

***EXPLORING CORPORATE GOVERNANCE STRUCTURES AND
PRACTICES IN JAMAICA: TOWARDS POLICY REFORM***

**A Thesis submitted to
The University of Manchester for
the degree of Doctor of Business Administration (DBA)
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V. THESIS ABSTRACT

This study explores corporate governance (CG) structures and practices in Jamaica to fill theoretical, practical and public policy gaps. The study is organized into four parts and nine chapters. Part one is an introduction to the thesis and the contextual setting. Part two explores the theoretical and methodological framework via an in-depth review of the social science literature on CG and sets out the research strategy and methodology. Part three analyses and discusses the findings from the fieldwork, and part four examines gaps, proposes recommendations for reform, discusses conclusions, limitations of the study, and suggestions for future research.

The study assumes a two-fold hypothesis of a CG problem and public policy problem. The CG problem is characterised by a dearth of empirical literature, a lack of CG awareness, and inadequate and poor CG practices among public bodies. The public policy problem is defined by a weak regulatory framework, systemic weaknesses in the financial sector, and pervasive corporate and political corruption. In seeking solution to the problems under review, the study adapts the interviewer's administered survey method supported by three in-depth case studies and two focus groups. The views of about 100 respondents were sought and an additional unspecified number of informal informants. This multi-technique approach ensured that the weaknesses of a given technique were compensated for by the counterbalancing strengths of other techniques. The key themes of focus were regulation, corruption, ownership and control, stakeholder relations, perceptions and role of institutional investors, board characteristics and processes and the board's role in strategic decision-making and corporate disclosures.

The findings revealed that while Jamaica has implemented several laws and regulations, there are still gaps in coverage, content and effectiveness of implementation. Corruption is still rampant in spite of evidence of a reduction since 2006 (TI 2008 Report). Ownership and control of Jamaican firms are highly concentrated and mainly by oligarchic groups giving way to such problems as an under-developed new issues market, a high degree of insider boards, inadequate minority protection, poor information disclosure, and incentives are aligned to dominant shareholders. There is a lack of representation and voice of employee and trade union representatives in the Jamaican boardrooms and institutional investors (II), while controlling approximately 75% of listed companies, are not interested in promoting CG reform over and above the extent to which such efforts would redound to their self-interest. IIs play influential roles in financing Jamaican politics and control large distribution channels, and determine who gets large private sector contracts. While much is being done internationally to achieve gender balance in the boardroom, the mean number of females on Jamaican corporate boards is 1.8 (or 19.8%) with an average board size of 9.1 Directors. Cross-tabulation analyses were conducted and tests for relationships between and within groups of key variables (board size, Chair/CEO duality, NEDs vs. EDs, number of female Directors with listed and unlisted firms and dominant ownership dispersed vs. closely held) and nothing of significance was found.

The study has concluded that reform is needed in several areas. These include increase of coverage and content of legislation and enforcement mechanisms to improve CG and fight corruption; reform of corporate boards - director selection and appointments, board's role and conduct of Directors, training and board performance evaluation. Future research is directed at more emphasis on CG in developing countries, SMEs, public bodies and non-profit organizations, the role and contribution of employees and trade unions, the board's role in influencing strategy, and the role of risk management. The study seeks to contribute to the growing body of international literature on emerging CG and targets primarily academics, practitioners and policymakers.

VI. DECLARATION

No portion of the work referred to in the thesis has been submitted in support of an application for another degree or qualification of this or any other university or other institute of learning.

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VIII. ACKNOWLEDGEMENT

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Thank you all.

IX. PREFACE

There was no serious challenge in obtaining research materials, equipment and doing the fieldwork and write-up. The respondents at all stages of this study were extremely cooperative. My public visibility in the research environment may have aided in accessing and obtaining available data. This may be partially due to several factors. First, the fact that on return to Jamaica to do fieldwork in 2002, I quickly established myself in the field of corporate governance (CG) and have served in one or more capacities at key centres or repositories of CG information such as the Jamaica Stock Exchange (as Judge on the JSE CG Best Practice Awards Committee), and the Private Sector Organisation of Jamaica (PSOJ) as a member of its corporate governance committee. Second, I found that most of the company respondents were aware of my research long before I approached them for information. This was due to my writing a weekly column in the *Financial Gleaner* on CG. I did this immediately on return home in September 2002 and the column lasted for nearly three years.

Third, in April 2005, I published my first book, *Effective Corporate Governance: An Emerging Market (Caribbean) Perspective on Governing Corporations in a Disparate World* (Jamaica and the United States) and established a successful business. This book was the first of its kind to have been published by an author from a developing country. Fourth, I obtained some notoriety from my countrymen for pioneering the training and development of Boards of Directors of Public Sector Entities in Jamaica and the Caribbean in the areas of Effective Corporate Governance and Public Accountability. At the time of writing, I would have trained just over 4000 Directors, Senior Executives and Government Ministers throughout the Caribbean, South America, South Africa and Mauritius. I have also won the contract to “Clarify the governance framework for Public Bodies in Jamaica”—the first attempt by a Caribbean government to develop a corporate governance code for State-owned Enterprises. Finally, I was already in the public’s purview prior to enrolment at MBS while serving as a Spokesman on Emerging Technologies for the then Opposition Jamaica Labour Party (which now forms the Government).

In spite of the preceding, due to elapsed time between collecting data and completion of write up, I had to allow myself an extended vacation in the summer of 2008 and the first nine months of 2009 to finalize and fine-tune this thesis to facilitate completion. This included going back to several of the companies I interviewed earlier to obtain more current and up-to-date information, as well as to re-write my literature review which by then was partially dated.

All in all, I had little regrets as the experiences gained in business and the extended time spent on this thesis helped me to hone my academic skills, theoretical knowledge, and practice experiences. When all these factors are combined, I think they have made me more intellectually equipped to contribute to the growing body of CG literature and to raise the standards of CG throughout the Caribbean, in the private and public sectors.

X. THE AUTHOR

Vindel Kerr is a recognised name throughout the Caribbean in the academic, policy and practitioner circles, particularly in the field of corporate governance. He is currently the lead consultant engaged with an IADB/Government of Jamaica funded project “*To Clarify the Governance Framework*”, a first of its kind project for the Caribbean. Mr. Kerr earned a Master of Business Administration degree (International Strategic Management & Marketing) from Rutgers University Graduate School of Management, 1997, a Bachelor of Science degree in Agriculture (B.Sc.), University of the West Indies (UWI), St. Augustine, Trinidad, 1991, and an Associate of Science degree (ASc) in agriculture, College of Agriculture, Science and Education (CASE), Jamaica, 1988.

Mr. Kerr’s almost twenty (20) years in private-public sector management included corporate governance advisory and training of Board of Directors and senior executives, strategic plan development and advisory, business process re-engineering, operations audit, business research and corporate and academic training. Mr. Kerr has held senior management positions in banking and international agribusiness. He obtained his early grounding with the Food & Agriculture Organization (FAO) of the United Nations, as a Farming Systems/Farm Management Economist, in 1988. Mr. Kerr has played a key role in the strategic restructuring of critical public sector enterprises including the National Insurance Board of the Turks and Caicos Islands and the Bureau of Standards (Jamaica). He is directly responsible for the training of more than 4,000 corporate executives and members of corporate boards in twenty (20) countries across the Caribbean, South America and Africa, since 2003, through **GovStrat Limited**. GovStrat is a management consulting and executive learning outfit he founded in 2003. Prior to becoming a facilitator of executive education, Mr. Kerr has held adjunct teaching assignments at the College of Agriculture, Science and Education Jamaica (CASE); the University of the West Indies (UWI), Mona Campus, and the University of Manchester, England, where he taught full-semester courses in project management, environmental management systems, marketing strategy and planning, and globalisation, respectively.

Mr. Kerr is the author of *Effective Corporate Governance: An Emerging Market (Caribbean) Perspective on Managing Corporations in a Disparate World (2005)*. Between 2002 and 2005, he wrote a weekly column on corporate governance for the *Financial Gleaner*, Jamaica. Mr. Kerr has been a keynote speaker, facilitator and/or lead presenter at local and international conferences, seminars, colloquiums and workshops for academicians, practitioners and policymakers, including the 5th and 6th Conferences on Corporate Governance, hosted by the World Council for Corporate Governance, held in London, England, 2004 and 2005, respectively. In addition, he has been invited speaker at the 25th Annual Conference of the Institute of Chartered Accountants of the Caribbean, held in St. Kitts (WI) 2007, the Development Banking Conference for Development Financial Institutions (DFIs), hosted by the Caribbean Development Bank and the Economic Commission for Latin American and the Caribbean (ICLAC), held in The Turks and Caicos Island, 2007, among many others.

Mr. Kerr is currently holds positions in several public bodies in Jamaica. These include: Chairman, Jamaica 4-H Clubs; Vice-Chairman, CASE; Director, Planning Institute of Jamaica (PIOJ); and Director, Central information Technology Office (CITO). He is also Convenor of the Jamaica Chapter of the World Council for Corporate Governance, since 2006, and served on the PSOJ Corporate Governance Committee, 2005-2007, the Jamaica Stock Exchange Best Practice Awards Committee 2005-2007, and is a former board member of HEART Trust/The National Training Agency.

XI. LIST OF ABBREVIATIONS

AGM	-	Annual General Meeting
APEC	-	Asia Pacific Economic Cooperation
BOD	-	Board of Directors
BOJ	-	Bank of Jamaica
CalPERS	-	California Public Employee Retirement System
CalSTRS	-	California Teachers Retirement System
CaPRI	-	Caribbean Policy Research Institute
CCMB	-	Capital & Credit Merchant Bank
CEO	-	Chief Executive Officer
CII	-	Council of Institutional Investors
CGP	-	Corporate Governance Problem
CSR	-	Corporate Social Responsibility
ED	-	Executive Director
FIA	-	Financial Institutions Act
FINSAC	-	Financial Sector Adjustment Company
FSC	-	Financial Services Commission
GCGF	-	Global Corporate Governance Council
GOJ	-	Government of Jamaica
IAQS	-	Interviewer's Administered Questionnaire Survey
IAS	-	International Accounting Standards
IASC	-	International Accounting Standards Council
ICAJ	-	Institute of Chartered Accountants of Jamaica
IMF	-	International Monetary Fund
INTEC	-	Information Technology Fund
IFC	-	International Finance Cooperation
IOSCO	-	International Organization of Securities Commission
ISGC	-	Inclusive Social Governance Council
JCC	-	Jamaica Chamber Of Commerce
JDIC	-	Jamaica Depositary Insurance Corporation
JMMB	-	Jamaica Money Market Brokers Limited
JSE	-	Jamaica Stock Exchange
MFPS	-	Ministry of Finance and the Public Service
MOU	-	Memorandum of Understanding
NAS	-	Non-Anglo-Saxon
NED	-	Non-Executive Director
NIBJ	-	National Investment Bank of Jamaica
NYCF	-	New York City Funds
OECD	-	Organisation for Economic Cooperation and Development
PSOJ	-	Private Sector Organisation of Jamaica
SEC	-	Securities and Exchange Commission
SOE	-	State-owned Enterprise
SWIB	-	State of Wisconsin Investment Board
TIAA-CREF	-	Teachers Insurance and Annuity Association, College Retirement Equities Fund
UKSA	-	United Kingdom Stockholders Association
WTO	-	World Trade Organization

PART ONE: INTRODUCTION AND CONTEXTUAL ISSUES

CHAPTER 1.0 THE IMPORTANCE OF CORPORATE GOVERNANCE (CG) AND THE PROBLEM STATEMENT

1.1 INTRODUCTION

The purpose of this study is to examine corporate governance structures¹ and practices² in Jamaica with the aim of prescribing recommendations for public policy reform. The study is exploratory in nature given that no previous work has ever been undertaken in Jamaica on the subject of CG and, therefore, necessitates an understanding, albeit in a structured and measured manner, of as many key CG issues as possible. The study also assumes that there exists several weaknesses in Jamaican CG, which are embedded in and can be addressed by a set of key CG elements. These elements form the key issues under review and include: regulation, corruption, ownership and control; stakeholder relations (representation), perception and role of institutional investors, board characteristics and processes, the board's role in strategic decision making and corporate disclosure. In framing the problems for which solutions are sought, some of these key elements are discussed later under the Problem Statement of this chapter. In the next section, the key issues of this study are outlined and their importance justified, followed by principal findings and some potential beneficial implications of the study.

Regulation is the act of controlling and restricting human or societal behaviour by means of rules or restrictions and they may take many forms from legal restrictions promulgated by governments to self-regulation (voluntary codes) by individual firms (Bert-Jaap et al, 2006). Regulation also takes on such terms as *Codes* and *Practices* and these are discussed later in this section.

In the last ten years, Jamaica has implemented a swathe of regulations, mainly in response to failures in the financial system, breaches in public procurement and the use of public good for private gain by public employees. A closer examination of these regulations is perused in this study to determine, among others things, their effectiveness in modifying corporate behaviour towards greater compliance, effectiveness of implementation and enforcement and gaps in content that may exist. This examination would yield, it is hoped, a scientific basis for prescribing measures to strengthen the regulatory framework of Jamaica and to achieve a greater level of compliance.

¹Corporate governance structures in this study refer to laws, regulations and regulatory institutions and their role in CG development. See Appendices 6.

²Corporate governance practices in this study concern the board structural characteristics and its processes. See also Appendix 12 (item 1.7.17).

A strong regulatory framework provides for soundness and integrity of the financial system which could redound to better corporate governance and ultimately greater business confidence in the economy by would-be investors. Higher business confidence means greater likelihood of achieving a prosperous economy with an abundance of opportunities for the Jamaican people.

Indeed, for the last two decades, the practice of CG is dominated by “politically” negotiated codes (personal experience). Typically, regulation are the “hard” laws which carry with them punitive measures for non-compliance and the “soft” laws or codes, which in most cases, have no punishable element in response to non-compliance. However, while regulation are non-negotiable and are established by independent governmental or quasi-governmental organisations, codes (self-regulations) are usually negotiated by a homogenous group of organisations (in similar industry) or between countries with common interests; for example, the OECD Principles of Corporate Governance and the London Stock Exchange Rules adopted from the Cadbury Report by the LSE in 1999.

Regulations are a broader concept in which *Corporate Governance Structures* are placed in this thesis. These *CG* structures of concern are those *institutions*, reputational agents³, *rules* and *voluntary Best Practices* of CG, as defined by Oman (2001). These structures comprise formal and informal rules, including generally accepted practices, legislation, government regulatory bodies, stock-exchange listing rules, financial accounting standards, public disclosure, professional associations, business associations and chambers of commerce and watchdog groups. See Appendix 6.

On the other hand, in this thesis, the *Corporate Governance Practices* to be explored include: ownership and control or their separation in Jamaica companies, board characteristics and processes [Chairman/CEO duality or separation, board size, number of Non-Executives versus Executive directors on boards, number, type and size of board committees, tenure of Directors, gender equality issues (female representation), board performance evaluation and the nature], and the quality and content of corporate disclosure. CG Practices are activities that are actually implemented by employees and Directors as well as public sector officials. These ‘practices’ very often contradicts the written rules and codes as individuals sometimes do what they please to satisfy their own self-interests. It is one thing to implement strict rules but it is another issue when company Directors, employees and public officials do what they

³ Reputational agents refer to private sector agents, self-regulating bodies, the media, investment and corporate governance analysts, and civic society that reduce information asymmetry, improve monitoring of the firms, and shed light on opportunistic behavior (OECD/World Bank, 1999, June, Paris MOU).

please. These practices along with the identifiable CG structures will form the key issues of focus in this thesis. See section 3.7 for more on CG Practices.

Corruption: In this thesis, the perception and incidents of corruption are explored with a view of framing recommendations for policy consideration to minimize its prevalence in Jamaica. By this, it is hoped that business confidence will be improved and sustained and economic losses to government and the private sector reduced.

While corruption is treated in various ways from one culture to another, here, the focus is on political (mainly) and corporate corruption. On the one hand, political corruption is defined as use of legislated power by government officials for illegitimate private gain (Transparency International Annual Reports 1999-2007; CaPRI, 2007). The misuse of government power for other purposes, such as repression of political opponents and general police brutality, is not considered political corruption. In sum, the World Bank defines political corruption as the misuse of public office for private gain. Forty-five per cent (45%) of Jamaican people define corruption as the misuse of public office for private gain. On the other hand, corporate (private sector) corruption is defined as the abuse of power by corporate managers against shareholders or consumers (CaPRI, 2007:13).

Transparency International Corruption Perceptions Index (TICPI) which measures corruption among public officials and politicians within countries worldwide rates Jamaica at 3.6 out of 10 (ranking 64th). A score of ten on the TICPI connotes an almost corruption free status. Neighbouring Caribbean islands Barbados, Trinidad and Tobago and Cuba had scores of 6.9 and 3.8, respectively, the latter two having received equal rating. According to the World Bank (1997), “corruption frustrates the formation of social capital and violates public trust [and confidence] and corrodes social capital.” The World Bank further states that “[u]nchecked, the creeping accumulation of seemingly minor infractions can slowly erode political legitimacy.” (Ibid, 102–104). In other words, the legitimacy of a government (and ultimately the state) is undermined.

