, including the appointment of directors.

Annual reports and financial statements are becoming far more comprehensive but it is unlikely that they are any more intelligible to the ordinary shareholder. The complexity of the financial statements and the depth of the notes thereon are generally only intelligible to a very small group of technical professionals.

The Companies Acts of the Member States contain minority protection provisions on the lines of the Canadian Business Corporations Act, which include amendment of the articles of the company; an order setting aside a transaction; an order appointing directors in addition to or in replacement of existing directors; an order to produce financial statements; an order directing the company to pay a shareholder or debenture holder any part of the monies paid by him for his shares; an order directing an

investigation under the Act; rectification of records and an order restraining the company from calling or holding a meeting of shareholders or paying a dividend. In some countries there are formally constituted shareholder groups that act as lobbying and or support groups for individual shareholders promoting good governance in public companies.

The directors sit at the apex of corporate governance. All companies incorporated or registered under the various Companies Acts are required to have directors. Private companies may have only one director but a public company must have more than one. In the case of Barbados, Jamaica, Trinidad and Tobago, Saint Lucia and St Kitts and Nevis they are required to have three. However, in Guyana a public company could have only two (2) directors.

Table X.3: The Phases in the Evolution of Boards of Directors

	Phase 1: Ceremonial	Phase 2: Liberated	Phase 3: Progressive
Group Dynamics	CEO all powerful; directors passive	Directors free to speak up in boardroom <i>but</i>dialogue is fragmented, a few directors overstep bounds, tangents drain energy and most of the time no consensus is reached.	Directors gel as a group. Mutual respect and trust among directors and management. One or two directors emerge as facilitators to channel lively debates. Everyone participates and consensus is very frequently achieved on key issues.
Information Architecture	No productive dialogue in boardroom. Management tightly controls information flow.	Board pledges to improve <i>but</i> ...focuses on mechanical solutions and does not act on self-evaluation with conviction. Management willingly makes company transparent to board <i>but</i> is frustrated by ad hoc demands by some directors that leave management scrambling.	Self-evaluation gives tool for continuous improvement and directors take results seriously. Information is focused, timely, regular and digestible. Management anticipates board needs.
	Usually not the right amount of information. Information is summarized at very high level, and presentations run long.	Board asks for more information <i>but</i>what they get is not packaged well and doesn't help the directors understand the guts of the business.	Directors learn the business.
Focus on Substantive Issues	Compliance only. Usually rubber-stamps CEO decisions.	Boards desires to make a contribution <i>but</i>overwhelmed by issues, becomes driven by compliance and routine operating issues.	Board and CEO jointly set twelve-month agenda. Board focuses on issues that are value added and anticipatory, as well as those that are compliance related.

Source: Ram Charran: *Boards That Deliver: Advancing Corporate Governance from Compliance to Competitive Advantage, 2005*

The Acts usually set out the broad functions and duties of the Directors which are to exercise the powers of the company directly or indirectly through the employees and agents of the company; and direct the management of the business and affairs of the company. The Board of Directors is decisive in ensuring a company's long-term survival. To do so, the Board must be governed by four principles: transparency; division of functions, both within the Board and between the Board and the Executive Committee; collegiality; and unity.

In 2001 McKinsey & Company conducted an investors survey and concluded as follows *“Generally much of the corporate sector in emerging markets remain uncommitted to reform. Initiatives to promote better practices , principally related to board reform , have either been ignored , or perhaps even worse have been applied with a spirit of compliance to the letter of the law, rather than driven by a performance mentality. For example , while most companies in South Korea that have been compelled to appoint more non executive directors to their boards have done so, few have proactively implemented steps to ensure these new appointees are truly versed in the requirements of their new roles”*²²

Some of the inadequacies which the public attributes to Boards include:

- Directors' emoluments and related transactions were not disclosed in the annual reports;
- Excessive secrecy – Conformance rather than performance;
- Life time engagement – No term limit or age limit;
- No distinction between non – Executive and Independent Directors;
- Too many boards – Complaints about the small gene pool and non disclosure; and
- No Directors Performance Evaluation.

