

“Recent Developments in Corporate Governance, A Caribbean Perspective”

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Outline of Presentation

- Evolution and Taxonomy of Corporate Governance Development
- The Contextual Environment: Caribbean
- Current Developments
- Cross Cultural Challenges & Practice Gaps
- The Way Forward
 - Recommendations
 - Conclusions

Key Drivers to the Corporate Governance Development Agenda

- Corporate Crises
- Corporate and Political Corruption
- Market Controls
- Traditional Laws (Business and Securities)
- Importance of Global Stock Markets
- Emergence, Enforcement & Codification of International Standards (Accounting, Banking, CSR, etc)

Corporate Governance Evolution

- South Sea 'Bubble' – 1st documented evidence of failure in corporate governance (1721)
- The Establishment of the first joint stock Company Law of Britain 1855
- The Boom years of the development of the City of London as the Financial Centre of the World late 1800s and early 1900s
- 1929 First Stock Market Crash of the USA
- Seminal Work of Adolphus Berle and Gardiner Means (1932)-- "***The Modern Corporation and Private Property***"
- The enforcement of a Slew of Securities Laws during 1933-1937

Corporate Governance Evolution

- 1970s and 1980s – Savings and Loans Crises in the United States
- 1980s demise of the Robert Maxwell Communications Group (Britain)
- 1987 Stock Market Crash (USA)
- 1990s Major Financial Crises: Argentina, Brazil, Russia, S.E. Asia, Jamaica
- 2000s – WorldCom, Tyco, Enron – Sarbanes-Oxley (2002)

Reconsidering the Evolution of CG

- First Period: The Dominance of Family Businesses (spanned the Industrial Revolution and lasted up-to the 1920s)
- Second Period: Saw the rise of Professional Managers (1920s to 1970s)
- Third Period: Origins in the 1970s— Characterized by increasing Accountability to Society

First Period: Familial Governance and Economic Enfranchisement

- Control of the Company by the founding family
- *Economic Enfranchisement*, the opening up of the right to own business by the general populace
- Various pieces of legislation were put in place that removed the class barrier to owning businesses

(*French Code du Commerce* (1808), the American legislation on *General Incorporation* (1811 for New York) and the *English Joint Stock Company Registration Act* (1844)).

- In the developing world, *Tocqueville* stated near the start of this first period:

“As Nations turn to democracy and a particular class occupied with industry, this class becomes more aristocratic...thus when one goes back to the source, it seems that one sees aristocracy issue by a natural effort from within the very heart of democracy”.

Second Period: Managerial Governance and Separation of Powers

- Ushered in as Family firms grew in size and complexity
- Professional Managers were brought in to run corporations more efficiently
- The growing firms required increased financial resources which saw families looking outside for other investors
- US, UK, Germany and France saw shifts at different time periods within the 1920's in ownership and control patterns towards a greater separation of powers
- New legislation came into being to define and regulate emergent limited liability firm, US (SEC), regulation defining the obligation of disclosure in the security industry.
- 1940s-France enacted law requiring the creation of the Board of Directors while German companies were obligated to create the two-tier board.
- Shareholders now began to meet and vote on board membership, etc.
- The Board was empowered to hire and fire managers and a balance of powers was created.

Third Period: Popular Governance and Representation

- Current state of affairs in major economies
- By far the most democratic of governance structures
- Best characterized by the feature of *Representation*
- As the corporation grows it comes under the influence of society at large
- Corporations have gone global and in the process, public ownership shifted into the hands of mass shareholders through public share offerings
- Employees share ownership and retirement investment
- Management is forced to create profit and act in a socially responsible manner
- Strategic direction must be informed by direct contact with shareholders and a majority of board members be independent
- AGM where debate and discussions ensued
- Managers are held accountable and can lose their jobs if found wanting
- Requirement for consent from those whose interests are represented holds true both in democratic political governance and in the corporate governance arena.