According to Nice (1986), “When public funds are squandered in unproductive ways or public Officials abuse the authority with which they have been entrusted, citizens will naturally be reluctant to permit expansion in government operations. This situation will be particularly important to people looking to government for assistance (p. 278). In fact, there is heavy reliance on government by citizens for various forms of services and as such, social security dependence is of growing proportion.

Ownership and Control: This study investigates the nature of existing corporate ownership in Jamaica and how, if at all, it influences important CG drivers such as board composition and leadership responses to emerging CG practices. High ownership concentration is assumed to characterise Jamaican firms and is associated with several governance problems such as the compliance with regulation, adoption of corporate governance recommendations, exclusion of employee and trade union representation, and the reliance on bank loans and family finance rather than public finance through the local capital markets, to name just a few.

Stakeholder Relations (Representation): Given the growing importance of stakeholder relations and representation in the international CG debate (Donaldson and Preston 1995; Sternberg 1997; Tirole 2001), and based on claims of stakeholder underrepresentation and voice among Jamaican corporate boards (pre-study personal knowledge), this study explores a wide range of stakeholder issues to better understand how employees, trade unions and others, contribute in firm-stakeholder interrelationships and organisational outcomes. This study assumes that a cordial and mutually beneficial stakeholder-firm relationship could foster long-term corporate value and strengthening firm external networks, corporate reputation and good corporate citizenship.

Perception and Role of IIs: The study of IIs in this thesis seeks an understanding of their importance and how their role can aid CG development. IIs hold voting rights, enter into dialogue with the management, stage proxy contests and voice concerns, ensure that board members have adequate experience and are truly independent, are usually privy to a wealth of information on their investee companies and this allows for early detection of risks, can boycott, display or withhold needed loyalty, and vote on key issues. According to Theurillat et al (2007), IIs can possess much clout as it relates to the operational and informational efficiency of the financial markets which engenders liquidity and transparency as well as guaranteeing good quality public information. With these myriad of possible levels of participation, the Jamaican IIs could indeed play a crucial role in improving the state of CG in Jamaica.

Board Characteristics and Processes: Given the exploratory nature of this study, it seeks to examine issues that have not previously been studied empirically in Jamaica in an effort to establish body of information on which further studies can be built. Some of the issues of critical importance are board size, Chairman/CEO duality of separation, non-executive versus Executive Directors, board committees and their composition, director tenure, gender and inequality issues, board performance evaluation, director training, frequency of

board meetings, timing of distribution of board papers; and proxy forms. The latter are not included in the key elements of focus of the thesis, albeit important.

Board's Role in Firm Strategic Decision-making: Board's role in decision making is a critical value-added contribution. However, because Directors are not often trained and properly prepared for their task, they come to the boardroom uncertain of their role and tend instead to become too involved in the day-to-day activity of the firm (personal experience). In this study, the role and extent of involvement of the Board and Senior Management, jointly and separately, are explored with the hope that the findings will yield beneficial answers to effect appropriate improvement in boardroom dynamics and effectiveness.

In the past two decades, there has been increasing scrutiny of Boards of Directors, increased vigilance by shareholders and a raging public scepticism in light of questionable events of corporate failures. Codes and guidelines have been issued by investor groups calling on boards to become more involved in firms' strategic decision-making processes. Whilst there is evidence that boards are becoming more involved (Spencer Stuart Board Index, 2008), the overwhelming impression, mainly from the business press, is one of boards' passivity and reluctance to introduce contestability into the boardroom (Stiles, 2001). In Jamaica, the passivity can be described as extreme and unbeneficial to shareholders themselves and by extension the investment community (personal experience). Though research on board involvement in strategic decision making have increased since the start of this decade, there remains a dearth of academic studies featuring the perceptions of Directors themselves as to their roles and influence in the core decision-making process of the organisation. This study also seeks to add new knowledge to existing literature on board's role in strategic decision-making.

Corporate Disclosure is critical in any CG debate and hence no less in the Jamaican context. There are many claims of weak disclosure regimes and inadequate coverage of published CG information (Jamaica Stock Exchange 2008 Report). In response, this study seeks to determine the nature, role, coverage, appropriateness of existing disclosure regimes and downsides, if any, with the intent of proposing others and strengthening existing regimes. See Appendix 3C for the detailed questions under the respective broad themes.

Furthermore, some companies did not comply with the Jamaica Stock Exchange (JSE) timely financial reporting guidelines and many other regulatory requirements within the financial sector. Consequently, these companies were often de-listed from the JSE resulting in the freezing of shareholders' investments as no stocks are traded during suspension. With weak, inadequate or the total lack of regulation, including those relating to shareholders'

protection, there was little or no compensation to these shareholders. Shareholders suffered the loss of opportunity cost of their investment, as well as, the total lack of access to their hard-earned assets as many of these companies were delisted on a temporary basis or over a protracted period. Findings of this study could assist in better understanding the underlying causes and propose solutions for an improved information disclosure regime for Jamaica. Hence, this issue should be of interest to the entire investment community and those interested in the theoretical aspects of corporate information disclosure.

Principal Findings: Some principal findings of this study revealed that while Jamaica has implemented several regulations and informal voluntary CG codes, there are still several regulatory gaps in coverage, content and effectiveness of implementation. Corruption is still rampant in spite of evidence of a reduction in 2008 compared to 2006 (TI 2008 Report). Ownership and control of Jamaican firms are highly concentrated giving way to such problems as an under-developed new issues market, a high degree of insider boards, inadequate minority protection, poor information disclosure, and incentives being aligned to dominant shareholders. Cross tabulations were conducted on selected categories of data (sectoral and industry groups) such as between listed and unlisted companies and between highly dispersed and closely held dominantly owned firms using variables such as board size, Chairman/CEO duality of separation, number of NEDs and Executive Directors, and presence of female Directors. In all the tests conducted, no statistical significance was observed, i.e., there no relationship to be found between an industry or sectoral group and the level of existence or prevalence of a particular variable. There is a lack of representation and voice of employee and trade union representatives in the Jamaican boardrooms and institutional investors (II), while controlling approximately 75% of listed companies, are not interested in promoting CG reform over and above the extent to which such efforts would redound to their self-interest. Notwithstanding this, IIs play influential roles in financing Jamaican politics and they control large distribution channels, and determine who gets large private sector contracts.

Several areas have been identified for reform. These include the need for regulatory strengthening in coverage and strategies for the effectiveness of enforcing legislations, implementation of anti-corruption measures, widening coverage and content of information disclosure, reform of corporate boards, director selection, and training, remuneration and performance evaluation issues.

The study seeks to contribute to the growing body of international literature on emerging markets corporate governance and targets primarily academics, practitioners and policymakers.

The remainder of this chapter includes seven sections. Section 1.2 outlines the subject matter contextual background and provides a background overview on recent developments and causes for concern in the local and international CG agenda. Section 1.3 articulates the importance of corporate governance and why. Section 1.4 outlines the problem statement and motivation of study which is two-fold: 1.) corporate governance problem, and 2.) public policy problem. Section 1.5 highlights the research challenges and triumphs while section 1.6 presents a selection of beneficial implications of this study. Section 1.7 presents the organisation of the different chapters of this thesis and section 1.8 summarises the issues of this chapter.

1.2 SUBJECT CONTEXTUAL BACKGROUND

In the two last decades, increased worldwide public attention as a result of high-profile corporate scandals and collapses such as Polly Peck, Bank of Credit and Commerce, Shell, Eurotunnel, and Maxwell/Mirror Group, in the United Kingdom, and Enron, WorldCom, Tyco and Aldelphia, in the United States of America, have forced governments, regulators and boards of companies to carefully reconsider fundamental issues of CG as essential for public economic interest. It was also reported in the 'Commonwealth Association for Corporate Governance Guidelines (CACG)', (August 1999:1,) that "volatility and instability experienced in emerging markets in recent times have drawn attention to the implications of corrupt practices and bad administration in national financial systems and on public expenditure."

In addition, increased privatization, financial market liberalisation, and high-profile corruption have led major international development and donor institutions such as the World Bank, OECD and the IMF to reconsider their approach to global governance. For example, the World Bank's increased focus on corporate behaviour, management, and policies has seen it paying particular attention to the governance of the banking sector, due to the sector's enormous influence on developing economies, especially where stock markets are underdeveloped, (Monks and Minow, 2008:395). According to the *Corporate Governance Policy* (World Bank), the resulting international debate on CG has shown that underlying principles of fairness, transparency, accountability and responsibility reflect minimum standards necessary to provide legitimacy to the corporate sector. It is hoped that the principles

could reduce financial crisis vulnerability and broaden and deepen access to development capital.

Jamaica, the focus of the thesis, has suffered from similar problems. In Jamaica, the *'Sunday Observer'* (October 17, 1999: pg. 1,4-7) in its front page article entitled, *'Busting the Piggy Bank,'* reported fat pay packets and disparities in public sector salaries. This report brought to public attention the fact that many public sector bosses were in breach of established pay guidelines and were paying themselves excessive salaries of millions of dollars at tax-payers' expense. After a full-scale investigation requested by the public and endorsed by the Government into the operations of more than 80% of the just under 200 public entities, then Prime Minister P. J Patterson reporting to Parliament on April 12, 1999 conceded that, "the Finance Ministry had lost control of the salaries in some of these state-owned companies." (Sunday Observer, 1999:1)

During the 1990s while prominent world financial markets (South East Asia, Russia and Argentina) collapsed resulting in significant losses in assets, closures of many financial institutions, loss of jobs and the plunging of many once booming economies into depression, Jamaica also experienced significant financial instability. Between 1993 and 1999 in Jamaica, several leading banks and other financial institutions collapsed or were bailed-out or taken over by others. Four of the country's largest and oldest insurance companies and at least fifteen merchant and investment banks and other financial institutions, which accounted for approximately 30% of depositors' value in all financial institutions, experienced closures (Bonnick, G., 1999.)

The Jamaican public has received no defensible explanation about these crises which occurred and directly affected both public and private companies. However, what remains evident is that the failures were partially due to poor administration and outright neglect of the duties of responsibility, care and loyalty to shareholders on the part of board Chairmen, Directors, CEOs and management (Hilton, 1999).

The Directors of boards are persons with whom the responsibility of governance is entrusted and therefore should be held accountable. Good CG is achieved when Directors and management agree on a set of principles and practices which seek to ensure accountability to shareholders and other stakeholders. Apart from each corporation's mission and values, the board and management must ensure that the laws governing good business conduct within their jurisdictions are upheld. In addition, the board's relationship with its internal and external stakeholders (customers, management, employees, shareholders, bankers, investors, suppliers, the community, media and others), ought to be ethically sound. To ensure that these

responsibilities are upheld by Directors, many countries have codified standards of conduct of boards especially for stock exchange-listed companies. According to Tricker (1994):

Whilst managerial processes have been widely explored, relatively little attention has been paid to the processes by which companies are governed. If management is about effectively and efficiently running businesses, governance is about seeing that this goal is properly achieved. All companies need governing as well as managing (Tricker R. I., 1994).

Critical to the assertions of Tricker, the governors (Directors) themselves need to be governed and so it is important that companies are not only managed by the managers but that there are structures and procedures to ensure checks and balances at all levels. The problem of poorly administered corporations has significant implications for stakeholders, and for the performance of the economy as a whole. For example, when the financial system collapses, a “ripple effect” is triggered causing widespread failures of “satellite” businesses. During the 1993-1999 melt-down of Jamaica’s financial system, scores of businesses, many totally unrelated to the financial sector, failed resulting in the loss of thousands of jobs, loss of foreign exchange earning potential, loss of national ownership of key institutions (as many were bought by foreigners) and loss of confidence in the political economy.

Unlike the more than sixty countries and major international institutions which have established national and international corporate governance codes (www.ecgi.org/codes/all_codes.php) to date, there is no national code for any Caribbean economy. In addition, efforts by the Private Sector Organisation of Jamaica (PSOJ) and the Caribbean Regional Taskforce on Corporate Governance (CRTCCG) have been criticised for being inadequate and inappropriate for the Jamaican and Caribbean realities, respectively. See chapter two, section 2.4.1.

1.3 THE IMPORTANCE OF CORPORATE GOVERNANCE AND WHY NOW

The process of continuous change has allowed developed countries such as Jamaica to establish a complex mosaic of laws, regulations, institutions, and implementation capacity in the public and private sectors. These systems of laws and institutions are by no means intended to shackle businesses but rather to allow them to function more effectively by attracting the best human capital and financial resources on affordable terms.

The economic crises of 1997 in East Asia, followed by those of Argentina and Brazil, and other regions, similar to the Jamaican crisis mentioned earlier, have demonstrated how

macro economic difficulties can be exacerbated by systematic failure of CG. In the Jamaican context, this failure stems from weak legal and regulatory systems, inconsistent accounting and auditing standards, poor banking practices, weak and unregulated capital markets, ineffective oversight by corporate Boards of Directors, and little regard for the rights of minority shareholders (Hilton 1999).

The case for the importance and study of CG in this thesis: corporate governance is important at this time and particularly for emerging economies like Jamaica for several reasons. First, the principal-agency problem is at the centre of what makes CG important. This problem grows out of the separation of ownership and control and of corporate outsiders and insiders (Berle and Means, 1932). In the absence of the protection and checks-and-balances that good CG provides, asymmetry of information and difficulties of monitoring mean that capital providers who lack control over the corporation will find it risky and costly to protect themselves from the opportunistic behaviour of managers or controlling shareholders.

Consequently, without meaningful protection for external capital providers, those who control the corporation can use their position to misappropriate economic benefits, often at the expense of long-term performance and value of the enterprise. Where poor CG is the norm, the problem extends beyond underperformance in the corporate sector to greater vulnerability of the financial system, since it is difficult for local capital providers (banks and institutional investors) to avoid governance risks (World Bank/OECD 1999)⁴.

Second, is that it is becoming increasingly clear that a healthy and competitive corporate sector is fundamental for sustained and shared growth - sustained in that it can withstand economic shocks, shared in that it delivers benefits to all of society. According to *Vision 2030, Jamaica*:

Good governance frameworks seek to be responsible for allowing rights and enforcing responsibilities for management at the appropriate levels; local, national, regional and global. Such governance frameworks enable the participation of all stakeholders in decision-making related to development and include mechanisms for ensuring transparency and accountability (PIOJ 2009).

Third, is that whether or not firms had previously seen it necessary to internationalize in search of larger markets, competitive pressures brought about by globalisation have now made it extremely necessary to tap both domestic and international markets in quantities and ways that would have been inconceivable even a decade ago. To effectively compete and

⁴ Corporate Governance: Framework for Implementation, World Bank/OECD 1999

attract international and domestic capital, the reputation of firms is becoming more and more important. Oman (2001) argues that increasingly, firms, individual investors, funds, banks and other financial institutions are basing their decisions not only on a company's outlook, but also on its reputation and its governance. It is the growing need to attract and access financial resources, domestic and foreign, and to harness the power of the private sector for economic and social progress that has brought CG into prominence the world over.

Fourth, sound CG is important not only to attract long term "potent capital" but more so, to broaden and deepen local capital markets by attracting local investors, both individual and institutional. Unlike international investors who can diversify their risks, Jamaican investors are often captive to the system and face greater risks, particularly in an environment that is opaque and does not protect the rights of minority shareholders (Kerr V, 2005:182-192). As a group, domestic investors constitute a large potential pool of stable long-term resources that is critical to development. If local capital markets are to grow, CG standards will need to improve to give investors the protection required to encourage them to provide capital.

Fifth, while Jamaica is not stacking up too badly with many of the regulatory frameworks in place, this is not the norm for the rest of the Caribbean, which features significant divergence in the maturity of supporting institutions, laws and regulations and human resources. The challenge for the Caribbean as a whole will be for the region to adopt systems of CG suitable to member countries' own corporate structures and implementation capacities, in the public and private sectors, to create a culture of enforcement and compliance. These small island states will need to do so in a manner that is credible and well understood both locally and across borders.

Sixth, CG has only recently emerged as a discipline in academia, although it has been a strand of political economy for centuries. While the importance of CG is now widely recognised, the terminology and analytical tools are still emerging. The voluminous literature now developed has largely ignored the developing world and significantly favours the developed and advanced industrialised economies. Therefore, this study comes at a critical time as it seeks to highlight the realities of CG in an emerging market such as Jamaica, in an effort to influence reform as well as to support the transition of CG into a profession and serve the best interests of academia, practitioners and policymakers in the private and public sectors.

Seventh, although CG may not prevent corruption, effective CG should make it more difficult for corrupt practices to develop and take root, and more likely that corrupt practices will be discovered early and eliminated. Effective corporate governance is a check on the

power of the relatively few individuals within the corporation who control large amounts of other people's money (Oman 2001).