Box X.10: Interlocking Directorships

Not surprisingly, because of the small size of its economies and the relatively few public companies, the Region has spawned a concentration of interlocking directorships far more pervasive than would be formed in developed markets. The concentration exists well beyond public companies and is common and exacerbated in state-owned enterprises and public bodies where political affiliation and loyalties are valuable considerations.

But size and political considerations are only part of the broader mix in economies and markets characterized by pyramiding and cross shareholdings. Understandably, an investor company wishing to protect its investment in effect appoints members of the parent to sit on the boards of its subsidiaries. With the increasing number of subsidiaries, there are not enough directors to go round and one director may sit on a number of boards. This director owes his position and his loyalty not to the entire body of shareholders of the subsidiary but to the parent company which he represents. The concept of the independent director is therefore blurred if not lost altogether while the unsuspecting public merely regards the nominee as non-executive director.

With few opportunities or requirement for directors to be exposed to appropriate training, no periodic mandatory formal assessment of board members' performance and weak regulatory and other mechanisms to secure the interest of the minority shareholders the damages of interlocking directorships are amplified.

At the same time however it is acknowledged the performance of the region's stock markets indicate that public companies fare as well as their counterparts in the more developed markets. The reasons for this are manifold and go beyond financial performance to include a paucity of investment opportunities, virtually non-existent financial press, uncritical investors and apathetic and inactive shareholders.

Directors of public companies are generally drawn from an exclusive group of persons. An examination of six important companies from across the Caribbean shows a Board composition as follows:

Table X.4: Sample Composition of Boards of Directors in the Caribbean

Company	Country	Number of Directors	Number of Middle Class Directors	Others
A	Barbados	10	10	Nil
B	OECS	12	11	1
C	Jamaica	12	12	Nil
D	Jamaica	12	12	Nil
E	Guyana	11	11	Nil
F	Trinidad and Tobago	14	13	1

Source: Field Research

One of the key responsibilities of the Board is to maintain sufficient procedures to provide reasonable assurance that the Company is able to collect process and disclose information, including non-financial information, required to be disclosed in its periodic and annual financial reports and Exchange Act filings. To ensure these compatibilities, the Board should establish an effective system of internal controls, and not be unduly influenced by the Management of the company.

The Executive Committee is just as indispensable for good corporate governance as the Board of Directors. Some of the tasks an Executive Committee must undertake to contribute to the improvement of corporate governance are as follows:-

- Design the company's medium and long-term strategy, draw up whatever plans are required, and submit them to the Board of Directors for approval;
- Develop employees and, in particular, the next generation of managers;
- Get the organization's employees to commit to the company's mission and project, through creating a demanding and positive working climate;
- Set standards and benchmarks, through internal regulations and manuals, and above all through the living example of the senior executives; and
- Focus on operational efficiency, the right way of working, and excellence in daily operations - essential to the achievement of long-term survival.

There are a number of other stakeholders who influence the pace of corporate governance and these include employees, Employee Pension Funds, Unions, Financial Institutions, regulators, the media and accountants, tax authorities are also key stakeholders in public companies and try in some way to influence Corporate Governance. There is considerable overlap between the various sectors being regulated and in many cases a group may have subsidiaries in more than one sector. There are efficiencies to be had with a single regulator in each territory and indeed from having a regional committee made up of such national regulators for the Caribbean. The media plays an important role in bringing information to the public domain and, where necessary, in questioning information provided by companies.

“Putting issues and events in context with perceptive comment and communicating it in a way that is understandable by the investing public is a challenge. It is critical and impacts the long term cultivation of retail investors. The media should continue to play this key role in educating the retail investor.”²³

In the Caribbean, the media has played a not insignificant role but has probably approached the issue in a less than desirable manner. This may result from the threat of withdrawal of support – in the form of advertising revenue – and or the fact that many media houses have some parent-subsidiary or associate relationship with large public companies.

While the directors hold a pre-eminent role in the Corporate Governance of the company, there are other gatekeepers who play quite important roles as well. In fact, company legislation deals specifically with two of these, the auditor and the corporate secretary. The third group, the attorneys-at-law, have largely escaped and or resisted any real scrutiny in the law or corporate governance frameworks around the world. Some of the critical issues that have arisen in relation to auditors and accountants are:

- Independence;
- Self – Regulation/Discipline ;
- The increasing complexity of accounting standards;
- The absence of a Caribbean accounting qualification;
- Need for small company accounting standards; and
- Convergence of international standards.