Evolution of CG and the Procedures of Democracy

	19 th Century– 1920s	1920s – 1970s	1970s-21 st Century
Model of Reference for Corporate Governance	FAMILIAL	MANAGERIAL	POPULAR
Economic Enfranchisement	<i>Implementation.</i> Creation of rights to ownership independent of social standing	<i>Reinforcement.</i> Strengthened by law and corporate practice. Public general meetings become standard	<i>Reinforcement.</i> Strengthened by new rules on the right to vote; protection of minority interests
Separation of Ownership/ Control	No	<i>Implementation.</i> Generalisation of the limited liability form, with boards and disclosure requirements	<i>Reinforcement.</i> Increasing board supervision over managers
Representation with public debate	No	No	<i>Implementation.</i> Mass ownership; stakeholder activism

The Global Corporate Governance Architecture (4 Existing Models)

- **Anglo-Saxon:** USA, UK, Canada, Australia
(Jamaica, Trinidad, Barbados and the Eastern Caribbean have been used as representative of the Caribbean—these are influenced in Company Law and Securities Laws by the United Kingdom and the United States of America)
- **Germanic:** Germany, Netherlands, Switzerland, Sweden,
- **Latin:** France, Italy, Spain, Belgium
- **Japan**

A Taxonomy of Corporate Governance Systems

KEY FEATURES	ANGLO-SAXON	NON ANGLO-SAXON		
	USA, UK, Canada, Australia	GERMANIC	LATIN	JAPAN
		Germany, Sweden, Switzerland, Netherlands	France, Italy, Belgium, Spain	
Ownership Concentration	Low	Moderate/High	High	Low/Moderate
Salient Shareholder(s)	Shareholders, Financial Holdings, the government, families, in general oligarchic group moderate	Industrial Banks (Germany), employees, in general oligarchic group	Financial Holdings, the government, families, in general oligarchic group moderate	City Banks, other Financial Institutions, employees, in general
Concept of the Firm	Instrumental, Shareholder-oriented	Institutional  GovStrat Ltd © Vindel Kerr	Institutional	Institutional

A Taxonomy of Corporate Governance Systems (2)

KEY FEATURES	ANGLO-SAXON	NON-ANGLO-SAXON		
	USA, UK, Canada, Australia	GERMANIC	LATIN	JAPAN
		Germany, Sweden, Switzerland, Netherlands	France, Italy, Belgium, Spain	
Board Model	One-tier (executive & non-executive)	Two tier (executive & supervisory board)	Optional (France), in general one-tier	Board of Directors; Office of Representative Directors, Office of Auditors; de facto One-tier
Importance of Stock Market in the National Economy	High	Moderate/High	Low/Moderate (19.5 % of GDP)	High
Active Market for Corporate Control	Yes	No	No	No
Performance-dependent Executive Compensation	High	Low	Moderate	Low

A Taxonomy of Corporate Governance Systems (Caribbean Realities) (3)

Key Features	Caribbean
Board Model	One-tier (executive & non-executive)
Ownership Concentration	High [76% institutional investors; 19% individuals]
Salient Shareholders	Institutional Investors, individuals/Families
Concept of the Firm	Institutional/Shareholder-oriented
Importance of Stock Market in the National Economy	High (116% of GDP; Jamaica 134% of GDP 2005)
Active Market for Corporate Control	No
Performance-dependent Executive Compensation	Moderate

Implications of the Caribbean

- An examination of existing realities of the corporate governance features that typify Caribbean Companies is suggesting that there is a significant cause for concern with current approaches to corporate governance developments in this region.
- Whilst Caribbean Company Laws are creatures of the British Joint Stock Company Law and most of the Financial Regulations (laws) have been adopted from the United States, including Stock Exchange Listing Rules, the Ownership Concentration problem presents the most important challenge to the present corporate governance agenda. This will be articulated later in this presentation with the relevant empirical evidences.

The Contextual Environment: Caribbean

- **The Stock Market**

Critical to any debate on corporate governance given its importance to Caribbean and global economies. Its value far exceeds the total value of goods of services traded annually.

- **Regulatory Framework**

Provides the legal and ethical backbone on which the moral concept of trust is expected to reign supreme. Most corporate governance structures by which global businesses are guided have their premises in the regulatory framework which is built on ensuring order rather than chaos.

- **Corporate Governance as a Strategic Business Direction**

Effective Corporate governance has emerged as a business strategy which delivers improved corporate reputation, increased market share and trustworthiness from the investing public.