Eight, by no means exhaustive, is the role of the World Bank in improving CG in developing countries, many with similar challenges to those faced by Jamaica and for which this thesis seeks solutions. In the late 1990s in Russia, a substantial share of profits of oil companies was siphoned off by their controlling shareholders, leaving the companies in debt to creditors, employees and the state. In the Czech Republic, thousands of small shareholders lost their investments as "tunneling" schemes by insiders, stripped privatized companies of their assets (www.worldbank.org/html/fbd/privatesector/cgi/worldbank/OECD/1999:2).

At the World Bank's annual meeting of October 1998, the Bank announced an initial raft of measures to improve governance worldwide, including expert and technical assistance, knowledge sharing and loans tied to CG reform. Very soon after, the Bank established an Internet site offering a catalogue of governance codes, research materials and links to CG resources. In Britain, the then Chancellor Gordon Brown, speaking at the above mentioned meeting, called for the Bank to endorse the OECD Principles and for the Bank's individual country reports to list how each market was implementing these principles. Brown was relentless in his plea and made further calls at the Commonwealth Summit and the meeting of G7 Finance Ministers for international principles and codes of Best Practices on CG and accounting as part of efforts to stabilise the global economy (Monks and Minow, 2008:395-396).

The seriousness and importance given to CG was further highlighted when the World Bank's President, James Wolfensohn, endorsed governance reform in "The Economist" of late 1998, in that publication's forecast for the coming year. He asserted that:

"Strong corporate governance produces good social progress and good corporate governance can make a difference by broadening ownership and reducing concentration of power within societies. It bolsters capital markets and stimulates innovation. It fosters longer-term foreign direct investment, reduces volatility, and deters capital flight."

Wolfensohn demanded tough rules of transparency and disclosure and stated that in Southeast Asia the Bank would lay down strict requirements for financial and corporate restructuring in return for financial assistance. The World Bank's crisis loans to Korea (US\$2 billion), Indonesia (US\$1 billion), Thailand (US\$400 million) and Malaysia (US\$300 million) were linked partly to CG reforms being made by those countries. These reforms were underpinned by studies conducted by the Bank's Chief Economist who found that countries

that pursue privatizations without putting good CG structures in place experience worse economic growth. These results support frequently voiced criticisms of the IMF for promoting free market policies without securing meaningful securities law, regulation, disclosure practices, etc. Furthermore, CG has been adopted as one of the 12 core best-practice standards by the international financial community.

In summary, corporate governance promotes greater transparency, accountability, and conformity to laws and regulations. As a result, wealth is maximised and long-term prosperity for the company, its owners and stakeholders is assured. Moreover, this preserves company integrity and reputation, as it minimises abuse of power, employment discrimination, mistreatment of shareholders, and poor accounting practices. Above all, CG can act as a shield against widespread financial crises.

Nonetheless, corporate governance is not just about a commitment to such ideals. More importantly, it emphasises the significance of ethics in business. For instance, a commitment to transparency results in better compliance to laws and regulations. Accordingly, this lessens the likelihood of fraudulent business dealings and allows corporations to attract more investments because of the increased confidence of local and international investors.

Having justified the importance of corporate governance and its relevance for study in this thesis, the problem statement and motivation of this study are outlined in the next section.

1.4 THE PROBLEM STATEMENT AND MOTIVATION OF STUDY

1.4.1 The Motivation for this Study

The motivation for this research is two-fold in nature. First, it is closely intertwined with the author's personal and professional ambition. The author having worked for nearly two decades in the private and public sectors of Jamaica, has developed a genuine appreciation for and wanting to contribute in a meaningful way to stemming the growing incidents of corruption in both the private and public sectors. He also has an interest in and passion for improving the state of regulatory maturity which is at varying stages, and for this reason, is often breached by the very enforcers and vanguards of the laws and government policies. Furthermore, there are weaknesses and lack of adequate oversight which give rise to other issues such as inefficiencies, ineffectiveness and bureaucratic red-tape in the delivery of public services and in many aspects of the private sector.

The author of this thesis in addition to wanting to make a personal and national contribution in helping to improve corporate and political governance, wants to do this consistent with his own professional aspirations, which is to further develop his management

consulting experience, public policy analytical skills and to contribute to the growing international body of scholarly work in the area of corporate governance through publications and policy dialogue. This research and its findings, albeit exploratory, is unique in the sense that it is the first of the kind for the Caribbean and could serve as a springboard on which to build further empirically rigorous and sound studies in furthering both public policy and general academic interests in CG within and beyond the Caribbean.

By the completion of this thesis, it is expected that the candidate will have honed his research and technical reporting writing skills, sharpen his analytical thinking, refined his research fieldwork techniques and be able to weave through voluminous literature and be able to get to essential issues expeditiously and effectively. All these experiences and new knowledge and skills can only serve to enhance his overall professional competencies in his chosen field and make a more rounded academic and practitioner.

The second motivational factor for this study has its genesis in two fundamental challenges with relevance to corporate governance and public policy. First, is the Corporate Governance Problem (CGP). Second, is the Public Policy Problem (PPP). Like any social problem, corporate governance arises from institutional, historical and political contexts. In expounding the research problem of this thesis, one cannot be but to make the logical connection and associations to these institutional, historical and political contexts.

The CGP is three fold in nature. First, is the lack of empirically sound data on any previous work on CG in emerging markets generally and in Jamaica, both prior to my commencement of doctoral studies in 2001 and subsequent to my publishing the book, *Effective Corporate Governance: An Emerging Market (Caribbean) Perspective in Governing Corporations in a Disparate World* in 2005. Second, is the lack of awareness and understanding of the importance of corporate governance to the Jamaican economy as evident by the absence of a National Corporate Governance Code. Third, are inadequate corporate governance structures and practices in the private and public institutional arrangement of Jamaica.

The second challenge is the Public Policy Problem. Like the CGP, there are three underlying issues. First, is a prevailing weak and relatively underdeveloped regulatory framework in both the private and public sectors, which has been proven to give way to collapses in the financial system and cases of public sector inefficiencies, fraud and corruption. Therefore, the need for public policy reform to improve CG, avoid corporate crises and minimise corruption in the public and private sectors is a matter of national importance (MFPS Paper No. 56, September 2002). Second, are systemic weaknesses in the local financial sector

which have resulted in a collapse of the financial sector during the 1990s. The third challenge is related to perennial incidents of real cases of corporate and political corruption, particularly in the public sector. Having identified the context of the CG problem in the preceding, this is therefore discussed in greater detail in the ensuing section.

Notwithstanding the above, the CGPs overlap the public policy problems and vice versa. On the one hand, the lack in CG awareness, dearth of empirical literature, and inadequacies and poor state of CG in public bodies, all implicate public policy. On the other hand, weak regulatory structure, systemic weaknesses in the financial sector and the perceptions and incidents of corruption in Jamaica, all have serious implications for the private corporatised sector in as much as they have critical implications for Government and the public service as a whole. Therefore, the issues of CG are inextricably linked with those of public policy and vice versa. **See Figure 1.0** for a diagrammatic illustration of the problem statement.

1.4.2 The Corporate Governance Problem in Jamaica

A dearth of empirical literature: There is a dearth of empirical data on CG in emerging markets generally and there has never been a study on any aspect of CG in Jamaica. Additionally, the lack of understanding of existing CG structures, corporate board practices-board composition and characteristics, the nature and role of corporate disclosure and the role of the board in strategic decision-making, among other factors, put Jamaica at a serious disadvantage at this time. Furthermore, the absence of formal studies on CG would further constrain any future attempt by Government or the private sector towards the development of a national CG framework, as there would be little or no background information, and more importantly, no empirically reliable data from which to draw.

It is essential that this theoretical gap be bridged. Hence, this thesis seeks to enrich CG scholarship for the benefit of practitioners (corporate profit-oriented leaders who want to improve board effectiveness and company performance), politicians and public policy experts (who want to improve accountability and transparency in Government and efficiency and effectiveness of public governance), the academic community of scholars, students and researchers (who want new insights into CG from a developing country's perspective), journalists, the media, watchdog groups and independent scholars and consultants.

A perceived lack of corporate governance awareness: Although there are no empirical studies on the level and nature of CG awareness among Jamaican professionals, it is this

Researcher's studied opinion and experience that at best, such knowledge would be at the very minimum. Like most other initiatives designed to benefit a broad spectrum of persons, to achieve buy-in, one seeks to encourage participatory governance, that is, to get the stakeholders on board in contributing to the decision making process. A necessary precursor to encouraging awareness building is the dissemination of Best Practices information and a concerted effort to convince the Government of both the merits of good CG and the urgent need for reform.

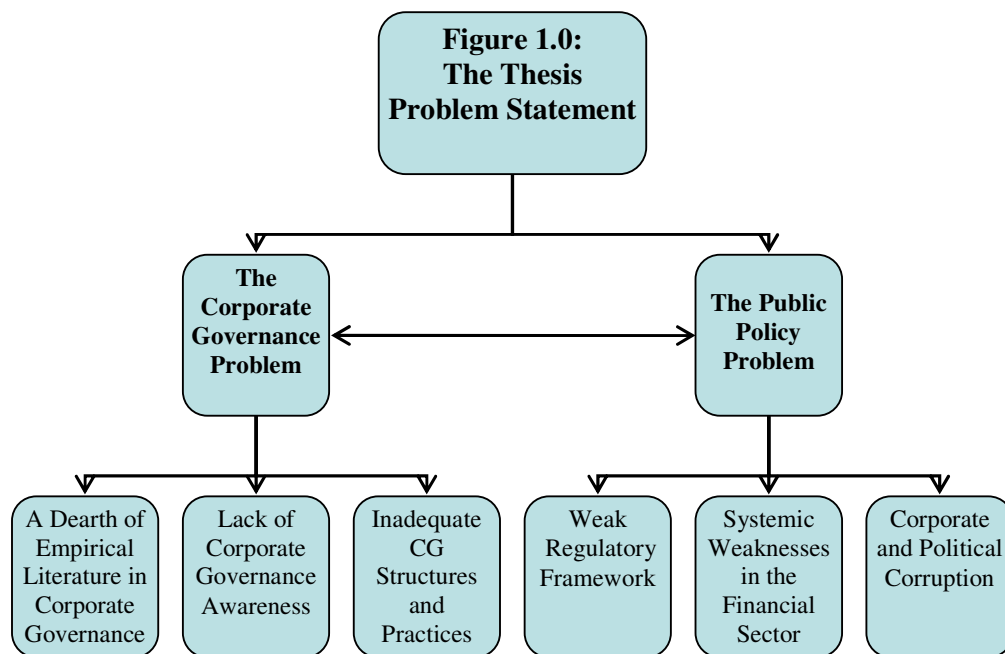
Inadequate CG structures and practices: The third plank of the CGP relates to inadequacies in laws, regulations institutional arrangements, standards of business practices, and failure to keep abreast with emerging trends in Best Practice adoption and implementation. In addressing these issues, several factors have been identified, which all have academic, public policy, and practical relevance to this study. These include: selection of Directors; director orientation, training and continued development, performance evaluation and accountability, board composition and committees and role of the board and key fiduciaries.

Historically, public boards are not as meticulously selected and oriented as private boards. The statutes governing some public companies prescribe the different stakeholder groups that should constitute the particular board. The 'responsible' Minister normally chooses his Directors from among a specified few or the person or persons submitted to him from each stakeholder group. Also, there are no written guidelines that set out the qualifications of a Director of a state-owned enterprise. This problem is exacerbated by the non-existence of a formal programme of orientation for 'first-time' Directors. Prior to 2002, there was no known programme of director orientation in Jamaica. However, in recent years, some companies have been offering such a programme which often involves providing Directors with the company's operational manual and director's guide book and familiarizing new directors with management and the business of the organisation. This practice of properly orientating new board members is far from being a common practice in the Jamaican public sector.

Board Evaluation: There is hardly any fully established system of evaluating and rewarding performance at the level of corporate boards in the public sector of Jamaica. It has been reported that only one stock market listed company is known to have experimented with the practice of evaluating its Board of Directors, albeit through peer review. In other words, performance evaluation of corporate boards is not a common practice in Jamaica, in the public and private sectors.

Board composition (diversity) is both limited and protected by some statutes. The statutes of State-owned Enterprises stipulate the different stakeholder groups and, to an extent, protect the integrity of board composition from the “Responsible Minister” who might otherwise be quick to appoint his political cronies.

Critical to the global debates on CG are the issues of director selection and orientation, performance accountability (evaluation) and board composition. These three issues have been determined from the doctoral research proposal stage to be of critical relevance in this study, given the importance of the effectiveness of State-owned Enterprises to the national economy. These themes have been studied in each research approach employed in this study, specifically, Interviewer’s Administered Questionnaire Surveys (IAQS) and Focus Group.



1.4.3. The Public Policy Problem in Jamaica

For the purposes of this analysis, the PPP has been earlier defined in the context of three issues: 1.) underdeveloped regulatory framework, 2.) systemic weaknesses in the financial regulatory structures, and 3.) the perception and incidences of corruption.

Underdeveloped Regulatory Framework: Firstly, Jamaica’s regulatory framework for both public and private sectors is a work in-progress. There is *wide disparity in the different stages of development* which spans many decades. Like other developing countries, Jamaica has not yet fully developed the legal and regulatory systems, enforcement capacities and the private sector institutions required to support effective CG. Also, attempts at reforming CG have tended to be reactive, rather than proactive, and usually focus on the surface issues.

Additionally, in spite of corporate collapses that have shaken the stock markets and big businesses in Asia (1997 East Asian Financial Sector Crisis), Russia, Argentina and Jamaica, the demise of Enron, Worldcom, Tyco and countless others, there has been no public proclamation or practical gesture by the Jamaican Government vis-à-vis enforced governance (regulations) versus volunteered governance (self-regulation). Furthermore, Jamaica has not kept pace with other common law jurisdictions (in the area of corporate governance development—emphasis added) but has tended to follow the UK model which did not codify the legal duties and responsibilities of Directors, nor regard the position as requiring any special training or skill (Bovell, C., 1999).

Systemic Weaknesses in the Financial Sector: Secondly, systemic weaknesses inherent in Jamaica’s financial regulatory sector had given way to a financial sector meltdown between the mid and late 1990s, which resulted in the demise of more than 150 companies, including 15 banks (5 commercial banks accounting for about sixty per cent (60%) of deposits in the population of nine commercial banks), 21 insurance companies (including all major life insurance companies with five accounting for over ninety per cent (90%) of premium income in business), one third of all merchant banks, 34 securities firms and several building societies, which were found insolvent and eventually had to cease operations (Bonnick 1999).

Table 1.0: Selected Failed Institutions (1990s Financial Sector Meltdown)

Company Name	Date of Intervention	Extent of Support (US\$ billions)
1) National Commercial Bank	February 1, 1997	\$0.22
2) Crown Eagle Life Insurance Company	November 1, 1997	\$0.17
3) Mutual Life Assurance Society	December 16, 1997	\$0.097
4) Loans Bank	February/March, 1998	\$0.091
5) Citizens Bank	September 30, 1997	\$0.03
6) Eagle Merchant Bank	November 1, 1997	\$0.03
7) Life Of Jamaica	July 18, 1997	\$0.02
8) Island Life Insurance Company	July 8, 1997	\$0.003
9) Dyoll Life Insurance Company	July 3, 1997	\$0.003
10) Caldon Finance Merchant Bank	March 22, 1998	\$0.0014
11) Fidelity Finance Merchant Bank	March 25, 1998	\$0.0014
12) Bill Craig Finance & Merchant Bank	January 1, 1998.	\$0.0001

Source: FINSAC website: www.finsac.com; Business Recovery Services Ltd (In-house data)

The meltdown of the financial sector presents a CGP on the one hand and a public policy problem on the other hand. It presents a public policy problem in that the failure of a significant number of businesses triggered a “ripple effect” resulting in the loss of thousands

of jobs, loss of national ownership and a general erosion of business confidence throughout the entire Jamaican economy.

Table 1.0 provides an impartial list of affected financial institutions during the meltdown which were bailed-out by the Financial Sector Adjustment Company (FINSAC), liquidated or bought by mainly foreign interests for less than their market value. Table 1.0 also lists some of the leading financial institutions, the date of FINSAC intervention and indicative cost to the Jamaican government (public) of the extent of FINSAC intervention. Among these institutions (Table 1.0), thousands of employees lost their jobs as a result of their collapsed or restricted operations. See Appendix 1 for a complete list of failed institutions.

Several of the financial institutions were taken over by the FINSAC and subsequently sold to foreign interests. Examples are Jamaica Citizens Bank, which was sold to the Trinidadian owned RBTT and Mutual Life, sold to the Trinidadian owned Guardian Life. In spite of the enormity of the above crisis and its implications on the financial sector, the labour market, economic growth and significant social deterioration in the economy, neither the Government of Jamaica nor the private sector have sought to conduct a comprehensive study into the reasons for the crisis. However, one exception was that of sectoral studies⁵ conducted by consultants and commissioned by the said Government. This financial crisis has been estimated to have cost the Jamaican tax payers in excess of US\$4.0 billion.