The accounting profession in the Caribbean is regulated at the national level by domestic Institutes of Chartered Accountants. Enjoying statutory recognition and privileges, these bodies wield considerable influence and authority in their respective countries, with respect to the adoption and enforcement of standards and monitoring and disciplining the members of their profession.

Box X .11: Role and Function of the Institute of Accounting

Typically an Institute has the following powers:

- Promote internationally acceptable standards of best practice within the region.
- Promote and increase the knowledge and skills proficiency of its members and students.
- Regulate the discipline and professional conduct of its members and students.
- Promote and protect the welfare and interests of the accountancy profession.
- Make provision for the training, education and examination of persons engaging or intending to engage in the profession.
- Provide leadership on emerging issues as they affect the accounting profession.
- Submit views of members to the Government and public bodies on legislation or other matters of professional interest to or affecting members.

The objectives of the Institute of Chartered Accountants of the Caribbean (ICAC) are to:

- Promote internationally acceptable standards of best practice within the region.
- Foster a strong, cohesive and self regulated regional Accountancy profession.
- Implement and coordinate a regional monitoring programme in collaboration with reputable providers.
- Promote an institutional framework under the umbrella of territorial institutes within which individual Accountants may associate and participate for mutual professional and fraternal benefit.
- Standardise the qualification entry requirement and rules of professional conduct among member Institutes and
- Provide leadership on emerging issues as they affect the accounting profession in the Region.

Strategic Goals

The priority goals of the ICAC as articulated in the 2001-2005 Strategic Plan are:

- The institution of a Regional Peer Review/Monitoring system;
- The harmonization of Continuing Professional Education Policies;
- Partnering in joint CPD seminars with the Association of Certified Chartered Accountants, the International Federation of Accountants (IFAC) and the Certified General Accountants Association of Canada (CGA);
- Endorsing and promoting throughout the Caribbean, seminars held under the aegis of territorial institutes, whether hosted solely or jointly with Affiliates;
- Encouraging the adoption of International Auditing Standards Audit (IASA) and International Auditing Standards (IAS) among member territories; and
- The standardisation of qualification requirements for membership.

In its formative years the Institute devoted a considerable amount of its resources and grant funds from the Association of Chartered Certified Accountants (ACCA) to the establishment of a Caribbean professional accounting qualification in association with the ACCA and the University of the West Indies. Those plans are now temporarily shelved as the difficulties of setting and marking variant papers in Taxation and Company Laws became more apparent.

The evidence in emerging markets suggests that auditors do have a corporate governance role. Joseph P.H. Fan and T.J. Wong of Hong Kong University of Science and Technology found that auditors in firms with a concentration of share ownership potentially have a stronger governance role because the conventional corporate systems are weak in protecting outside investors and minority shareholders. On the other hand, evidence in a United Nations Report (Rahman, 1999) questions whether auditors succeed in the role of corporate monitors, noting that just months after giving some large East Asian companies clean audit reports those companies became fatalities in the Asian Financial Crisis.

Fan and Wong offered five reasons for the apparent failure of auditors in their role as monitors of good corporate governance in East Asia. These are:

- The opaque nature of business dealings in that region makes auditing not attractive as a profession and extremely difficult
- Audit committees that represent the interests of outside shareholders to select external auditors are either ineffective or non-existent.
- An external audit loses its value when the auditor's opinion may not bear significant consequences in emerging markets where legal enforcement is weak.
- Compared with the more developed economies, the lack of audit expertise in emerging markets could weaken auditors' monitoring role.
- Conflicts between their auditing and non-auditing roles may weaken accounting firms' incentives to be independent and consequently their credibility as effective monitors.

Almost all of these conditions exist in varying degrees in the Caribbean and are exacerbated by the limited choice of quality audit firms, the close relationship between the auditors and the parent company or, not unusually, the Chief Executive Officer. While trust has been a major element in boardroom governance in the Caribbean, it is hard to believe that a more activist shareholder group in the company would not contribute to a better level of corporate governance in the individual territories, even though a policy of disruption by

small or institutional shareholders is hardly conducive to a stable company environment.