Importance of Stock Market to National Economy

- The Stock Market is a superior means of:
 - Attracting capital
 - Mobilizing and organizing labour
 - Stimulating innovations, both intangible (intellectual property) and tangible in the form of raw materials and finished products and providing efficient and effective systems of production and distribution networks
- No invention of the industrial age has created as much wealth over the past two Centuries as the development of limited liability, publicly-traded companies (Megginson, 2000):

Importance of Stock Market to National Economy (Market Cap as % of GDP)

(2005 Data)

Country Class	GDP(2005) -in US\$ Trillion	Market Value of Domestic Companies (MVDC) in US\$ Trillion	MVDC as a % of GDP
ANGLO-SAXON	15.35	20.23	131.81
GERMANIC	4.10	5.42	132.25
LATIN	3.60	0.70	19.51
JAPAN	4.51	6.67	148.12
CARIBBEAN	0.008	0.009	116.04

Sources: World Federation of Exchanges (2005), World Bank Statistics, CIA, The World Fact Book



Importance of Stock Market to National Economy (Market Cap as % of GDP): Selected Caribbean Economies (2005 Data)

Country Class	GDP(2005) -in US\$ Billion	Market Value of Domestic Companies (MVDC) in US\$ Billion	MVDC as a % of GDP
Trinidad & Tobago	14.80	17.03	115.07
Jamaica	9.70	13.00	134.02
OECS	3.34	0.27	8.10
Barbados	3.00	5.49	182.83

Sources: World Federation of Exchanges (2005), World Bank Statistics, CIA, The World Fact Book

Regulatory Framework

- Company Laws
- Banking Laws
- Financial and Securities Laws
- Public Entities Regulations and Guidelines
- International Financial Accounting Standards
- Self-Regulation—As a means of strategic direction, corporate reputation building and more recently, to influence or avoid excessive regulatory scrutiny

Recent Developments

- In the Private Sector: Codification, awareness building, director training, improvements in Company laws towards more focus on Directors' roles and responsibilities; Balancing Board Composition with an increased number of non-executive and independent directors
- In the Public Sector: Ministries of Finance have been increasing scrutiny of Public Bodies in light of increasing incidences of corruption and 'crony capitalism' in the public sector; tendency is to use very skilled, experienced and sometimes high profile executives to lead public sector boards. There is still the pervasiveness of 'political activists' and 'party loyalists' dominating public sector boards throughout the Caribbean.

Recent Developments (3)

- In the Regulatory Environment: Central Banks & Securities and Commissions have made significant strides in approaches to more closely monitor their licensees and in issuing corporate governance guidelines. Stock Exchanges have hosted several awareness building Seminars, have self-regulated (CG) and at least one has implemented a major programme of incentivisation of members in order to promote best practices and to improve corporate governance
- NGOs and Others: Credit Unions throughout the Caribbean have been involved the training of Directors in Effective Board Practices and the legal duties and responsibilities; Chambers of Commerce in recent years have caught on too.

In Jamaica

<p><u>Private Sector</u></p> <ul style="list-style-type: none"> •PSOJ •Private Commercial Interests 	<ul style="list-style-type: none"> •Launch first Code 2006 •Significant awareness through Seminars •Training & Certification of Directors •Technical and Scholarly work •Active Training and Consulting by CG Service Firm (s)
<p><u>Public Sector</u></p> <ul style="list-style-type: none"> •Ministry of Finance & Planning 	<ul style="list-style-type: none"> •Enforcement Public Bodies Management & Accountability Act 2001 •Est. of a Government Audit Commission •Vigilance of Auditor General, Contractor General •Enforcement of Public Officers Integrity Act
<p><u>Regulatory/legal Environment</u></p> <ul style="list-style-type: none"> •Company Law •FSC •BoJ 	<ul style="list-style-type: none"> •Significant improvement in Companies Law 2004 •New and significant Guidelines issued by the Financial Securities Commission •Launched of Best Practice Awards Competition by Jamaica Stock Exchange 2005
<p><u>NGOs & others</u></p>	<ul style="list-style-type: none"> •Increasingly strong Volunteered Governance (self-regulation)



In Trinidad & Tobago

<p><u>Private Sector</u></p> <ul style="list-style-type: none"> • Private Commercial Interests 	<ul style="list-style-type: none"> • Companies Act 2005--Guidelines for Directors • Gradual developments in Training of Company Directors
<p><u>Public Sector</u></p> <ul style="list-style-type: none"> • Ministry of Finance 	<ul style="list-style-type: none"> • State Enterprise Monitoring Manual • Freedom of Information Act (1999) • Integrity in Public Life Act, 2000
<p><u>Regulatory/legal Environment</u></p> <ul style="list-style-type: none"> • Company Law • Central Bank 	<ul style="list-style-type: none"> • Draft Financial Institutions Bill, 2007 • Central Bank released Corporate Governance Guideline, Rev. 05/07 • TTSEC not as proactive in light of current intl. developments
<p><u>NGOs & others</u></p>	<ul style="list-style-type: none"> • Chamber of Commerce recently launched Code for Members • Moderate level of Volunteered Governance (self-regulation) • Training of Directors is increasing • Credit Union League hosted CG session for its Members