Public and Private Sector Corruption: The third case for the Public Policy Problem explored under this study relates to the perception and incidence of corruption in the private and public sectors of Jamaica. Exacerbating the financial crisis of the 1990s, on April 27, 1999 in the midst of the Government reeling from three days of riots over its aborted plans to increase taxes on petrol, then Opposition Spokesman on Finance, Mr. Audley Shaw, M.P., (Minister of Finance and The Public Service since September 2007), delivered yet another body blow. Mr. Shaw in his presentation to Parliament claimed:

“...that [Dr. Garvin Chen], the President of the National Investment Bank of Jamaica (NIBJ), was earning a salary of over J\$7.0 million a year, had a mortgage from the institution of J\$17.0 million and received very generous allowances. Other officials at the NIBJ had similar hefty packages. The NIBJ was not the only public sector entity where such payments were being thrown around. Indeed, it was common practice.” (Sunday Observer, pg.1, October 17, 1999.

This exposure of public sector excesses came in the aftermath of gas riots, the meltdown of the financial sector, the collapse of businesses and the Government’s call for belt-

⁵ FINSAC commissioned several sectoral studies with a view to better understanding aspects of the financial sector failures and its impact on the different sectors—banking, agriculture, manufacturing etc.

tightening. Shaw's (1999) assertion embarrassed the Government and gained currency with the public, forcing then Prime Minister Patterson to call together public sector bosses to insist that they follow established pay guidelines and to order a full scale investigation into the salaries of about 1000 bosses in approximately two hundred state-owned entities.

The Cabinet's summarised version of an 81-page report commissioned by the Government and conducted by PriceWaterhouseCoopers was tabled in Parliament six months after Mr. Shaw's revelations of April 27, 1999. It revealed that many other bosses of state owned entities were in breach of salary guidelines and were paying themselves excessively, millions of dollars of tax-payers money. Prime Minister Patterson in an address to Parliament on October 12, 1999, conceded that the Finance Ministry had lost control over the operation of many of these entities.

The report prepared by the Cabinet Office not only confirmed hefty pay packages in some agencies but have revealed glaring disparities between bosses and their deputies and more broadly across state-owned enterprises performing essentially the same functions.

Table 1.1 illustrates salary disparities among public sector bosses and their subordinates. Unlike in the United States where the salaries and perks of corporate executives of listed corporations and financial regulatory Public Bodies are required to be disclosed under the Securities and Exchange Commission laws, in Jamaica there is no such law and the practice in the public and private sectors is for the disclosure of just basic salaries, which may or may not include travelling and sometimes contractual gratuity as a substitute for pension. Therefore, while this table is void of perks and bonuses which is almost non-existent in the public sector, it provides an illustrative view of the disparities in salaries among public sector executives and a true reflection of the trend throughout the public sector.

Salaries (excesses) have come into questioning as indicated earlier among Jamaican public sector bosses and have triggered intensive debates over the state of internal controls in the public sector (Sunday Observer, October 17, 1999, *Busting the Piggy Bank*, pg. 1, 4-7). In the international context, several cases of salary excesses have made global news headlines and have resulted in many CEOs being fired, organisations coming under negative criticisms and even tarnishing of reputation. See *Financial Times* of May 9, 2002, pg. 22. According to Jacob Barney:

The first decade of the Twentieth Century began with a rash of large-scale corporate scandals touching every corner of the globe, and it draws to a close in the midst of a worldwide recession which, somewhat ironically, has brought to light gargantuan executive compensation packages,

resulting in widespread public outcry. Given the global nature of these two sets of corporate crises, it stood to reason that there would emerge a universal movement to revise the laws and practices controlling executive compensation. However, the mere fact that such a movement has emerged does not mean that the response to this movement will be uniform (http://works.bepress.com/jacob_barney/1/).

Table: 1.1: An Illustrative List of Salary Disparities among Public Sector Executives

Name of Organisation	Salary Paid to Exec. Head (mill J\$) (A)	Salary Paid to Senior VP (mill J\$) (B)	Extent of *Disparity (%) between A & B	Salary Paid to Manager (mill J\$) (C)	Extent of Disp. Bet. A & C (%)	Salary Paid to other Members (mill J\$)
BOJ	7.3	5.25	39.0	4.0	82.5	N/A
NDBJ	7.03	2.50	180.0	1.9	270.0	1.3
NIBJ	7.4	4.45	166.0	3.0-3.8	94.7-146.0	1.9
Heart Trust/NTA	5.3	3.3	60.6	2.99	77.25	—
SCJ	4.30	6.0**	-39.5	2.0 and under	200.0	—
UDC	0.53***	2.57		4.7-3.2		—
Petrojam	6.0	4.8	25.0	3.5-4.0	33.3-71.4	3.2
PAJ	6.0	3.48	49.5	3.48		—

Source: Extrapolated from information of the *Sunday Observer*, October 17, 1999, pg. 1, 4-7)

Keys: BOJ–Bank of Jamaica; NDBJ–National Development Bank of Jamaica; NIBJ–National Investment Bank of Jamaica; SCJ–Sugar Corporation of Jamaica; UDC– Urban Development Bank of Jamaica; PAJ–Port Authority of Jamaica

* Disparity is the difference in percentage pay that a CEO gets over and above his subordinates

** The general manager crop production makes more than the President of the SCJ. This is rather difficult to understand.

*** The Executive Chairman accepts only a travelling allowance as his Company Gentech Ltd. was already making billions of dollars in contracts from the Government.

Note briefly: US\$1=J\$60.0 at the approximate time of occurrence of breaches.

Therefore, Table 1.1 is also important in that it illustrates practical realities of salary disparities in the Jamaican public sector consistent with the issue as a major concern among both private and public sector companies internationally. In Table 1.1, the issue of salary disparity is treated as partial support to the existence and/or perception of corruption in the public sector of Jamaica. Also see Paul M. Guest (2009)⁶.

In underscoring the problem of corruption in Jamaica, two of Jamaica’s most important citizens in the likes of The Most Honourable Portia Lucretia Simpson-Miller, then Prime Minister of Jamaica, and the Contractor General of Jamaica, Mr. Greg Christie, have echoed sentiments to tackle the scourge of corruption. In her inaugural speech, The Most Honourable

⁶ Board structure and executive pay: evidence from the UK. Cambridge Journal of Economics Advance Access published online on July 14, 2009 (<http://cje.oxfordjournals.org/cgi/content/abstract/bep031v1>).

Portia Lucretia Simpson-Miller declared: “I want to pledge to the Jamaican People to work tirelessly to eradicate corruption”. This pronouncement by Prime Minister Simpson-Miller was the second of many goals she outlined to “facilitate change” in Jamaica (Jamaica Information Service, 2003). For his part, Mr. Christie has described corruption as a scourge that is strangling Jamaica to death and used the recent (2010, March 11) conviction of Sierra Leone's former health and environment, Sheiku Tejan Koroma, to urge journalists to focus on breaches of trust in relation to the Government's contract procurement process. In pointing the media to the conviction of Sheiku Tejan Koroma, Christie said it should encourage the press to "focus upon, and give deep thought to, similar issues with which we are currently faced here in Jamaica, particularly as they relate to matters which have to do with public procurement and government contracting and the abuse of office on the part of those in whom the Jamaican taxpayer has reposed his/her confidence" (Jamaica Observer, Friday March 12, 2010)⁷.

The Jamaican situation is exacerbated by the fact that laws governing political corruption—the Jamaican Constitution, The Representative of the People’s Act of 1944, The Corruption Prevention Act of 2003—are either weak in various aspects or not enforced in others. However, recent amendments to the Corruption Prevention Act signify possible improvement to corruption laws. While these legislative developments are taking place, critical entities such as the Commission for the Prevention of Corruption (CPC), have been encountering challenges in executing their duties. This is confirmed by the many complaints by civil society on various electronic media which would suggest that political victimization and a non-responsive citizenry are just some of the challenges besetting the CPC (Waller et al, 2007).

The problems of CG are further elaborated in chapter 2 which details the Jamaican contextual realities, including challenges to CG. Indeed, the challenges detailed in Chapter 2 further reinforce why CG is important and expand both the CG and public policy problems earlier exposed. These problems and challenges therefore form a basis for the structure and content of the literature review of Chapter three which seeks to provide theoretical, empirical and practical debates around the critical key research questions, focusing on opposing,

⁷Jamaica Observer (2010). *Corruption strangling Jamaica: Contractor General says conviction of Sierra Leone minister, holds lessons for Jamaica*, March 12, page 1.

concurring and contradicting perspectives. In the next section of this chapter, the research challenges and triumphs are discussed.

1.5 THE RESEARCH CHALLENGES AND TRIUMPHS

This section features critical factors which challenged the research agenda to the extent of making it difficult and/or interesting. These factors include the availability of data, selection of country, Anglo-Saxon dominance of the CG literature, empirical gaps, and resource constraints. These are discussed in the following segments.

1.5.1 Availability of Data and Access to Respondents

The limited availability of meaningful data makes a study on corporate governance practices and structures in Jamaica a challenging endeavour. Boards of Directors are not easily accessible, always busy, and often conduct their business behind closed boardroom doors (Maassen 2000). While stringent disclosure regulations provide detailed information on board practices in annual reports and proxy statements of listed companies in the UK and many continental European countries, the extent of the disclosure regulations in Jamaica is very limited and there is hardly any disclosure on CG practices.

In this study, it has been found that most databases (or available data) concentrated on financial information and were only available in the Annual Reports of Companies (in hard copy and on web sites) listed on the Jamaica Stock Market and/or non-listed financial institutions. However, with strategies such as establishing the right contacts within the companies studied, and the ability to network by attending various corporate activities of the targeted firms, these have contributed to this thesis, benefiting from much archival and unpublished data.

The prominence given to CG over the last decade has stimulated the interest of many academicians, institutions, independent researchers and countries, to the extent that there is already the publication of one scholarly journal (*Corporate Governance: An International Review*), several academic books and many research programmes sponsored by the OECD, World Bank and the Commonwealth Association for Corporate Governance, dedicated to promoting and disseminating scholarly work in CG. In addition, McKinsey Consulting Group, executive search firms such as Spencer Stuart, Korn Ferry International, and PricewaterhouseCoopers have produced research which has been used in this proposal. In addition, the Bank of Jamaica, the Financial Services Commission, Jamaica Stock Exchange,

case companies (GraceKennedy Limited, Capital & Credit Merchant Bank and Jamaica National Building Society), have made public, their CG activities (though largely voluntarily) which have been heavily utilised in this study.

At the time of preparing this research proposal (2002 August), many corporate misdeeds were making headlines all over the world, particularly in the USA. After 5 years (and at the time of finalising this thesis), there have been many responses vis-à-vis reforms to the turbulences that have shook the CG landscape only a decade ago. In Jamaica, there are increasing calls for reform, greater level of disclosure and more stringent requirements for auditors, from both private and public sector leaders. In this regard, a significant amount of information has been generated and has become available during 2006-2009.

1.5.2 Selection of Country

There are many other reasons for having chosen Jamaica for doctoral research in corporate governance. First, doctoral studies are meant to contribute to and advance knowledge in the chosen field of study. Given that no previous in-depth academic study on CG had ever been undertaken in Jamaica, this presented an opportunity to break new ground and become the first researcher to have completed a doctorate in CG based on the Caribbean context.

Second, the chosen research environment should exhibit a need and tolerance for the research and the convenience of the researcher. There was a need to strive in an environment of comfort and one with sufficient maneuvering ability—work, study and play without worrying about surviving (paying school fees and enjoying a quality life). In this regard, being self-funded was indeed a major factor as it was recognized that it would be advantageous to do fieldwork in an environment where the researcher earns while he learns.

Third, there should be some existing problem to provide motivation to the researcher and stimulate his intellectual curiosity. He should have more than a cursory desire for the project. The researcher had carefully and strategically decided that he wanted a “rare” degree in an area in which he would be the sole person, or at least, one among, not more than a few graduates.

Fourth, this author recognised that CG was an emerging field for academic studies and board services consulting and would require highly trained professionals. Fifth and the most important to the field of CG development, was the fact that it was realised from an early scan of the global CG literature, that most were Anglo-Saxon in origin, and hence the motivation to generate an urgently needed Caribbean body of CG literature was most imperative.

Notwithstanding the above stated reasons, Jamaica provided a fertile ground for CG research by the very nature of its own corporate failures that occurred during the 1990s—the era of “Fat Cats” and the Financial Sector Meltdown of 1993-1999. Also, during this period of thesis development, Jamaica had begun to recover from the financial melt-down and much activity was taking place in the public and private sectors in terms of new regulatory developments. For example, the passage of the Public Bodies Management and Accountability Act, 2001; the Access to Information Act, 2002, Corruption Prevention of Act 2003, and the revised Companies Act of Jamaica, 2004.

1.5.3 Anglo-Saxon Dominance and Empirical Gaps in Corporate Governance Research

This challenge relates to the bulk of Anglo-Saxon views that have dominated the CG literature. The existing body of knowledge is dominated by research on the structures and practices of corporate boards in the USA and UK, which most often apply shareholder perspective to CG. More so, these studies are mainly focused on quantitative research methods rather than exploring the realities of organisational contexts through one-on-one dialogue with organisational actors—Boards of Directors, CEOs, Corporate Secretaries, and other employees.

1.6 BENEFICIAL IMPLICATIONS OF THE STUDY

This thesis seeks answers to CG challenges in the public and private sectors of Jamaica and for this reason, focuses on an appropriate research strategy and methodology to ensure that its aims are realised. It focuses on advancing academic (theoretical) understanding, practical improvement in the effectiveness of public and private sector boards and public policy (corporate and political governance issues) reforms. More specifically, the potential beneficial implications of this study are highlighted in at least five ways as presented in the ensuing analysis.

First, this research is an attempt to provide the first and potentially beneficial source of an empirically sound body of CG literature to be accessible to by private and public sector planners, academicians, independent scholars and practitioners on Jamaica and the Caribbean. Second, the researcher’s presence in and interaction with (participant observer) research subjects and the wider business community during the fieldwork, has positively influenced the current stage of CG development in Jamaica. This was a stated potential beneficial implication in the formal Research Proposal of this study. This sensitisation was achieved through the

publication of numerous articles in the *Financial Gleaner* and participation in numerous conferences, seminars and academic colloquiums and extensive appearances and features in the local media regarding the author's role in CG development in Jamaica. Third, the research strategy and findings will have potential for the transfer to and replication (generality) in other Caribbean and emerging markets.

Fourth, it will influence international CG agenda by disseminating findings through books, book chapters, conferences, seminars and publications in recognised academic journals. Fifth, the emergent theory-testing and development aspects will improve the dearth of academic literature available on CG realities in emerging markets. Also, the results will most certainly add to the wider volume of academic literature on corporate governance, and provide unique experiences from a developing country's perspective.

1.7 ORGANISATION OF THE THESIS

This thesis is organised into four parts. Each part discusses different but complementing issues and weaves logical connection from one stage to the next. Part one consists of chapters 1 and 2. It provides an introduction to the thesis by identifying the key issues under study, justifies the importance of CG and why it deserves this particular attention at this time and articulates the problem and motivation for the research. Chapter two discusses the contextual setting of Jamaica. The specific topics for consideration are identified and explored under respective chapters.

Part two discusses the research theoretical and methodological framework and include chapters 3 and 4. Part three focuses on the findings of the research and presents analyses and discussions in Chapters 5, 6 and 7. Part four constitutes chapters 8 and 9 and presents analyses and discussions on theoretical, empirical and regulatory (public policy) gaps, proffers recommendations, policy reform and conclusions, suggestions for future research, and limitations of the study.

Chapter 2 discusses the Jamaican political, economic and socio-cultural dynamics, the governance framework (private and public sector), factors that challenge the CG agenda and local and global trends in CG. It ends with a summary and conclusions.

Chapter 3 explores nine broad themes after the introduction: 1.) brief history of CG development; 2.) corporate governance and its democratic principles, 3.) relevant theories of CG, 4.) regulation, 5.) perceptions and incidence of corruption, 6.) ownership and control patterns, stakeholder relations, perception and role of institutional investors, 7.) board characteristics and processes (board size, Chairman/CEO duality or separation, Non-Executive

Directors (NEDs) versus Executive Directors, board committee and composition, tenure of Directors, gender and inequality issues, board performance evaluation, and timing distribution of board papers and proxy forms) 8.) board's role in strategic decision-making and 9.) the nature of corporate disclosure.

Chapter 4 details the research objectives, research questions (key elements under study) and the research strategy and methodologies employed. It explores the aims and target users of the study, the focus of the study, epistemological issues, research design and data collection techniques, the research population, samples and response rate, data analysis and coding issues, the fieldwork overview and aims and target users of the research. Like the chapters before, it ends with a summary and conclusion. Chapter 4 essentially integrates the methodological approaches.