D. Weaknesses in the Caribbean System of Corporate Governance

Some Member States have gone to great depth in defining corporate malpractice and establishing stringent rules regarding mechanisms and disclosures which are aimed at protecting all interested parties including potential investors and the society at large. For example, Trinidad and Tobago has extensive provisions for take-overs in the Securities Industry Act, 1995, and Take-over By-Laws thereon.

Disparities within the regulatory system, such as penalties for offences and definitions and interpretation provisions stem from the individuality of circumstances in each member state. With the CSME providing a unified regional exchange of skills, and capital, there will be a greater need for harmonisation. While companies legislation in the past has been the main driver of Corporate Governance, this has been augmented by industry specific legislation for the banking and insurance sectors and the securities industry in relation to public companies. The industry-specific legislation is a mirror-image of the models common to the developed world. Being of more recent vintage and applicable to fewer entities it is often better enforced than the Companies Act.

In all the territories there is a raft of legislation designed to impose order and discipline, regulate businesses, protect the public and enhance transparency and disclosure and accountability, all with a view to contributing to a properly functioning economy. It must be remembered, however, that while the law plays a role in governance, it is both impracticable and inadvisable for governance to be seen entirely as a statutory matter. Even those who advocate making a code of corporate governance mandatory and part of the continuing obligations of listed companies recognise that such a code should set the minimum conditions and requirements, with companies encouraged to add and expand as they see fit to suit their own circumstances.

The Office of the Registrar of Companies in the countries of the Region administers the Companies Acts and therefore has a major role to play in corporate accountability and ensuring easy access to information on companies. The single most important general legislation is indeed the Companies Act which regulates the conduct of all companies operating in the particular jurisdiction.

The Companies Acts of the Caribbean have an interesting history and lesson for future efforts at harmonization of the Region's laws and regulations. They all have their genesis in the Companies Acts of the United Kingdom but each territory enacted its own companies legislation at different times, using as its

model the operative Act in effect in the United Kingdom at the particular time . Few, however, monitored changes in the United Kingdom legislation or amended their legislation in keeping with developments in the UK. Recognizing that despite the common source the companies legislation and rules of the various territories were not only different but in many cases outdated, the Eighth Meeting of the Council of Ministers of the Caribbean Free Trade Association (CARIFTA) launched in March 1971 the Harmonisation of the Company Law Project which has not yet completed its work despite the coming into being of the CARICOM Single Market.

The Region's professional accountants, academics, writers and members of the business community need to apply their minds to a model of Corporate Governance appropriate to our circumstances. While it is unquestionable that we cannot re-invent the wheel, it is clear that wholesale importation from different markets and circumstances is equally unproductive. The small market, limited pool of talent, close personal relationships, and the consequential difficulties in finding independent directors are perhaps the most significant challenges in Corporate Governance facing the Region.

E. Towards a Regional Code of Corporate Governance

An examination of legislation provisions of Member States has identified significant disparities in the definition/interpretation, regulations or restrictions and penalties to be applied for infraction of the requirements. Who is an insider and how it is defined varies from jurisdiction to jurisdiction. For example, the OECS has a general definition of an "insider" with specific examples such as a director, employee or shareholder having access to the information by virtue of employment, office or profession, or directly or indirectly to any of the above. The Statute of Barbados identifies an insider, in addition to the above, as a person who beneficially owns more than 10% of shares with voting rights and details the definition of a presumed insider as a director or officer of a body corporate that is a subsidiary of the company. The Statutes of the Republic of Guyana and the Republic of Trinidad & Tobago, however, take a different approach by introducing into the definition the concept of price sensitive information and then go on to state that trading of securities by persons connected (by virtue of privileged access) or reasonably expected to be connected, is prohibited.

Generally, disclosure is required for any director or officer of the company who is party, either directly or indirectly, in a material contract or proposed material contract with the company. This disclosure requirement is consistent in all Member States.

The Companies Act of the Republic of Guyana is the only Statute within CARICOM that requires disclosure of directors' emoluments. While the Companies Act of Jamaica is the only Statute that requires disclosure of payments in relation to loss of office by a director.