In Barbados

<p><u>Private Sector</u></p>	<ul style="list-style-type: none"> • High level of overlapping directorship • Need for independence of Audit Function • CG Awareness building through Stock Exchange • Seminar on Role of the Board, CBB, 06/06
<p><u>Public Sector</u></p>	<ul style="list-style-type: none"> • Companies Act 2001 provides basic duties and responsibilities of Directors
<p><u>Regulatory/ legal Environ.</u></p> <ul style="list-style-type: none"> • Company Law • Central Bank 	<ul style="list-style-type: none"> • Companies Act 2001 and Securities Act both requiring timely disclosure of Financial Reports • Corporate Governance Guideline, 10/2006 • Operational Risk Management Guideline (06/2007) • Intl. Financial Services Act 2002
<p><u>NGOs & others</u></p>	<ul style="list-style-type: none"> • Chamber of Commerce recently launched Code for Members • Moderate level of Volunteered Governance (self-regulation) • Training of Directors is increasing • Credit Union League hosted session for its Members

In the OECS

<u>Public Sector</u> <ul style="list-style-type: none">•Ministry of Finance•Central Bank	<ul style="list-style-type: none">•Corporate Governance Seminars for Financial Institutions (2003)•The existence of the Caribbean Corporate Governance Code (ECCB)
<u>Regulatory/ legal Environment</u> <ul style="list-style-type: none">•Company Law•Central Bank	<ul style="list-style-type: none">• ECCB Agreement Act 1983• Eastern Caribbean Securities Act 2001
<u>NGOs & others</u>	<ul style="list-style-type: none">•At least two Regional CG Conferences, the latter 8-9/3/05, St. Kitts (World Bank Global CG Forum, ECCB, ECCSE, etc)



Recent Developments (Cont'd.)

Case Study: Jamaica Stock Exchange Best Practices Awards Competition

Objectives:

- To create an awareness of the standards for best practices in the areas to be adjudged
- To enhance the relationship between the JSE and its stakeholders
- To provide an avenue to recognize Stockbrokerages and listed Companies, in the securities industry who uphold best practices standards

Case Study: Jamaica Stock Exchange Best Practices Awards Competition

Leadership and Terms of Reference:

- A Sixteen-member Panel of Experts was established to act as Judges for Awards
- The Following Terms of Reference for the Committee were agreed to:
 - To examine and develop criteria for the Awards
 - Five Committees were established, each focusing on a specific Award
 - The Sub-committees report to the main committee, which will consider and if thought fit, ratify their decisions
 - The Sub-committees are able to co-op external members if deemed necessary

Case Study: Jamaica Stock Exchange Best Practices Awards Competition

Case in Point 1: JSE Best Practices Annual Report:

“To encourage public listed companies to produce clearer more reader-friendly annual reports and to provide greater insight into companies’ financial affairs, governance practices and business activities.”

Some Criteria:

- General Management information and analysis – Strategic Direction, CG Practices, CSR, Profiles of Directors, Industry & Business Segment Discussion
- Financial Information —Analysis of Trends, 10-yr. historical data, transparency & consistency in treatment of items, disclosure and discussion earnings from on-going operation
- Layout and Design: Aesthetic Appeal, Readability-Use of type-fonts, clarity of expression, graphics, photos, charts and organization of information
- Timeliness and Availability of Publication

Case Study: Jamaica Stock Exchange Best Practices Awards Competition

Case in Point 2: The JSE Best Practices Corporate Disclosure and Investor Relations Award

“To recognize and encourage companies to make timely and accurate reports and announcements to the JSE and maintain good investor relations with the wider investing Public.”

Some Criteria:

- Submission of timely and accurate quarterly and audited annual reports to the JSE and shareholders
- AGM timeliness and opportunity for shareholders to participate
- Investor briefings and media relations
- Dividend policy and payment
- Timely and accurate info in accordance to JSE “Listing Agreement” and Policy on “Timely Disclosure”
- Timeliness in effecting transfers of Shares
- Disclosure of Corporate Governance (Board & Director info and CSR)

Case in point: Jamaica Stock Exchange Best Practices Awards Competition

Key Results and Market Improvement in first 2 years:

- About 80% of listed companies are now reporting on corporate governance in annual reports. Prior to the Competition—10/44 (23%)
- General disclosure, quality, scope and consistency of reporting on corporate governance and CSR have been significantly improved
- Quality, content, organization, presentation and timeliness of annual reports have significantly been improved in all aspects
- 50% of non-financial companies are reporting on some aspects of risk management
- 60% of Companies are now reporting on some aspects of Corporate Social Responsibility
- Survey conducted by JSE on the impact of the Competition on participating companies revealed: 100% respondents said that their investor relations policy was improved as a result; 50% thought the category impacted their website development
- Approval rating for criteria: 25% thought the criteria was excellent; 75% thought that they were good.