Chapter 5 analyses the role of regulation and political and corporate corruption. This chapter is indicative of the significance of regulation and corruption in CG and the response to the research problems of chapter 1 and research questions of chapter 4 while relating to the literature review on regulation and corruption of chapter 3.

Chapter 6 is the second of the result chapters and analyses ownership and control patterns, the role and nature of stakeholder relations (representation) and perception, and the role of institutional investors. These areas are in response to research problems under review and key elements (See Appendix 3A, 3B and 3C).

Chapter 7 analyses findings on board characteristics and processes, board's role in strategic decision-making and corporate disclosure. It integrates results obtained across methodological approaches similarly to those in chapters 5 and 6. These areas are consistent with the research problems under review, key elements, and research questions.

Chapter 8 outlines theoretical, empirical and public policy gaps and suggest recommendations for the way forward for public policy reform in Jamaica. It benefitted from suggestions made by participants of policy discussion groups held.

Chapter 9 is the concluding stage of the thesis. It synthesises research findings and presents conclusions in response to problem statements and research questions, addresses limitations of this study and proposes areas for future research.

1.8 CHAPTER SUMMARY

This chapter outlines the nature and focus of the study and includes seven sections along with this summary and conclusion. The chapter introduces and rationalises key areas under review and establishes the framework for further development of each problem

identified. Section 1.0 provides an introduction which defines the issues under study and section 1.2 presents an overview of recent developments in the local and international CG arena. Section 1.3 articulates why corporate governance is relevant at this time and why should be the study of interest to the reader. Section 1.4 sets out and articulates the problem statement and motivation for the study. It specifically identifies a lack of CG awareness in the wider Jamaican context, a dearth of empirical literature, poor state of institutional governance, disparity in the stages of regulatory development, systemic weaknesses in the financial regularity sector and the prevalence of corporate and political corruption as the main problems. Sections 1.5 highlights the research challenges while section 6 outlines the triumphs and beneficial implications of the study. Section 1.7 outlines the organisation of the thesis and identifies the broad themes of each chapter. It makes logical connections as it progresses to the concluding section.

The motivation for this research is two-fold in nature. First, it is closely intertwined with the candidate's personal and professional ambition. The second motivational factor for this study has its genesis in two fundamental challenges with relevance to corporate governance and public policy. First is the Corporate Governance Problem (CGP). Second is the Public Policy Problem (PPP). The candidate in addition to wanting to make a personal and national contribution in helping to improve an inadequate corporate and political system, wants to do this consistent with his own professional aspirations, which is to further develop his management consulting experience, public policy analytical skills, and to contribute to the growing international body of scholarly work in the area of corporate governance through publications and policy dialogue. This is the first of this kind of research for the Caribbean and could serve as a springboard on which to build further empirically rigorous and sound studies in furthering both public policy and general academic interests in corporate governance within and beyond the Caribbean.

CHAPTER 2: THE CONTEXTUAL SETTING

2.1 INTRODUCTION

The aim of this chapter is to outline the research contextual setting for a better understanding of the study environment. In doing so, it examines the following issues: section 2.2, an overview of the Jamaican economy; section 2.3., challenges to CG development; section 2.4, local and global trends in CG, and ends with section 2.5, the chapter summary.

2.2 OVERVIEW OF THE JAMAICAN ECONOMY

Party Political History: Like both the US and UK, Jamaica's economy grew rapidly during the post-war period with annual gross domestic product (GDP) growth rates of over 6%, buoyed by healthy export growth, and substantial foreign investment flows (Jefferson, 1972; Panton 2000). This impressive rate of growth was sustained until the 1970s when international crisis, world recession and poor economic management emphasis added, and the leadership of Michael Manley, led to a slowdown in growth (Kaufman, 1985). During the period of the 1970s, Michael Manley, leader of the People's National Party (PNP) and Prime Minister, pursued a radical campaign to nationalise the commanding heights of the economy and make extensive reforms in education, health, housing and other social factors (Stephens and Stephens 1986). As a result of external economic shocks and increased spending, Jamaica's economy suffered under the PNP between 1976 and 1980 as real GDP growth contracted by an average 3.2% per annum (Panton, 2000:78).

The Jamaica Labour Party (JLP) under the leadership of Edward Seaga was victorious in 1980 with a landslide victory of 49 seats to the PNP's 11. The JLP quickly established close ties with the Reagan and Thatcher administrations, (speculations were rife that Seaga had been working for the CIA in counter communism operations long before the elections and received substantial election backing from both Britain and America.) Seaga became the first foreign head of state to visit Reagan after his election in 1980. Similarly, Thatcher's principal advisor on privatisation (John Redwood of N M Rothschild) became senior advisor to the JLP government in its extensive privatisation programme (Adam et al, 1992). In spite of an economic growth rate of approximately 8% per year and drastic cuts in social services, the national deficit ballooned during the 1980s (PIOJ 1998).

Like the US and UK, Jamaica's economic growth slowed in the 1990s as a result of world recession (EIU, 1998). Since the 1990s and up to 2008, the economy grew an average of 0.9% per annum (PIOJ Data). In effect, what Seaga might have done is to experiment with

the western doctrine of neo-liberalism.⁸ Neo-liberalism has neither assisted in alleviating Jamaica's economic woes nor fulfilled the 'promise' of an economic transformation for any other developing country, after nearly three decades.

In early 1989, the PNP under Michael Manley was re-elected to power and shadowed his socialist practice by abandoning social democracy for the ideological convergence of the two political parties over the management of the economy towards greater market reform and economic liberalisation (Panton, 1993). As a result, when Manley retired as Prime Minister in 1992, his successor, P J Patterson, continued the party's market-oriented reforms both in principle and practice. Patterson went on to create history when he not only secured his own mandate in March 1993, but led his party to historic third and fourth terms in December 1997 and October 2002, respectively. Patterson resigned in March 2006 and handed over leadership to Jamaica's first female Prime Minister, Portia Simpson-Miller. After 18 months of her stewardship, the critics who had predicted a relatively short stint for her had their day when she was defeated at the polls by another newcomer, Orette Bruce Golding of the JLP on September 3, 2007 in the general elections.

Drivers of the Economy: Jamaica's small size limits its scope of growth and leads to dependency on four key pillars or drivers of foreign exchange: bauxite and alumina, tourism, the informal sector, and remittances. According to data from the World Fact Book 2008 (of the US CIA), Jamaica exported 71.3% of goods and services to the USA (30.2%), Canada (15.6%), China (15.21%), and the UK (10.3%) during 2006. In terms of imports, Jamaica imported a total of 62.4% of goods and services from USA (39.3%), Trinidad & Tobago (13.6%), and Venezuela (9.5%).

The bauxite and alumina industry contributes twenty-three per cent (23%) of exports of goods and services. Tourism generates thirty-seven per cent (37%) of foreign exchange and directly and indirectly employs twenty per cent (20%), (250,000 persons) of the labour force. The informal economy is estimated to be equivalent to forty-three per cent (43%) of GDP, and remittances grew ten-fold from US\$184 million in 1990 to US\$1,870 million in 2005, a level that is equivalent to eighteen per cent (18%) of GDP (2006 ESSJ Report, PIOJ). GDP for fiscal year 2008 was US\$20.88 billion with a per capita income of US\$7,400.00 (CIA World Fact Book 2009).

⁸ Neo-liberalism is based on the fundamentalist notion that markets are self-correcting, allocate resources efficiently, and serve the public interest well. It was this market fundamentalism that underlay Thatcherism, Reaganomics, and the so-called "Washington Consensus" in favor of privatisation, liberalisation, and independent central banks focusing single-mindedly on inflation.

Socio-Cultural Dynamics: On the socio-cultural level, Jamaica's racial structure differs from that of both the UK and the US in that dominant racial and ethnic groups make up roughly 90% of the population and co-exist, relatively peacefully, with the minority groups. The majority of Jamaicans are of African descent and the primary minority groups are European, Chinese and Indian in origin.

More importantly, the historical context out of which most Jamaican people arose is one of plantation slavery and colonial domination. This dates back to the late fifteenth Century when the island became part of the Spanish empire. The Spanish developed the plantation system and initiated the importation of African slaves to provide plantation labour. In 1655, the British conquered the island from the Spanish and further entrenched the plantation system by importing larger numbers of African slaves. As a result, Jamaica never became a settler colony and African slaves always outnumbered the white population.

Income from sugar made Jamaica a prized possession of the British Crown during the eighteenth Century, until Parliament ended the slave trade in 1807 and abolished slavery in 1838. It took upheaval and agitation among the Jamaican working class and tense and explosive riots prior to and during the 1930s to pave the way for adult suffrage in 1944, in which newly formed local political parties competed for the first time for leadership. However, it was not until 1962 that Jamaica gained full independence from Britain. Unfortunately, the systems, laws and government still remain a legacy of what obtains in Britain – the “winner” takes all model of governance and the British common law which dominates business and the judicial aspects of the Jamaican economy.

Indeed, several authors have stressed the importance of these institutions in shaping and defining the structure and character of modern Caribbean society (Panton 2000:88 c.f. Lindo 1994 and Beckford, 1972). Of note, while the vast majority of the population is represented by the descendants of African slaves, the minority classes control a majority of the nation's wealth. As this thesis develops, one of the critical legacies of Jamaica's historical context, which is that of ownership and control patterns of Jamaican firms, is further examined in chapters 3, 5 and 6.

Therefore, while Jamaica inherited its Westminster model of governance from Britain, whether or not this system remains relevant is beyond the scope of this study. Notwithstanding this, further research into such a system of governance should yield interesting findings.

2.3 CHALLENGES TO AND IMPLICATIONS FOR CORPORATE GOVERNANCE DEVELOPMENT IN JAMAICA

On the surface, Jamaica has strong formal institutions and has passed laws in the last decade in an effort to strengthen the legislative structures of the business sector, particularly the financial sector, critical among the major economic drivers of the economy. In the public service, Jamaica possesses a strong and competent civil service and in the area of political governance, a well-established parliamentary democracy and vibrant civil society.

However, there are many signs of weakening governance in Jamaica that transcend and cut across various developmental spheres. Given Jamaica's political history, especially the 1970s which have been characterised by tribal and divisive politics, the society continues to show signs of social and political polarisation. This makes it rather difficult at times to forge consensus on key policy issues in the interest of the populace.

Elements contributing to the weakening of governance in Jamaica, with particular emphasis on public policy relevance are reported in *Taskforce Report: Jamaica Development Plan 2030*. These are as follows: 1.) an alienation from existing political institutions and processes and increased disregard for the norms of civil society by a growing number of persons, especially the young; 2.) the redefined position of the State from its previous function as a development agency to that of a facilitator of market driven policies; 3.) poor performance of the economy and persistent poverty; 4.) the inability of the State to sustain levels of welfare that were put in place in the post-independence era; and 5.) increased criminal activity, including drug trafficking; and 6.0) sustained levels of 'crony capitalism' and competition in the public and private sectors (Shaw, A. 2007).

Case studies of Argentina, Brazil, Chile, China, India, Malaysia and South Africa suggest that there are forces working against significantly improved CG which may nonetheless give lip service to the need for improvement. These forces include dominant shareholders and other corporate insiders in the private and public sectors in entrenched distributional cartels. The heightened risk associated with regulatory capital in countries with clientelistic relationship-based (as opposed to rule-based) systems of corporate governance reinforces the fact that good CG requires good political governance, and vice-versa (Oman 2001:11).

With the preceding point made, other very crucial Jamaican challenges may have their roots in its economically powerful minorities—the powerhouse of the business class or dominant and powerful vested groups. Seventy-Five per cent (75%) of issued shares on the Jamaica Stock Exchange (JSE) among Jamaica's 45 listed companies are held by institutional

investors and among the institutional investor groups there are significant cross-holdings (JSE Report 2006). A small minority class, which is also connected by marriages between families, control almost all listed companies by being the largest shareholders and are also involved in the day-to-day management of these companies. These immigrant minorities include Portuguese, Jews, Syrians, Lebanese and Chinese but also include the mixed offspring of wealthy white plantation owners and black Jamaicans who are referred to in Jamaican terminology as “brown” or “Jamaica White” (Stone, C. 1988).

There are approximately twenty-one 21 of these families and they include the Issas (SuperClubs chain of hotels), Gordon “Butch” Stewart (Sandals Group of hotels and the ATL Group of Companies), McConnells (Lascelles DeMarcado Group, Carrearas Group and Trade Winds Farms), the Ashenheims (Carreras, Lascelles de Marcado); Chris Blackwell (Island Records, Island Outpost, Golden Eye, Strawberry Hill Hotel, Jamaica Black Gold Rum and Premium Jamaican Rum); The Johnsons (shipping and agricultural czars); The Levys (Jamaica Broilers Group and Ethanol Production); the Matalons (construction, financial and distribution interests); Michael Lee-Chin (AIC Canada and NCB Group Jamaica, etc), the Chen, family including Michael Lee-Chin (SuperPlus Supermarkets); the Hendricksons (hotel, baking and agricultural interests); the Duncans (financial); the Myers (fast food); the Lyns (fast food); Campbell (Capital & Credit Merchant Bank Limited, and Halls (Jamaica Producers Limited).

It is also instructive to note that the latter ten can be considered “new money” as they have earned most of their wealth only in the last one to two decades while the others have enjoyed more than three generations of wealth. Except for Campbell, the Duncans (mixed race) and the Halls, the others are predominantly white, Chinese and mid-eastern by ethnic origins.

This ownership arrangement poses several challenges to CG development. First, the shareholder environment is concentrated with a reliance on family, bank and public finance (government papers), giving rise to an underdeveloped new issue market and limited takeover market. For example, only four new companies have been listed on the JSE in the last twelve years, having gone through a ten-year ‘drought’, without the listing of a single stock between 1992 and 2002. In the corporate context, transparency and accountability (two pillars of good CG) are limited and there is inadequate minority protection. Furthermore, the boards are largely non-independent⁹ with a majority of insiders and incentives formally aligned with core

⁹ Non-independent means that most Directors on these boards have vested material interest in the particular organisation (s).

shareholders. Only approximately twenty-five per cent (25%) of assets are listed for each major company on the Jamaican Stock Market (JSE information, 2008).

Other challenges to CG have originated with scholars and practitioners. At one end of the CG debate, there are proponents who are in support of such practices as having majority board of non-executive Directors, reducing the emphasis on CEO performance-based compensation, splitting the duality of Chair/CEO, improving the quality of corporate disclosure, inter alia. In spite of the “hype” about the importance of good CG, questions are being raised as to whether or not there is credible evidence to support those claims. For example, do effective CG practices improve efficiency, effectiveness and accountability of corporations? This is just one of the many questions critics have been asking.

At the other end of the spectrum, the issues at the centre of the debates include: 1.) many company Directors are opposing the level of objective decision-making which comes with the call for a greater number of NEDs and independent Directors on boards; 2.) Directors are refuting the growing pressure to communicate strategies and policies to the primary institutional investors; 3.) others believe the current global CG initiatives aimed at “improving” CG in the UK and elsewhere have simply served to slow down decision-making and create more red tape and bureaucracy (Solomon, G 2007:69). One popular Jamaica corporate executive had concerns about what he calls “over-regulation” and had the following to say:

“...Although there is a prescribed approach, in recent times, for CG that comes from state-empowered regulators, which make recommendations about what ought to be done...it is up to corporate executives to do the right thing to keep the State out of the boardroom...or else be exposed to the downside of over-regulation. (Jarrett, Earl, Business Observer, April 13, 2005: pg. 15B).

However, Professor Clarke, the inaugural Director of Australia’s largest multidisciplinary research group on CG and a leading proponent of good corporate regulations posited both concurring and opposing views for corporate governance regulations. According to Professor Clarke:

A swathe of new...regulations and laws on CG do not amount to over-regulation. The debacles of HIH, FAI and OneTel (problem plagued Australian firms) have been a reminder that the purpose of business is not only to generate wealth, but to retain it, and to see that it is used for the purposes for which it was intended. Further, with a raft of regulations and new laws coming, including the ASX CG Guidelines, CLERP 9, and the HIH Commission Report, it might be feared that Australia is moving into a period of over-regulation as occurred with the Sarbanes-Oxley Act in the United States in response to the Enron and Worldcom collapse. This could occur, but

only if the guidelines are implemented in the wrong way. What is required is intelligent engagement with higher standards of corporate governance, not unthinking compliance. (Thomas Clarke, speech delivered at the launch of the Centre for Corporate Governance at the University of Technology, Sydney).
(www.uts.edu.au/new/releases/2003/mark/18.html.)