Various statutes, i.e. Companies Acts and Securities Industry Acts, require the disclosure of beneficial interest in share capital by owners, and detailed information about the holders thereto, upon request of the issuer of the security. A monopolistic market exists where there are many demand units with few supplier units controlling the market. While a regional Statute does not provide regulators with the necessary powers to regulate market activity with regards to monopolies, there has been action by regulators for public interest companies, such as the Public Utilities Commission for power utilities and telecommunication companies.

1. Takeover Provisions

A takeover in the Caribbean has generally been seen in a rather unfavourable light, particularly if it is a cross-border transaction. While this may stem from a defensive, nationalist tendency, it does not explain the more favourable treatment given to the acquisition of state entities by a private company from another jurisdiction. Yet the economic justification for takeovers remains the same regardless of whether the asset is publicly or privately owned. They are seen as a way of enhancing corporate performance and shareholder value by the introduction of new policies and management and the elimination of incompetence and managerial ineffectiveness. They constitute corporate restructuring imposed from without the organisation. While conceding this point, others argue that takeovers are not always the best option as the investors and other pressure groups sometimes possess the ability to restructure failing companies without the need for predatory action by outsiders.

There is a high incidence of takeovers in Anglo-American corporate life the probability of such action has been seen as a great incentive to managers to operate in a fashion that would satisfy the wishes of shareholders by maintaining efficiency and maximizing profits. The take over explosion in the eighties in the UK directly revealed excessive use of golden handshakes, the poison pill and other corporate manoeuvres and led to the setting up of the Cadbury Commission, which pioneered the modern search for a code of corporate governance.

The statutory provisions on takeovers are mainly contained in the Companies Acts but Guyana, Barbados and Saint Lucia also have take over provisions in their respective Securities Industry Acts which appear to conflict with the provisions in their Companies Acts. The Guyana takeover regulations under its Securities Industry Act, (SIA) 1998, appear to have been imported from the UK. Knowledgeable legal sources have suggested that once the SIA became

operational, the corresponding provisions in the Companies Act should have been repealed. The reasons for a similar situation in Barbados and Saint Lucia are not obvious but it would appear necessary to have the provisions reviewed and appropriate amendments made to the law.

The Statute of several Member States consistently defines a takeover bid as any bid for the outstanding share of a particular class of shares and all offers by an entity to acquire its own shares. Some States provide that offers to acquire effective control of an entity, separately defined at varying rates of ownership but all retaining the concept of majority voting rights, are considered takeover bids.

The Companies Act (CA) of the Republic of Guyana is the only Statute that requires a mandatory take-over bid once a shareholder or group of shareholders, acting in concert, acquires 30% of the shares of a particular class of shares.

While the CA of Barbados, Guyana and Saint Lucia consistently define control as acquiring voting rights sufficient to elect a majority of the directors, Jamaica and Trinidad & Tobago have taken different routes. In the case of Jamaica, it defines control as board of directors holding more than half in nominal value of its equity share capital. Trinidad & Tobago defines control as the holding of shares or the possession of voting power in relation to that body corporate; or any other power conferred by the articles of incorporation or other document regulating the body corporate, that the business and affairs of the body corporate are conducted in accordance with the wishes of that person.

Given such disparities in definitions, restrictions and general provisions for takeover bids across CARICOM Member States, harmonisation is vital for the smooth workings of the CSME and the movement of capital. The establishment of a regional securities exchange would facilitate the process.

2. Supporting Measures

In the aftermath of the Corporate Governance scandals in the USA in 2001 and worldwide concerns that the problem could extend beyond the borders of the world's largest and most regulated securities market, many countries undertook efforts to ensure that the systems in their countries were working properly. Reviews were done and minor adjustments made but there has been no wholesale revamping of the system as was done in the USA.

The efforts in the Caribbean were far more limited and as the economies continued to grow and the market steadily improved there was less urgency to search for a national, let alone regional, Code of Corporate Governance. The Private Sector Organisation of Jamaica has now published a Code for public companies in that country while the Organisation of Eastern Caribbean States (OECS) has held two major conferences on a Code. Except for these two efforts any urgency to formulate a Code of Corporate Governance appears to have

dissipated, and in some cases to have been taken off the agenda, with reliance placed on the regulators and the market to detect and address any issues. This approach is likely to result in the authorities dealing with problems after they have arisen and after the damage had been done.