Cross Cultural Challenges & Practice Gaps

- Families (biological connection) own and control approximately 45% of Companies. They are most influential in Board appointments and participate through executive positions in the day-to-day management.

Source: Stock Exchange Data and information – Jamaica, Trinidad, Barbados and OECS)

- Ownership Concentration and Pattern of Management Control

- Stake of Listed Common Shares held by top 10 Shareholders in regional Stock Markets

– Jamaica	–	58%
– Trinidad	–	63%
– Barbados	–	71%
– Eastern Caribbean	–	70% (estimated)

Source: Information derived from respective Stock Exchanges



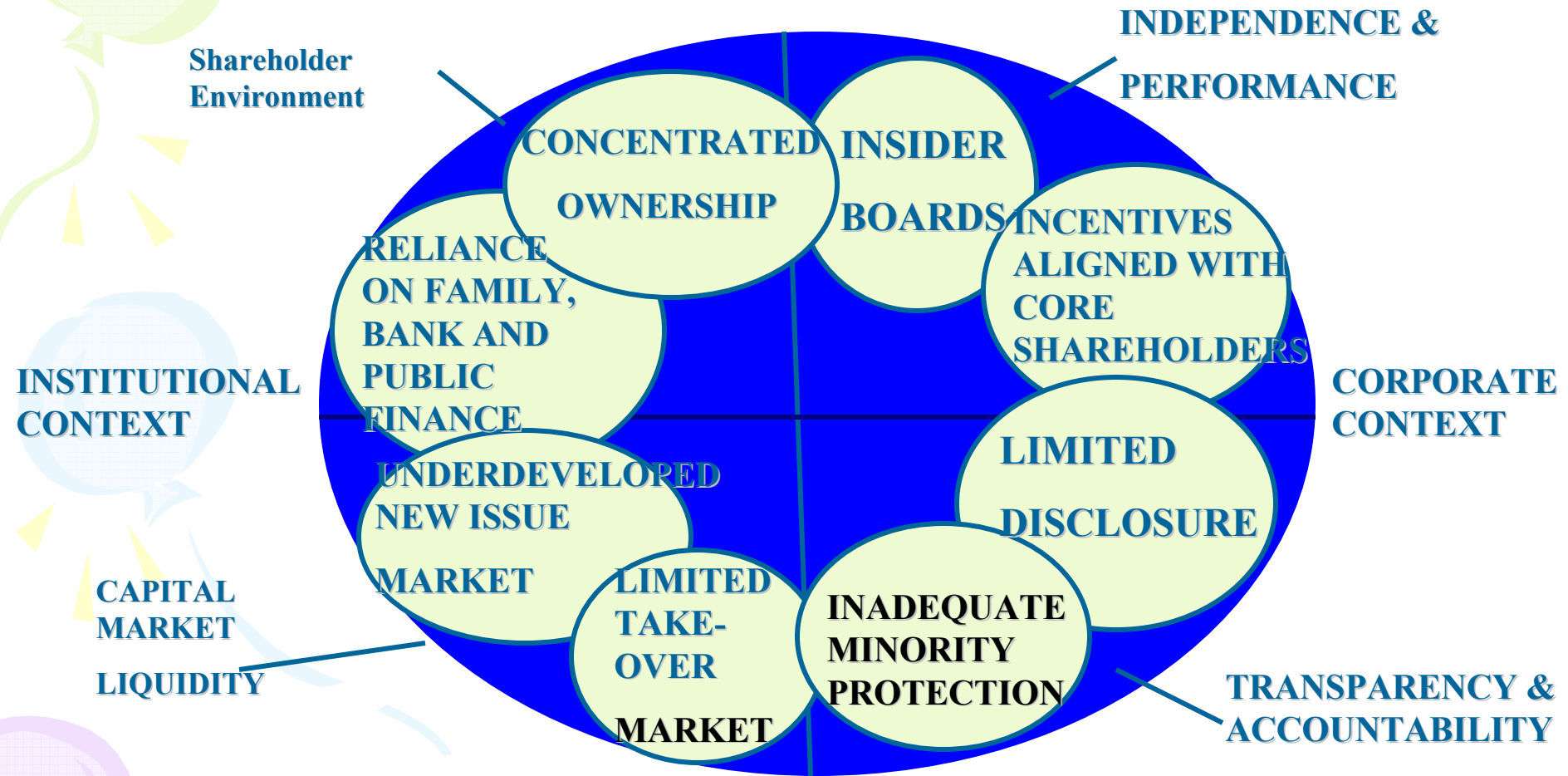
Ownership of Common Shares in the US, UK, Germany, France, Japan and the Caribbean