The Cadbury Report (1992), in a concurring view, emphasised the importance of avoiding excessive control and recognised that no system of control can completely eliminate the risk of fraud without hindering companies' ability in a free market (Cadbury Report 1992, pg. 12, para. 1.9). This is quite instructive and in reinforcing his argument, Jarrett (2005), went further: "...that real CG would only happen when it is intricately tied to one's personal value system and that its absence would be an imminent step towards the ultimate collapse of any company." Another author said that human nature cannot be altered through regulation and checks and balances (Solomon 2007: 69). Yet, Sir Adrian Cadbury¹⁰, in a speech delivered at the launch of the Centre for CG at the University of Technology Sydney, states: "underperforming boards were a greater threat than dishonest ones and that a main thrust of CG reform should be to raise standards of performance, as well as, to check malpractice".

From the ensuing discussion, it is important that a balance is struck between accountability and transparency of operations and the ability of entrepreneurs to operate competitively and efficiently. In spite of the skepticisms as to whether good CG adds to the bottom-line and leads to prosperous companies, the evidence is overwhelming. See McKinsey and Company, 2000; Mackenzie, 2004; and Moxey, 2004.

Richard Branson was the primary owner of the Virgin Company from its creation. After many years, he was persuaded to become listed on the London Stock Exchange as this would provide valuable funds for his varied business ventures and endless new projects. A number of trips to the City of London where he met with institutional shareholders and reported to other shareholders, seem to have cramped his style of business management, and he was in the least a proponent of the accountability regulation and corporate governance practices recommended by Cadbury. Branson withdrew his company from the London Stock Exchange as soon as he could in the 1980s. He reported that excessive corporate governance hindered his ability to make things happen and slowed down his decision-making processes. For Branson, the problems of accountability far outweigh the benefits.

¹⁰ Sir Adrian, Chairman of Cadbury Schweppes, drafted the first code of corporate governance in the UK in 1992 and has advised the OECD and World Bank on corporate governance principles.

The Branson analogy finds favour with common criticisms of CG reform, especially of national codes, in that they slow down decisions at company board level and makes running a company unnecessarily difficult by hindering innovation and creativity (opinions expressed by fellow Directors of several boards).

2.4 LOCAL AND GLOBAL TRENDS IN CG DEVELOPMENT

In spite of the fact that there has been no formal national CG framework in Jamaica, there are many existing structures, and companies that have been made sensitive to the renewed attention being given to this subject. Since the meltdown of the Jamaican financial sector, the Government has taken the lead, in many regards, to ensure a healthier financial sector and CG environment. In this section, emerging trends in Jamaica have been summarised in Table 2.1 under three sub-headings, namely, existing governance framework, changes in boards, and to some extent regulatory frameworks and current issues. Highlights of PSOJ Code of CG are presented in the next section.

2.4.1 The PSOJ Code

The PSOJ Code is based on The Combined Code on CG issued by the Financial Reporting Council (FRC) of the United Kingdom (UK) on 23 July 2003. It has been compiled by the CG Committee of the PSOJ. Part 1 (“the Principles”) of this Code sets out core Best Practices it hoped it would be effected for annual reporting periods commencing on or after 1st January 2007. It was also hoped that those companies, if any, that are able to do so would adhere to Part 2 of the Code (“Best Practices”) as soon as may be practical.

The Code presents the core Principles and Best Practices that the Committee proposes for adoption by all listed companies in Jamaica and non-listed companies engaged in the provision of financial services. Also, it was the hope of the PSOJ that other non-listed companies would be guided by the Principles and adapt these Best Practices where practicable. According to the Code (para. 2: pg. 1):

The Committee has tailored the provisions of the FRC code to suit the “Jamaican business climate”, in particular the embryonic state of CG. The Committee has also taken into consideration the small number of listed companies and consequently the small number of business people, who would qualify for appointment as non-executive directors.

It can be gleaned from the Code that its authors intended for companies to have a free hand in the spirit of good CG and to explain their governance policies in the light of

Principles, including any unique circumstances which would have led to a particular approach. The Code requires a company to either confirm that it complies with the Code's Principles or where it does not, to provide a reasoned explanation. This author believes that the Cadbury requirement to 'comply or explain' is a major weakness of the Cadbury Report (1992). Even though it has gained wide acceptance by companies and investors worldwide, it may serve as a disincentive for others not to make the extra effort to be responsive to good CG practices—in that they can explain themselves out of being non-compliant. Additionally, markets cannot be run without mandatory rules which provide a level playing field for all. In the same manner, markets need flexibility so that businesses can respond rapidly to sudden changes which could otherwise ruin businesses. Therefore, as well-intended as the Cadbury Report is, a mix of both "hard" and "soft" laws would be more palatable from this author's studied opinion. See Appendix 11 for the highlights of Core Principles of the PSOJ Code (also at <http://www.psoj.org>: assessed May 11, 2009).

In spite of the good intentions and significant efforts that have gone into developing the Code, it has been met with lukewarm responses from intended users. There are many reasons for this but I shall identify and briefly discuss the more salient ones.

First, the PSOJ did no prior empirical assessment of the CG landscape to determine existing frameworks and practices with a view of filling the gaps—needed areas of reforms. Indeed, correction of this failure by the PSOJ is hoped to be addressed as a key aim of this study. Second, the application of poor strategies to achieve buy-ins from key stakeholders which could have been more successful if employed at the front-end, especially before the imposition of the Codes on the intended users. Third, a Code of such importance should never have been designed and positioned to suit just listed companies, mainly the financial sector- a minority group in terms of numbers—only forty-four (44) traded at best on any trading day, and the non-financial companies which would have already had a swathe of regulations and are now even more concerned about "over-regulation" (Jarrett, 2005). Fourth, the "comply or explain" clause which might have relevance and workability in the UK, would not work easily in Jamaica with seventy-five (75%) per cent of companies owned by a few connected persons. With this level of ownership concentration, it is difficult to achieve buy-in when these owners see CG regulations (and self-regulation) as being expensive and unnecessary. Fifth, the Code lacks even a presentation or explanation of the methodology used to develop it.

In addition, as a member of the PSOJ CG Committee (2005-2008), this author tried assiduously to convince his colleagues of the value of the following combination of

approaches to increase the likelihood of acceptance of the Code by both the private and public sectors of Jamaica.

Borrowing from the approaches and experiences of those establishing National CG Codes of South Africa (King Report), Singapore (CG Code), Canada (The Dey Report), Australia and many others, I suggested that planning and formulating relevant CG guidelines for Jamaica must include, in no order of priority, a mix of several important considerations: 1.) self-assessment of the state of member institutions must be achieved before any sound and meaningful agenda can be developed and implemented. Paradoxically, the PSOJ commissioned a study to determine CG structures and practices among approximately fifty (50) companies about twelve (12) months after the Code was launched and distributed; 2.) Knowledge on Best Practices must be disseminated; 3.) Government and the public must understand the merits of good CG and the urgent need for reform; 4.) Government should be encouraged to develop their capacity to implement reform and the capacity of self-regulatory bodies to develop and execute their own reform; 5.) build consensus for policy, regulatory, and legal institutional structures; 6.) frame CG strategies against the transient and vulnerable state of the Jamaican economy to globalisation, the internationalisation of local firms, and the realities of the increased regulatory demands of international financial markets and systems; 7.) be prepared to address CG issues that go beyond Jamaica, to include the Caribbean; 8.) be opened to draw on local and emerging expertise; 9.) train the various professionals and the other agents who are essential to bring about a culture of compliance. These are not difficult to be achieved as training has begun, and there is a growing tendency towards greater awareness building and compliance. Notwithstanding the above, corporate governance is multi-disciplinary and requires the contribution of intense academic and scholarly intervention. Equally, the practitioners must play their role.

The CG codes of South Africa, Singapore and Canada have been highlighted as possible sources guidelines for Jamaica from the perspective of similar governance (corporate and political) systems and as members of the Commonwealth, which also presents many other similarities. In spite of the successes of each in their respective countries, to improve CG weaknesses in the public and private sectors, they should not be misconstrued to be panaceas or solutions to Jamaica's CG challenges. In fact, there are many other good examples within the Commonwealth from which similar or other lessons could be drawn. To just list a few others, Australia, New Zealand and Malaysia (and still others), were able to develop and establish CG guidelines and regulations within a few years because their Governments were fully on board from the beginning. The level of mistrust of politicians and lack of political will

to act were less problematic than the reality in Jamaica. Furthermore, these countries all had what could be called a “Country Strategy” on CG. These Governments understood their role as facilitators too well, and were never seen as barriers to progress. It must also be stressed that most of the countries CG Codes mentioned in the preceding were developed with the respective private sector groups playing a lead role. The conceptualisation and in-depth planning and strategising were left up to the private sector groups.

Table 2.1: Emerging Corporate Governance Trends in Jamaica

<p>Existing Governance Framework:</p> <ul style="list-style-type: none"> ▪ The Companies Act of Jamaica 2004 provides minimum requirements on disclosure of board practices, a diversity in the composition and structure of corporate boards, introduces the concept of a “Shadow Director”¹¹, and penalty of up to \$1,000,000 or six months imprisonment for neglect of fiduciary duties; but still does not provide recourse for compensation of shareholders where a company fails to fulfil its mandate to shareholders. It does not stipulate who should be directors and how the board should be composed. ▪ The Financial Services Commission Act of 2001 (the Act)¹² establishes the Financial Services Commission (FSC) as the entity responsible for the regulatory and supervisory control of institutions providing financial services (which services do not include deposit taking services). The FSC succeeds the Securities Commission (1994). ▪ The FSC in addition to its role as a securities’ regulator, has recently been conferred with the responsibility for the Insurance Act, Mutual Funds Act and Pension Funds Act.
<p>Regulatory agencies, boards of listed and unlisted corporations are undergoing changes:</p> <ul style="list-style-type: none"> ▪ In response to the financial crisis of the mid 1990s, the BOJ has since implemented new and more stringent ‘fit and proper’ requirements for directors. ▪ The establishment of the Financial Adjustment Company (FINSAC) as well as recommending more disclosures of personal and company activities and connections. ▪ At March 2008, as many as 20 Jamaican (local) companies have been making CG disclosure in their annual reports. <p>Current Issues:</p> <ul style="list-style-type: none"> ▪ PSJO launches CG Code in 2006 but the Code has been met with lukewarm response from the private sector for whom it was drafted. ▪ JSE Best Practice Awards Competition was launched in 2005. ▪ The Jamaica Depository Insurance Corporation (JDIC) protects depositors up to the sum of \$600,000 in the event of a failure of a depositor’s institution. ▪ ICAJ has introduced International Financial Reporting Standard (IFRS) as mandatory requirements for companies. ▪ Ministry of Finance and The Public Service had mandated all public entities to adopt accrual basis of accounting in line with IFRS.

¹¹ A “Shadow Director” is a person in accordance with whose direction or instructions the directors of a Company are accustomed to act Section 741 (2), Companies Act of Britain 1985; Section 251, Insolvency Act 1986-Section 22 (5), Company Directors Disqualification Act 1986. According to Field Fisher Waterhouse (2004), professional advisors acting in that capacity are exempt from being Shadow directors. A person can only be a Shadow Director of a registered Company under the Companies Act. This includes a Company limited by shares or guarantee. Firms not under the Companies Act such as statutory corporations or other corporate bodies, cannot have Shadow Directors.

¹² The Act defines financial services as 'non-deposit' taking services which are provided in connection with insurance, the acquisition or disposal of securities within the meaning of the Securities Act, and units under a registered Unit Trust scheme within the meaning of the Unit Trust Act, as well as, such other services as the Minister of Finance may by order declare to be financial services. The financial institutions to which the Act applies are institutions or persons offering or providing the above-mentioned financial services to the public. This Act is response to the need for tighter regulatory powers and greater control of the financial sector arising out of the events of the 1990s.

2.4.2 Global Trends in Corporate Governance

The purpose of this section is to enrich the discussion by an understanding of developing CG trends beyond the Caribbean to examine how Jamaican CG stock when compared to these international trends. The section draws heavily on the CG principles issued by the OECD in 1999 for its members and which have been serving ever since as a blue print for Best Practices standards around the world. This author has identified from careful study and analysis of the literature, the ten most trendy practices and issues based on activities in at least 25 countries on all continents. See Table 2.2 (Jamaica and the Caribbean added for emphasis on comparative analyses). Notwithstanding the differences or similarities shown between Jamaica and the other countries, the focus of this thesis and the key issues it targets are necessary to gain a better understanding of the most appropriate applications of these principles in the Jamaican context given its institutional, historical, political and cultural uniqueness.

After extensive and careful review of the OECD Principles (1999) that has chronicled developments in more than twenty (20) of its member-countries, two striking revelations came to the fore. First, differences among cultures, traditions, social institutions, laws, and stages of economic development have helped to shape CG practices, globally. Second, the largest multinational companies, major players in the global capital markets, are having more and more in common. For them, the question is not whether they will grapple with the same CG issues their Anglo-American counterparts have been facing, but when, and how, they will evolve a CG system which meets the needs of largely Anglo-American-dominated global capital markets.

The 10-point Matrix represented by Table 2.2 summarises the ten (10) most important issues on the global CG agenda, particularly in the last five years, and as recently as the last quarter of 2007. First, *CG Codification*, OECD through a World Bank funded programme, has been promoting the development of national codes of CG Best Practices in all its member countries, since 1999. As stated earlier in chapter one, at the end of June 2008, at least 65 countries would have established a national CG code.

Second, *board models-two-tier versus one-tier models*: The former Soviet states of Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan and Uzbekistan have gone through a CG revolution between 2000 and 2003 and have joined countries such as Germany, France, the Netherlands and Switzerland in having either full or partial two-tier board models. In Central and Eastern Europe, countries such as Russia, Poland, The Czech Republic and

Hungary have maintained a dual board model arrangement (both unitary and two-tier). However, these structural arrangements of the boards (one or two-tier) do not guarantee that they operate according to the 'letter of the law'. In fact, based on the author's studied opinion in the Jamaican context, boards in the private sector (listed and unlisted companies), in spite of the rules of the industry or business laws, tend to do what they please by ignoring the rules of trade. In many European jurisdictions, anonymous informants also advised that many companies operate similarly to those in Jamaica, by ignoring the rules. Also, the source remarked that Directors are largely persons who are put in place to carry-out the wishes of the owners (personal communication).

Third, *board size and composition*: There has been a noticeable global shift towards smaller boards in the last decade. For example, executive search firm Spencer Stuart's 13th Annual Survey of board practices in large US companies found that average board size had shrunk from 15 in 1998 to 10.9 in 2002. One quarter of S&P 500 boards had between eight and nine Directors, as opposed to sixteen, five years earlier. In a number of countries, minimum board size is determined by national law or listing requirements. An analysis of Ethical Investment Research Services (EIRIS) data (Autumn 2004) show that average board size for a selected number of twenty-five (25) countries, including leading industrial nations across all continents, was 11.9. Nell and Minow (2008) reported on data from The Corporate Library' data base that the smallest board in that system was Wave Wireless with two Directors, i.e., the CEO and one outsider (following the resignation of three Directors). The largest was Capital Bancorp at twenty-three (23).

Fourth, *Chairman/CEO duality or separation*: It can be seen from data in Table 2.2 that at one extreme, countries such as Austria, Ireland and Norway all have 100% separation of the role of Chairman from that of CEO, others such as Australia (97%), New Zealand (95%), Netherlands (97%) and the UK (94.2%) have near 100% separation. The middle ground countries are France (52%), Greece (58%), Portugal (68%), and Spain (58%). At the other extreme the United States of America is the only country with less than thirty per cent (30%) or exactly twenty-four per cent (24%) of separation of the roles of CEO and Chair (EIRIS data 2004). However, Spencer Stuart Board Index (2006), a globally authoritative source on CG information and a leading board consulting firm- have concluded that more companies have separated the chairman and CEO roles in the last seven years. For example, sixty-seven per cent (67%) of all S&P 500 company boards have a combined chairman/CEO, down from seventy-one per cent (71%) in 2003 and seventy-four per cent (74%) in 2001. Further, 158

companies had separated the roles in 2003 compared with 140 in 2002. Of these, 100 companies have a non-independent chair (compared with 94 last year) and 48 have an independent chair (compared with 43 last year). Ten (10) companies did not list a chairman. Therefore, only ten per cent (10%) of boards (48/484) have a truly independent chairman. What are the advantages and disadvantages of separating these two roles? See Chairman/CEO Duality or Separation in Chapter 6.

Fifth, the *establishment of strategic board committees*, such as audit, selection, and remuneration. From Table 2.2, almost all countries examined, had at least three major board committees with audit, the most popular and an increasing trend of more CG and compensation committees being established.

Sixth, is *rule-based or enforced governance versus market-oriented or volunteered governance*. The emphasis has been on volunteered governance through the Cadbury (1992) recommendations, but there is also the enforcement of specific disclosure rules, and board composition issues as they relate to independent Directors, and that an outside independent Director should chair the Audit committee. These developments are becoming the norm rather than the exception in many countries. For example, the Sarbanes-Oxley Act of the United States which has been the most profound piece of financial legislation since 2002.