There are a number of supporting measures which can serve to make more effective the Regional Code of Corporate Governance that is being recommended below. These include the following:-

- **Giving a Role to Non - Controlling Shareholders in the Appointment of Boards:** Controlling shareholders have been known to use their controlling shares to nominate and elect directors, appoint auditors and enter into related party transactions often on terms and conditions less favourable than are available on the open market. Mechanisms should be incorporated into the law that allows for persons representing the other shareholders to participate in the nomination of directors.
- **Require Periodic Mandatory Independent Reviews of Boards and Individual Directors:** Boards operate collectively and the results produced by the company reflect that collective responsibility and performance. However, the contribution of individual directors under the rubric of performance has been the subject of much public comment and speculation. Consultants could be contracted to evaluate directors' individual performances with a view to strengthening their contribution to the company.
- **Pensions for Non – Executive Directors:** At least in one Member State the practice has grown up of non – executive directors becoming eligible for pensions. This practice should be expressly prohibited by law and directors' tenure on the board should be subject to strict term limits.
- **Remuneration of Directors:** Directors are perhaps the main Corporate Governance player particularly in relation to non-routine transactions and those involving themselves. A secretive directorate bent on relating its own reality can manage profits by the simple device changes in accounting policy. They may engage and authorise transactions with themselves that they then do not disclose in their annual report. In matters in which directors have the greatest interest to be transparent not to be accountable and not to disclose, we leave it to them to decide how much is paid to executive directors and how much if any is disclosed. There is clearly a need to strengthen disclosure provisions relating to directors dealing in the shares of the entity and other group company.

- **Interim Reporting:** Timely and adequate reporting are the corner stone of accountability .Securities legislation currently requires half-yearly reporting by public companies mandatory quarterly reports should perhaps the new requirement.
- **Establishing a Regional Competition Commission:** This is a requirement of Chapter 8 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community including the CARICOM Single Market and Economy. While consolidation of small firms into large entities would enhance the prospects of the Caribbean attaining global competitiveness , regulators have to ensure that there is no abuse of dominant market power in the Region and that contestability obtains in situations where this would safeguard consumer interests.
- **Strengthening the Accounting Profession:** The accounting profession in all the territories is essentially self regulated and has not been independently enquired into. Since the Andersen fiasco the developed markets have placed the profession under intense scrutiny although outside of the United States they have stopped short of drastic changes in the oversight of the profession.

Given the critical role accountants play in facilitating the work of the tax authorities and the governance of public entities, there seems to be a case for reviewing the structure and operation of the profession regionally and at the national level.

Annual Reports of companies across the Region vary in quality and depth with some of them nevertheless comparable to international standards. The International Accounting Standards body has taken steps to introduce mandatory Management Commentary across the world. Referred to in the US and Canada and by the International Organisation of Securities Commission (IOSCO) as Management Discussion and Analysis (MDA) and in the UK as Operating and Financial Review (OFR), this commentary improves the quality of financial reviews and helps shareholders reading same to make better economic decisions.

Some Caribbean companies including Republic Bank, Grace Kennedy and First Caribbean already include such a statement in their Annual Reports. Without waiting on the IASC to finalise and publish its rules on such a statement, the Caribbean profession should take the lead in adapting this requirement using any of the standards currently applicable in North America or the UK.

The public interest requires that practising professionals be exposed to, and be reasonably familiar with, Caribbean Corporate & Securities Law and Taxation. The Caribbean Institute of Chartered Accountants should urgently revisit an

earlier plan to examine accounting students in corporate law and tax. The Institute should also offer regular Continuing Professionals workshops on trends, ethics techniques in the profession and accelerate movement on peer reviews.

While a number of jurisdictions have passed legislation dispensing with the audit, bankers and other providers of capital still find the independently certified financial statements critical to their loan decisions. The audit opinion, however, does not distinguish between large and small companies and the standard of care and quality and content of disclosure are the same for all companies. The international profession has signalled its intention to produce an accounting standard for small and medium-sized companies but the Region can hardly wait for this to materialize and the profession ought to take the lead in developing a standard appropriate to our needs.