	USA	United Kingdom	Germany	France	Japan	Caribbean (2006 Data)
Individuals (%)	58.5	28.7	25.0	19.5	30.4	19.0
Institutional Investors (%)	40.4	58.0	61.0	70.0	65.0	78.0
Government (%)	-	1.0	5.0	3.7	0.7	0.3

Sources: World Federation of Exchanges (2005), World Bank Statistics, CIA, The World Fact Book, Stock Exchanges of Jamaica, Trinidad, the OECS and Barbados



The High Ownership Concentration Problem of Caribbean Stock Markets



Examples are found throughout the Caribbean, Latin America, Asia and many European Countries



Cross Cultural Challenges... (2)

- Disparities in the stages of Development of Basic Market Fundamentals
 - Company Laws/Guidelines
 - Securities Laws/Guidelines
 - Due diligence procedures
 - Corporate Disclosure
 - Corporate governance guidelines
 - Corporate governance practices
- Weak Shareholder Protection regimes (at Stock Market levels and in Companies Law)

Cross Cultural Challenges... (3)

- Low level recognition of the importance of Corporate Governance at the Political level
- Non-Acceptance of Corporate Governance as a critical, emerging and relevant field for Academic Study by regional academic institutions (in-activity)
- Corporate Governance is at the behest of the Practitioners rather than being driven by scholastic enthusiasm and commitment

The Way Forward

Recommendations (Private Sector):

1. Regional Ministries of Finance to issue new and increased minimum volume of share for IPOs
2. Restriction on the level Family participation in executive management and direction of publicly-listed Companies

The Way Forward (2)

3. Establish minimum dividend payout ratio across markets
4. Level of Compliance and corporate governance standards can be raised by regional governments becoming more actively involved in the Exchanges through the listing of public enterprises
5. Revise and issue penalties for delinquent directors

The Way Forward (3)

Recommendations (Public Sector):

6. Governments should establish Public Entities Governance and Monitoring Body to focus on the establishment, enforcement, monitoring and regulating of Public Entities Corporate Governance Activities:

- Establish minimum standards of qualifications for directors to serve on State-owned Boards
- Board Appointments, Tenure, Compensation and Performance Evaluation
- The “Model” Public Audit Commission established by Jamaica could serve as a good example for adoption by other regional Public

Conclusions

The region corporate governance standards has been at its current slow pace of development due to:

- Inadequate and uncommitted influence by private sector leaders. They have not done enough in treating corporate reform as a priority in planning the future of the private sector.
- Ownership Concentration and Management Control remain the most significant impediments to improving corporate governance throughout the region. This phenomenon also hindered general market growth as the “Cowboys” do what they please in terms of what stocks are traded, when and amongst whom the exchanges would take place. This has made an active external market almost non-existent.
- Models of Public-Private Sector partnerships from South Africa (Kings Report II) and Singapore (Singapore National Corporate Governance Code) are just two examples where both the public and private sectors collaborated resulting in mutually beneficial results in corporate governance developments. The Caribbean could learn important lessons from the approaches of these partnerships.

Conclusions (2)

There is no jurisdiction in the world with as high an Ownership Concentration of its Stock Market similarly to the Caribbean, that has successfully implemented “Volunteered” Corporate Governance Reform. The United States has the most democratized Stock Markets in the World (most dispersed Shareholding regimes), yet persistent failures of corporate governance systems have sent it on the offensive –the ‘birth’ and ‘rearing’ of Sarbanes-Oxley Act 2002—the most stringent form of Financial Regulation since the establishment of the Securities and Exchange Commission of the USA in 1933 .

Why then do Caribbean professionals like ourselves believe that **“Comply and Explain”** Guidelines issued through Cadbury II (2003) and the OECD Corporate Governance Principles are the most appropriate corporate Governance models for this region?



Thank you!

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