Seventh, Best Practices *CG incorporated in Stock Exchange Guidelines* of most markets on some scale or another, directly or indirectly.

Eighth, issues of *AGM, proxy voting and the publication of executive pay*. Electronic voting is now accepted in countries such as Canada and the Czech Republic.

Ninth, *shareholder activism* is no longer concentrated in the USA. It has now spread throughout the globe, and is gaining strong presence in Europe and Asia.

Tenth, *employee rights and representation*: Employees continue to have board representation, mainly in countries where work councils and trade unions are highly developed, such as the USA, Germany and France. There is much to be desired in this matter, on a global level, and in Jamaica, in particular.

The above discussion on global trends is meant to provide a feel of the critically emerging issues on the CG agenda at this time, and establishes the background for close empirical and theoretical scrutiny in chapter 6 where the researcher's findings and analysis are presented.

Table 2.2: The Ten-Point Matrix of Global CG Trends

Countries	Corporate Governance codification	Board Models Unitary vs. Two-tier	Shift towards Board size reduction & NXD in Majority	Separation of Chairman & CEO duality Roles (%)	Presence of key Committee: Audit, Selection, Compensation, Corporate Governance	Volunteered Governance (gv) or Enforced governance (ge)	Corporate gov. influencing stock markets rules	AGM, Proxy (mm, ev) & publication of executive pay	Shareholders' activism growing	Employee rights & representation
Australia	✓	U	✓	97.3	✓	Dual	✓	MB	✓	NN
Austria	✓	TT	✓	100	✓	GE	✓	NN	✓	✓
Belgium	✓	U	✓	84.6	✓	GE/GV	✓	EV, MB	✓	NN
Canada	✓	U	✓	79.9	✓	GE/GV	✓	EV, MB	✓	✓
Czech Re.	✓	Dual	✓	NA	✓	GE/GV	✓	NN	✓	✓
Denmark	✓	TT	✓	NN	✓	GE/GV	✓	NN	✓	✓
France	✓	20% tt 80% U	✓	52.0	✓	GE/GV	✓	NN	✓	✓
Finland	✓	U	✓	87.5		GE/GV	✓		✓	✓
Germany	✓	TT	✓	97.7	✓	GE	✓	EV	✓	✓
Greece	✓	U	✓	58.3	✓	GE/GV	✓	NN	✓	✓
Ireland	✓	U	✓	100.0	✓	GV/GE	✓	NN	✓	✓
Italy	✓	U	✓	88.8	✓	GE/GV	✓	EV, MB	✓	NN
Japan	✓	U	✓	50.8	✓	GE	✓	NN	✓	M
Korea	✓	U	✓	NN	✓	GE/GV	✓	NN	✓	NN
Mexico	✓	U	✓	NN	✓	GE/GV	✓	NN	✓	NN
Netherlands	✓	TT	✓	95.0	✓	GE	✓	MB	✓	✓
New Zealand	✓	U	✓	95.5	✓	GE/GV	✓	MB	✓	NN
Norway	✓	TT	✓	100.0	✓	GE	✓	NN	✓	✓
Poland	✓	Dual	✓	NN	✓	GE/GV	✓	NN	✓	✓
Portugal	✓	U	✓	62.5	✓	GE/GV	✓	NN	✓	NN
Singapore	✓	U	✓	78.0	✓	GE/GV	✓	MB	✓	NN
South Africa	✓	U	✓	NN	✓	GE/GV	✓	MB	✓	NN
Spain	✓	U	✓	58.3	✓	GE/GV	✓	NN	✓	NN
UK	✓	U	✓	96.2	✓	GE/GV	✓	MB	✓	NN
USA	✓	U	✓	24.9	✓	GE	✓	MB	✓	NN
*Emerging Markets	✓	U	✓	NN	✓	GE/GV	Not always	MB	✓	M
Caribbean*	✓	U	✓	In most cases	✓	GE/GV	✓	MB	✓	M

Source: Kerr, V (2005:61, updated 2008); Ethical Investment Research Services (Research Briefing, August 2005); Mallin, C. (2007)

Keys: U-unitary; TT –two-tier; NED –non-executive director; gv -governance volunteered; ge: governance enforced; mb –mail ballots; ev – electronic voting; NN-not known; M= Mixed *South Africa, Ghana, Kenya and India are the more advanced on CG Issues. **Jamaica being the most advanced (CG) is used as the model.

2.5 CHAPTER SUMMARY AND CONCLUSIONS

This chapter describes the contextual setting of Jamaica and seeks to provide a better understanding of the unique environment within which the study took place. By this, it outlines an overview of the Jamaican economy, the challenges to CG development, and local and global CG trends. The political economy can be described as a two-party stable democratic state which is characterised by the Westminster model of political governance. The major drivers of the economy include bauxite and alumina, tourism and information services.

In spite of having a strong civil service with highly competent civil servants, and having passed several laws in recent years to strengthen the financial sector—a linchpin of the economy - Jamaica still possesses many challenges in CG. These include, but are not limited to an alienation from existing political institutions and processes and an increased disregard for the norms of Civil Society, by especially the young, the redefined position of the State from its previous function as a development agency to that of a facilitator of market driven policies, poor performance of the economy and persistent poverty, increased criminal activity, including several forms of corrupt activities, as well as drug trafficking, and sustained levels of ‘crony capitalism’ and competition in the public and private sectors. Additionally, the issue of concentration of ownership and control of most of its leading private sector and stock market listed companies, poses CG challenges that have implications for corporate control, information disclosure and equitable treatment of stakeholders.

In addressing the preceding challenges, there are several emerging trends, Best Practices and scientific studies that will be reviewed, tested and analysed in this study, as part of a broader framework to better understand the CG issues confronting Jamaica and to ultimately frame policy recommendations for improvement.

The next section of the thesis consists of Part 2 (chapters 3 and 4). Its aim is to explore the theoretical and empirical contexts (chapter 3) of the areas identified as important aspects of CG with a focus on the research problems raised in chapter 1. The analysis of theoretical and empirical issues aims to identify weaknesses and gaps in the literature and to advance the development of early hypotheses. It is the hope of the researcher to weave appropriate research questions, choose suitable strategies for collecting and analysing data and information (chapter 4), and be guided empirically and theoretically on the basis of the findings to be yielded from this review and methodological framework.

PART TWO: THE THEORETICAL AND METHODOLOGICAL FRAMEWORK

CHAPTER 3: THE THEORETICAL AND ACADEMIC FRAMEWORK

3.1 INTRODUCTION

The main focus of this chapter is on the key elements of CG as outlined in chapter 1, namely: regulation, corruption, ownership and control, stakeholder relations (representation), perception and role of institutional investors, board characteristics and processes (board size, Chairman/CEO duality or separation, NEDs and executive Directors and selection, board committee and composition, tenure of Directors; gender and inequality issues, board performance evaluation), the board's role in strategic decision making and corporate disclosure. It examines these key elements of the thesis by a review of the literature from a broad spectrum spanning business history, accounting, economics, political science, finance, law and sociology.

The analysis integrates several specific areas of CG into a broader perspective which in turn is deeply grounded in the results of theoretical and empirical research rather than merely conceptual and theoretical debates. Where debates are entertained, they are supported by empirical findings. The review of empirical literature has depended heavily on studies from the USA and the UK but integrates benchmark comparisons of Jamaica (where possible) with European countries and other parts of the world. In many instances, it employs secondary analyses from many empirical sources.

CG in this study embraces established laws, regulations, guidelines, voluntary codes and the associated structures (the institutions) and practices (how boardroom and corporate affairs are conducted), Best Practices across the public, private and non-profit sectors, and the role of ownership and control arrangements. The author's view of a most suitable definition is one that is all-embracing and recognises that there are fundamental differences in cultural, sociological, philosophical, legal and religious dynamics rendering no single model as ideal for all situations. That is, "no one size fits all".

Tricker (1984), states: "If management is about running businesses, governance is about seeing that they run properly. All companies need governing as well as managing". In interpreting (Ibid), there should be a clear distinction between corporate management and CG.

Many other authors have their views as to what CG is and does, for example, Cochran and Wartick (1998), sees CG as an umbrella term covering many aspects related to concepts, theories and practices of boards, concentrates on the relationship between boards, shareholders, top management, regulators, auditors and other stakeholders. Cadbury (1993:9)

states: “corporate governance is the ability of the Board of Directors to combine leadership with control and effectiveness with accountability that will primarily determine how well...companies meet society’s expectations of them.” Vance (1983), opined that CG ensures that long-term strategic objectives and plans are established...proper management structure (organisations, systems and people) is in place to achieve those objectives, while making sure the structure functions to maintain the corporation’s integrity, reputation and responsibility to its various constituencies.

The chapter is further organised into the following sections: 3.2 presents a brief history of CG development; 3.3 discusses relevant theories of CG; 3.4 features in section 3.4.1—ownership and control patterns, role of stakeholder relations (representation) and perception, and role of institutional investors. Section 3.4.2 assesses CG Practices: board characteristics and processes, board’s role in strategic decision-making and the nature and role of corporate disclosure. The chapter closes with a summary and conclusions in Section 3.6.

3.2. A BRIEF HISTORY OF CORPORATE GOVERNANCE DEVELOPMENT

3.2.1 An Introductory Overview

CG systems have evolved over many Centuries, often in response to corporate failures or systemic crises. Perhaps two of the most significant cases of early incidents of corporate failures that have had far-reaching impact on the public’s confidence in private CG were the cases of the Mississippi Company and The South Sea Company. In discussing these two examples, however, the approach is in no way exhaustive as other critical events have not been cited. For example, in the historical narrative about France, the case of the Credit Mobilier in the second half of the 19th Century and the importance of the Bourse, in the context of pension fund versus shareholding—the latter is more widespread in France than in the UK. In addition, the Civil Law arrangement is believed to be dated back to the era of Napoleon. This section therefore serves to provide a brief perspective into the historical context of CG development and is by no means complete.

The failure of the Mississippi Company in 1720 nearly brought France to the brink of financial ruin, only avoided because it was rescued by a Scotsman, John Law, who took over all of its debts in return for a monopoly on trade with Louisiana. John Law’s Company failed with heavy losses borne by the French Government and its wealthy citizens (Morck and Steier, 2005). France banned joint stock companies (JSC) and Frenchmen shunned the financial markets and passed this knowledge on to their children. The South Sea Company, a deliberate imitation of Law’s French experiment in Britain, collapsed at about the same time and with

somewhat the same effect-hence the South Sea Bubble¹³. The Bubble Act of 1722 was passed and banned JSCs in Britain unless they secured a parliamentary charter. This meant that establishing each new JSC required an Act of Parliament. It was explained that the London Stock Exchange survived because pre-existing successful British companies such as the British East India and Hudson's Bay were 'grandfathered'. So traumatised were the French that they banned JSCs and stayed away from the Financial Markets (Ibid, 2005).

The JSCs by their nature allow for more than one person to hold shares (stocks) in a company. With these stocks being willingly traded by their owners at speculative prices, (perception prevails over reality) creating the opportunity for greater and greater demand. Like real bets, pundits will wager their bets and offer to buy or sell these stocks at unrealistic and unsustainable value, hence driving a country into hyperinflation and other problems with resultant effects being a collapse in the stock markets of the countries involved.

However, unlike France, Britain did not respond in like manner but instead sought to protect investor rights by legislative actions. This later approach by Britain as opposed to that of France could be partially explained by the difference in the legal systems between the two countries. In Britain, a common law country, financial crises were met by the passage of legislation while in the civil law European countries (such as Germany, France, Switzerland, etc.) the banks and state investment programmes became a substitute for capital markets (Ibid, 2005).

Not surprisingly, this early resentment in France and other civil law European Countries towards the capital market could well explain why nearly three hundred years later, market capitalization of domestic companies as a percentage of GDP (i.e., GDP divided by total market value of local companies) in France was 34.5 per cent compared to Britain, 121.7 percent (Waimar and Pape, 1999:156). In the same breadth, the stock market remains more important in Anglo-Saxon countries such as Britain (82.1% Market Value of Domestic Capital as a per cent of GDP) than in NAS civil law European countries such as France (34.5 per cent MVDC of GDP).

According to Morck and Steier (2005), common law countries' courts and governments sought to protect the weak from the strong through a shareholding model with "one share, one vote" (Anglo-Saxon countries), while civil law countries' governments sought alternative

¹³ The South Sea [or plural "Seas] Bubble is the name given to the first great Stock market crash in England in 1720. See www.dal.ca/~dmcneil/sketch.html

ways of implementing the public goal of efficient capital allocation with different shareholding models (cross-holdings as in Germany, France and other NAS countries).

In spite of remaining hesitation to open the floodgates to this form of privately owned company, the UK Parliament passed the Chartered Companies Act of 1837 which included a provision for 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. In strengthening this Act, two other pieces of legislation came into being which have served to partially establish the foundation for British company law. First is the 1855 Act, ('an act for limiting the liability of members of certain joint stock companies') introduced limited liability. Second is the 1862 Act ('an act for the incorporation, regulation, and winding-up of trading companies and other associations') to 'consolidate and amend' the previous legislation (Sheikh, Rees and Williams 1995).

The 1855 Act essentially allowed a joint stock company (JSC), registered under the 1844 Act, to obtain limited liability status, as long as it adopted the word "limited" as the last name of the company. The idea was that the single word would alert creditors, and investors, as a whole, to the risks implied by limited liability. So, for the first time, shareholders were protected, against lawsuits which could be pursued against the company. Such a provision reads:

"If any execution, sequestration or other process in the nature of execution...shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereon to levy or enforce such execution, ...then such execution...may be issued against any of the shareholders to the extent of the portions of their shares...not then paid up...", (Butcher, 1995: 221).

The language of the above might have changed significantly since, but what is still relevant is its essence. A company is now given its own identity as a legal and sole person. However, where the said company fails to honour its obligations, the question of director liability may or may not be a matter for settlement.

The 1862 Act: The 1862 act consolidated all previous company laws. It was reported by Butcher (1995) citing Sheikh, et al (1995:223) to have been divided into as many as nine parts, in addition to a first schedule. Butcher, writing Reform of *The General Meeting*, recalled the following brief provisions: "While Part III of the act included a Clause 52 which read, in adequate of any regulations as to voting every member shall have one vote."

However, Clause 44 reads: “Every member shall have a vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred and an additional vote for every ten shares beyond the first hundred shares.” Tricker (1984), one of the most prolific writers on CG, has described the 1855 and 1862 Acts as making the UK Company law the most permissive in Europe, and many other parts of the world. However, it is doubtful Tricker’s postulation could be accepted today as Britain has since revised its company law since 2006. The aim was: “to develop a simple, modern, efficient and cost effective framework for carrying out business activity in Britain for the twenty-first Century.”

According to Butcher (1995), “the Cohen Committee of 1995 and Jenkins Committee of 1962) of Britain adhered to the same concept of what was to be known as “decreasing control” that shareholders are perceived to wield. Control referred to what should be happening at general meetings, and why, invariably it did not happen.” The Jenkins Committee focused particularly on control issues. However, the statute is pretty much the same today, nearly sixty (60) years since the Jenkins Committee. The conclusion, therefore, is that these Companies Acts that resulted from the Jenkins Committee have not achieved much.

Adolphus Berle and Gardiner Means, in their seminal thesis, *Private Property And The Modern Corporation* (1932), found that as share holdings in companies became more dispersed, control shifted from family and large institutional investors into the hands of a new group of managerial elite. This group, while not the legitimate owners, effectively runs and controls the organisation, at times not in the best interest of legitimate owners.

It was because of the recognition of the plight of shareholders that the Cohen Committee Report opened with the following claim:

“We have also sought to find means of making it easier for shareholders to exercise a more effective control over the management of the companies. The result will be to strengthen the already high credit and reputation of British Companies. We must emphasise however, that this object will be attained more by the selection of the shareholders of the governing body of each company, than by the provisions of any statute.”
(Butcher In: Sheikh, S. and Rees, W., 1995)

This same Committee had voted to reject the suggestion that the Act be amended, to allow voting on resolutions by postal ballot, and invariably reverted to the need for a general meeting, despite having paraded, just like Cohen, the many well-known failings. This was

justified (or attempted to be justified) when Butcher (1995) commented: “Where there is any possibility of there being a difference of opinion between members...we think there should be a meeting at which it may be discussed.”

In 1987, Mr. William Cash of Britain introduced the “private member’s” bill, called, “The Protection of Shareholders Act” (No. 58, Session 86/87), which came a quarter of a Century after Jenkins. It was intended as an amendment to the Companies Act 1985, and reads as follows:

“Make provision for each company to establish a shareholders' committee; for the allocation of a Director in each public Company to such a committee; and to prescribe the functions of the auditor, Company Secretary, and solicitor of each such company in relation to that committee.”

Clause 4 (same bill), reads:

“The shareholders committee shall be so appointed to serve a proper balance between the interests of the different classes of members of the company and so as to secure adequate and independent representation for members generally and for individual members in particular, and not by Directors, by a body corporate or trust corporation, or by persons on their behalf or connected with them.”