- **Disclosure and Public Interest Companies:** There shall be introduction of the concept of public interest companies so that those entities in which the public have an important stake, for example banking and insurance companies would be required to meet the same standard of disclosure as a public company.
- **Promotion of Public Sector Governance:** Governments in the Region still play a significant role in the economies, in some cases directly as state owned firms and in others as statutory bodies. Corporate governance in these bodies is as important as in public companies and the example of Jamaica with the Public Bodies Management and Accountability Act 2001 and the audit rotation principle in Guyana should be the basis for the development of enforceable standards of corporate governance in the Region. These are areas where the benefits of traditional private sector corporate governance can be translated to the public sector.

3. Issues for Inclusion in the Code

Corporate Governance has taken been shaped by developments in the more developed markets. The stakeholders in the Region need to apply their minds to a model of Corporate Governance appropriate to our circumstances. Table X.6 on a proposed regional code of corporate governance borrows from both international best practice and the experiences gained in the Region. While it is unquestionable that we cannot re-invent the wheel, it is clear that wholesale importation from different markets and circumstances is equally unproductive.

Table X. 5: Recommended Regional Code of Corporate Governance

Issue	Description
Disclosure of compliance with recommendations	Companies are encouraged to report on how they apply relevant corporate governance principles in practice.
BOARD ISSUES	
Accountability to shareholders / stakeholders	Board is accountable to all shareholders including minority shareholders.
Mission and responsibility	The Chairman has the responsibility to ensure all members have been properly briefed on all issues of concern.
Election	<p>Non executive directors should be appointed for specific terms and reappointment should not be automatic; all directors should be subject to shareholder election following their appointments and re-elections thereafter.</p> <p>Appointment to the board should follow formal and transparent procedures; the nomination committee should make recommendations on all new appointments to board positions.</p> <p>Directors should submit themselves for re-election at regular intervals of not more than three years.</p>
Orientation and Training	Training should be available to any director upon appointment to the board.
Access to Information	<p>Timeliness and quality of information reported to board members should occupy a priority in company procedures.</p> <p>Directors should be free to acquire independent professional advice at the expense of the company.</p>
Disclosure of Director Biographical Information	Sufficient biographical data should accompany the names of directors submitted for election and re-election on the basis of which shareholders may make informed voting decisions.
Size	Non-executive directors should comprise not less than one-third of the board of Directors.
Multiple Board Seats	Executive directors should be encouraged by their companies to accept only non-executive appointments in other companies. The number of non-executive appointments should not adversely impact upon the directors' executive responsibilities in their own company.
Chairman and CEO	<p>The following is an ideal situation that we should strive to achieve: Any decision to combine these two positions must be publicly justified; in all circumstances, a strong and independent non-executive element must sit on the board with a senior independent director, other than the Chairman to whom issues can be referred and who, together with the Chairman and CEO, should be identified in the annual report.</p> <p>Encourage separation of the functions of Chairman and CEO.</p>
Composition	The board of directors should include a balance of executive and non-executive directors (including independent non-

Issue	Description
	executives) so that no individual or group of individuals can dominate the board's decision making process.
Independence	The following is an ideal situation that we should work towards: A majority of non-executive directors should be independent of management and free from any business or other relationship that could interfere with their independent judgement; they should be identified in the annual report.
Committees	The Board should have 3 mandatory committees namely the Audit, Remuneration & Governance Committees
Audit Committee	The Audit committee should comprise at least of three non-executive directors, a majority of whom should be independent, with written terms of reference that identify their authority and who should be named in the annual report.
Governance Committee	The Board should have some procedure for election of members in this committee and it should largely comprise of independent directors.
Nomination Committee	Not compulsory
Remuneration Committee	Remuneration committees should be made up exclusively of non- executive directors who make recommendations on the company's framework of executive remuneration and who must operate independently from managerial interference and from any intrusive business relationship; they should be granted full authority to seek counsel from both inside and outside sources.
Other	As the corporation sees fit.
Board Meetings	The Board should meet regularly and have a formal schedule of matters specifically reserved to it for decision.
Performance	The Board should establish procedures for assessing the effectiveness of the board as a whole, together with contributions of individual directors.
Term Limits	Not covered, save with regard to re-election every three years.
Liability	Not covered. Liability of directors covered by various legislative measures in countries.
REMUNERATION	
Level of remuneration	Remuneration should be sufficient to retain executive directors who can run the company successfully and should be linked to performance; remuneration levels of non-executive directors should reflect experience and level of responsibilities undertaken by the particular non-executive

Issue	Description
	director.
Composition of remuneration	For executive directors, the component parts of remuneration should be structured so as to link rewards to corporate and individual performance.
Contracts and compensation	Performance to be evaluated; contracts reviews at pre-determined intervals.
Procedures for determination	Remuneration of directors; including non-executive directors should be subject of recommendation to the board by a remuneration committee.
Disclosure	The annual report should contain details of the remuneration of executive and non-executive directors.
Shareholder involvement in determining remuneration	Remuneration committee should disclose to the Board and to shareholders who can then vote on the matter.
Severance Payments	Corporations should be cautious about concluding extended notice period and "golden parachute" arrangements with executives.
ROLE OF SHAREHOLDERS	
Shareholder voting	Shareholders have a responsibility to make considered use of their votes. Companies should have specific guidelines for use of proxies and they should disclose the number of proxy votes received "for and against" in an election. Companies should establish guidelines to involve all shareholders (especially institutional) to take an active roll at the Annual General Meetings.
Management - Shareholder Communication	Separate Chairmen of Board committees should appear at the AGM to answer shareholders' questions.
Governance disclosures	Corporation should provide information on their Governance policies and principles on the request of shareholders for further evaluation.
General Meetings	Board should use the AGM as the primary means of direct communication with shareholders. Notices of the AGMs should be sent to the shareholders at least twenty working days before the meeting.
FINANCIAL REPORTING TRANSPARENCY & AUDIT	
Financial reporting	The financial statements are the responsibility of the directors. The auditor is responsible for the reporting on the financial statements.
Transparency	The directors should establish formal and transparent arrangements for considering the method in which they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with the company's auditors.
Internal Control	Companies must constantly strive for transparency. Directors should provide a statement in the financial statements in relation to their internal controls. Companies should have an effective internal audit function that has the respect and co-operation of both the board of directors and management.

Issue	Description
	Internal auditors should have unrestricted access to the Chair of the audit committee. Annual report of Internal Auditor to the Board.
Accounting Standards	Companies must ensure that audits and standards are in compliance with International Accounting Standards (IAS).
Auditors Independence	Not only should the auditors discharge their duties in total independence from personal interest or managerial interference, they should also perform a regular review of their independence, along with their cost effectiveness and objectivity.
Auditor's Liability	In the event that auditors provide the company with non-audit services, the audit committee should maintain full records of them, balancing auditor objectivity against auditor profit.
STAKEHOLDER	
Communication	One of the principal responsibilities of the board of directors is developing and implementing an investor relations programme or shareholder communication for the company. Boards of directors must maintain an effective communication policy that enables both the board and management to communicate effectively with its shareholders, stakeholders and the public generally.
Ethics	Every affected company should have its own Code of Ethics, which should be implemented as part of the corporate governance of the Company. A code of ethics should commit the corporation to the highest standards of behaviour.

Endnotes

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³ R. K. Morck and L. Steier (2005).

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⁷ Report of The Committee on the Financial Aspects of Corporate Governance, chaired by Adrian Cadbury, December 1992.

¹⁰ B.McLean and P. Elkind, (2003).

¹¹ G. Hamel, (2000).

¹² BankruptcyData.com

¹³ P.Dey, (1994).

¹⁴ Corporate governance: Stronger principles for better market integrity

¹⁵ B. Witherell, (2004).

¹⁶ *The Private Sector Organisation of Jamaica* (http://www.psoj.org/cor_gov.html)

¹⁷ *Caribbean Corporate Governance Forum*

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¹⁹ *World Bank Report. 1999,*

²⁰ *Caribbean Corporate Governance Forum*

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²¹ *Speech by Hsieh Fu Hua, CEO of Singapore Exchange Limited (SGX), at the CAD Corporate Governance Conference on 23 November 2005*

²² McKinsey & Company 2001

²³ See footnote 21.