In the final analysis, this bill is believed to be the first of its kind to have sought, and presented, a meaningful “ownership” role for the individual shareholder, and is argued to have applied mainly to listed companies.

Leading up to the 1920s, the global business landscape was dramatically changed, with significant bank bailouts that saw the shift of ownership and control of corporations largely from families to banks, both in Anglo-Saxon Britain and North America. After the 1929 Wall Street crash, the USA established a well-celebrated Securities And Exchange Commission (SEC), it was hoped that this institution would help to curb the influence of a new and elitist group of corporate raiders, dubbed, “The New Princes of Industry” by Berle and Means (1932).

Prior to the Berle and Means seminal work, Lewis Gilbert (ordinary American shareowner) who owned ten shares in New York’s Consolidated Gas Company, found that his questions were ignored at an annual meeting. Lewis and his brother pushed for reform. Finally, in 1942, the SEC adopted a requirement that companies put shareholder resolutions to vote, under specified circumstances (McRitchie, 1997).

In 1967, two and a half decades later, Saul Alinsky, a New York State, Rochester-based community organiser, together with several national U.S. churches, targetted Kodak's poor record of minority hiring. In addition, empire building by CEOs led to a kind of merger madness (McRitchie, 1997), as conglomerates gobbled up unrelated companies. When many of these conglomerates lagged in price, in the 1970s, it heightened the realisation that CEOs needed oversight.

However, these corporate crises were not limited to the United States as there were simultaneously many other business crises and/or failures in the United Kingdom. In the USA, we saw the growth of hostile bids, and Wall Street corporate takeover activities, triggered by "junk" bonds, generated a new terminology: green mail.¹⁴ Fundamental issues of governance power came to the fore. In the U.K. during the 1980s, the raid of the Maxwell Group on the pension fund of the Mirror Group of newspapers, the collapse of Bank of Credit and Commerce International (BCCI) and Barings bank, placed heavy focus on the United Kingdom. Simultaneously, in the USA, in the 1980s, it was the savings and loans debacle, followed rapidly by "Black Monday", October 19, 1987, another Wall Street crash.

The impact on employees and communities was often devastating, in the form of plant shutdowns and loss of jobs. While workers and communities struggled with massive layoffs, CEOs invented "golden parachute"¹⁵ severance packages, and designed "poison pills"¹⁶, which made takeovers less attractive, through "stock dilution" mechanisms that hit new shareholders. By the late 1980s, a backlash set in. The "junk bond" market imploded, and an irate public, and many corporate boards, began to demand a more visible role in CG. They recognised that their intervention could soften the impact of corporate restructuring on workers, operations, profits and communities at large.

¹⁴The term Greenmail is a neologism combining the terms greenback and blackmail and said to be invented by Journalists and commentators who saw the practices of corporate raiders as a form of blackmail. The greenmailer commonly targets a publicly traded company that is cash rich but often undervalued, with large assets and possibly a solid customer base (<http://www.investopedia.com/terms/g/greenmail.asp>).

¹⁵ Golden Parachute is a clause in an executive's employment contract specifying that he/she will receive large benefits in the event that the company is acquired and the executive's employment is terminated. These benefits can take the form of severance pay, a bonus, stock options, or a combination thereof (<http://www.investopedia.com>).

¹⁶ Poison Pill is a strategy used by corporations to discourage a hostile takeover by another company. The target company attempts to make its stock less attractive to the acquirer. There are two types of poison pills: (1) A flip-in allows existing shareholders (except the acquirer) to buy more shares at a discount; (2) The flip-over allows stockholders to buy the acquirer's shares at a discounted price after the merger.

3.2.2 Corporate Governance Development and its Democratic Principles

This section examines CG development drawing on the psychology of justice (Gomez and Korine, 2005; Thilbaut and Walker 1995; Lind and Tyler, 1990; and Satan, 1987) and the political economy of social choice (Rawls, 1971, Mackie, 2003). CG is a set of contracts that defines relationships among three distinct actors in a corporation: the sovereign, who forms the vast majority of the modern legal system and are the shareowners; the governed, namely all stakeholders including owners of shares; and the governing, who directs and/or control the corporation. Given the nature of the contractual triad of the sovereign, governed, and governing, and being equally embedded in a society of natural law, CG shares with modern political governance a common root in consent by the governed (Gomez and Korine, 2005:739).

Consistent with the doctrine of political economy of social choice, consent by the governed in CG cannot be satisfactorily explained without reference to the collective value of procedural fairness that underlies markets. With this analysis, the authors (Ibid) were compelled to suggest that the evolution of CG, too, can be understood in terms of Tocqueville's¹⁷ well-known hypothesis that democracy eventually prevails in all spheres of organised activity. Historical records of institutional reforms in France, Germany and the United States revealed that CG has indeed evolved to make increasing use of democratic procedures. When traced over a period of two Centuries of capitalist development, CG was seen to have been slowly and successfully incorporated into the fundamental democratic processes of enfranchisement, separation of powers and representation.

It is important to define the preceding terminologies: *Enfranchisement*- in line with enlightenment philosophy of equal treatment and individual freedom (Locke), the law is the same for every citizen, and every citizen has the freedom to act independently, within the limits set by private property rights. *Separation of Powers*-again in the tradition of enlightenment (Montesquieu), a separation obtains between the power of direction (the executive) and control (the legislature and judiciary) to prevent the abuses of autocracy and to ensure the protection of individual freedom. *Representation with Public Debates* - A critical element of these democratic principles is the opportunity they provide for debating opposing

¹⁷Tocqueville's democracy hypothesis much like Kant's famous peace hypothesis (cf. Gomez and Korine, 2005:13, 739-752), stood on a long-term reference for scholarly inquiry. To Tocqueville, all of history can be read as the slow, but inexorable struggle of the collective values underlying democracy, namely the values of fairness and equality of condition, to assert themselves. It is Tocqueville's central hypothesis that democracy constitutes the sole model of acceptable governance in modern society and will eventually prevail in all spheres of organised activity.

views and this expression of contrasting views encourages consensus in decisions thus fostering individual freedom. The authors also see this system as facilitating the delegation of sovereignty to representatives rather than in authoritarian regimes built on secrecy and information monopoly.

The work of Berle and Means (1932), in addition to advancement by institutionalists and agency theorists, described the evolution of CG in terms of changes in the relationship between ownership and control (Chandler 1977; Fligstein, 1990). Three major phases have been posited, each having its own model of reference for CG, which have come to be accepted as standard for the times and are generally adopted, whether by a large, small, listed or unlisted company (Frentrop, 2003). Phase one is typified by the dominance of the founding family and stretches from the Industrial Revolution to the 1920s. The second phase is marked by the rise of the professional manager and spans the 1920s to 1970s. Phase three has its origins in the 1970s and is characterised by increasing accountability to society. These three time horizons represented distinct stages in the historical development of the corporation and each has its own historical features. See Table 3.1

3.2.2.1 Phase One: Familial Control and Economic Enfranchisement

The first phase of the development of CG involved the dominance of family owned and managed businesses. This period spanned the industrial revolution and lasted up to the 1920s. Familial control involved the governance of the company by the founding family while economic enfranchisement involved the opening up of the right to own businesses by the general populace. Various pieces of legislation were put in place that removed the class barrier to owning businesses and represented the first step in fundamentally reshaping the notion of economic sovereignty. The legislation includes the French Code du Commerce (1808), The American Legislation on General Incorporation (1811 for New York), and the English Joint Stock Company Registration Act (1844). They opened the right to the ownership of a business corporation to any individual who can afford it, independent of social status, class or heredity and established that each owner of property has equal rights before the law.

However, the incorporation of the limited liability company was subjected (limited to a few individuals) until the second part of the 19th Century and, therefore, remained highly restrictive in practice. It took a period of 20 years commencing around 1860 (United Kingdom 1856; France 1867, Germany 1870, but also Spain 1869, Belgium 1873, Hungary 1875, and Italy 1882) for the removal of the requirement of public authorisation. This latter development in property rights represents what has been called the “Magna Carta of emerging shareowner

power” (Rippert, 1951, p.63). By this, individuals are emancipated from the public authority, and shareowners acquire full sovereignty over the corporation. This is the era when, for the first time, individuals may freely create, buy and sell shares of ownership in a corporation. Therefore, it can be stated that CG in the 19th Century puts in place the first defining element of democratic procedure or so-called economic enfranchisement. Unfortunately, there is no clear evidence that workers were economically enfranchised.

Notwithstanding the above, it is not to be construed that the corporation of the 19th and 20th Centuries was governed by the procedures of democracy, i.e., equal rights to ownership only established economic enfranchisement. When one traces the beginnings of capitalism, as it is today, to the Industrial Revolution, the most striking revelation from a CG point of view is the lengthy dominance of the founding family. With the exception of a few nations, the family firm represented the model of CG throughout the 19th and early 20th Century (Kaeble, 1990 and Coffee, 2001). The family owned and managed the assets of the corporation (no separation of powers) and decisions were made in secret family councils with no representation of outsiders and no public debate. These new entrepreneurs emerged from the skilled working class and benefitted from the legal order, appeared to have created the institutions of the old regime, constituting veritable dynasties of industry. A few examples are the Dupont de Nemours in the US, the Siemens in Germany or the Boussac in France, and the Courtaulds in the United Kingdom.

While the majority of upheavals of the late 18th Century led to the political institutionalisation of enfranchisement, separation of powers and representation in much of the 19th Century America and Europe, businesses adopted a form of governance that is much closer to aristocracy, with a concentration of power and lack of representation and public debate. Not surprisingly, Tocqueville noted quite lucidly at the very beginning of this new era:

[T]hus, as a mass of the nation turns to democracy, the class occupied with industry becomes more aristocratic. Men show themselves more and more alike in one, and more and more different in the other, and the inequality increases in the small society as it decreases in the great. 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 (Gomez and Korine 2005:13, 744 citing Tocqueville, A, (2000 [1830], DA,II, 320, pg. 532)

3.2.2.2 Phase Two: Managerial Governance and Separation of Control

As it approached the end of the 19th Century, some industries were already beginning to reach their limits and this was widened as World War I set in. This phase fell between the 1920s and the 1970s and saw the rise of professional managers who were hired to run family firms more efficiently as they grew in size and complexity requiring greater financial resources to continue growth. Family firms were forced to look outside for investors rather than to depend solely on the family for financing expansion. Great corporations emerged out of once small family businesses and needed professional management to deal with the new challenges of size, product diversity, and modern manufacturing, even in those cases in which ownership remained in family hands. It was argued that familial governance could not cope with the changed economic conditions of the 20th Century and thus managerial governance arose to take its place (Berle and Means, 1932; Chandler, 1962).

With the new era heralded by professional managers in the 20th Century, CG integrated the separation of control, the second defining element of democratic procedure. Under managerial governance, ownership and control were separated, with owners providing capital and leaving day-to-day management and control of the business to hired hands—the managers (Berle and Means, 1932; Burnham, 1941). During this period, the limited liability corporation became the most popular form in western economies, and a swathe of laws was enacted to regulate and categorise corporations (Cheffins, 2002; Frentrop, 2003).

In an era of managerial governance many laws were passed and codes written to favour the separation of ownership and managerial control. For example, securities laws concerning the obligation of disclosure (1940s)-- France enacted laws for mandatory creation of the Board of Directors while German companies were obligated to create the two tier board during 1947 and 1957. With these new laws, CG began to exhibit even more features of political governance. Shareholders began to meet and vote on major corporate decisions such as electing Board of Directors at AGMs and overseas professional managers. In some jurisdictions like Germany, shareholders voted on owner and worker representatives on the Boards. Most significantly, though, is the power conferred on the Board of Directors by shareholders to hire and fire managers hence instilling a counterweight to managerial authority.

According to Gomez and Korine (2005), with these historical changes, one cannot describe the adoption of the procedures of democracy in CG as a straightforward process. In fact, Stanworth and Giddens (1974) opined that the managerial revolution has led to the replacement of the old capitalist aristocracy by a new capitalist technocracy. It is felt that

although in theory the corporate board is supposed to be independent, in practice, it is controlled by a “managerial technocracy”—managers from other companies as shareowners and stakeholders are usually excluded (Bourdieu, 1998; Monks and Minow, 1995; Jensen and Meckling, 1973). The observation cited by Bourdieu et al earlier, holds similarity with Jamaican listed corporations at present time (Kerr, personal experience).

3.2.2.3 Phase Three: Popular Governance and Representation

The third time horizon has its origins in the 1970s and can be characterised by increasing accountability to society, popular governance and representation. The current state of affairs in major economies involved, by far, the most democratic of governance structures. This is best characterised by the feature of Representation. However, representation is still limited in most countries, depending on whether or not the debate includes stock market companies versus private unlisted corporations.

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 investments are two of the more recent inventions arising from the approach to mass ownership. It is instructive to differentiate this mass ownership from dispersed ownership as described by Berle and Means (1932). For if mass ownership were to mean further dilution of shareholding and hence more dispersed stocks, then this would have negligible influence on managerial governance in publicly listed companies. This mass ownership comes in the form of large block owners, such as pension funds, who have been backed by laws passed in the United States since the 1970s that enable them to actively monitor and vote their holdings.

In this third phase, strategic direction must be informed by direct contact with shareholders and a majority of board members, the majority of whom should be independent. At AGMs, debate and discussion ensues, 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 CG arena.

Table 3.1 summarises the history and development of corporate governance as discussed in the preceding section. The next section focuses on selected relevant theories in corporate governance.

Table 3.1: History of Corporate Governance Development

KEY FEATURES	First Phase: 19th Century (Industrial Revolution) to 1920s	Second Phase: 1920s to 1970s	Third Phase: 1970s to 21st Century
Model of Reference	Familial	Managerial	Popular
Relevant Legislations and Important Voluntary Codes of CG	General Incorporation (1811 for New York) French Code du Commerce (1808) ; Bubble Act (1825) Chartered Companies Act (1837); Joint Stock Companies Act (1844); Limited Liability Act (1855); 1862 Act, “One share on vote principle”;	Securities Exchange Commission (SEC) (1933), USA; Company law of France (1940) making BoD mandatory; Two tier board in Germany; Corruption Prevention Laws; Freedom of Information regulations	Cadbury Report 1992; Sarbanes Oxley Act (SOX), 2002; Turnbull, 2003; Smith Report, 2003; Combined Code, 2006; King III, 2008
Separation of Ownership from Control	None	Implementation Generalisation of the limited liability form, with boards and disclosure requirements	Reinforcement Increased board supervision over managers; close monitoring; performance appraisal
Economic Enfranchisement	Implementation Creation of rights to ownership independent of social standing	Reinforcement Strengthened bylaws and corporate practice. Public general meetings become standard	Reinforcement Strengthened by new rules on right to vote; protection of minority interests
Level of Public Debate	None	None	Implementation Dispersed and mass ownership; institutional stakeholder activism

Sources: Advancement to Gomez and Korine (2005: pg. 747).

3.3 RELEVANT THEORIES OF CORPORATE GOVERNANCE

There are various theoretical frameworks that have evolved to explain and analyze the development of CG. The more relevant of these theories to this thesis, specifically, and which have positively influenced the development of CG literature, generally, are discussed herein. These are agency theory, shareholder theory, transaction cost theory, stewardship theory and the volunteered governance versus enforced governance arguments. Although there are marked differences between the various theoretical frameworks as they each seek to analyse CG, they do share significant commonalities.

3.3.1 Agency Theory

Agency theory¹⁸ is the dominant orientation in research on CG. It is built on the premise that corporate profit satisfies individual preferences and thereby ensures general consent (Gomez and Korine, 2005). Agency theory discusses moral hazards and agency costs. It categorises the agency relationship in which one party, the principal, delegates work to another party, the agent. According to Solomon (2007)¹⁹, the introduction of limited liability and the opening up of corporate ownership to the general public through share ownership had a dramatic impact on the way in which companies were controlled. The market system in the UK and the USA, *inter alia*, is organised in such a way that the shareholder, the owner or ‘principal’ of the company, delegates day-to-day decision making in the company to the Directors, who are the shareholder’s ‘agents’.

There is a separation of ownership and control that has led to the well-known ‘agency problem’. Much of agency theory as related to corporations is set in the context of the separation of ownership and control as described in the work of Berle and Means (1932). In this situation, the agents are the managers and the principals are the shareholders. Essentially, there is a connected group or series of contracts amongst the various players, arising because it is seemingly impossible to have a contract that perfectly aligns the interests of principal and agent in a corporate control situation. As a result the Agency theory views the firm as a nexus of contracts. This commonly cited agency relationship in the CG context can also cover various other relationships including those of company and creditor, and of employer and employee.

Agency theory views CG mechanisms, especially the Board of Directors, as being an essential monitoring device to try to ensure that problems brought about by the principal-agent relationship are minimised. Mallin (2007) explains that the agency relationship can have a number of disadvantages relating to the opportunism or self-interest of the agent: for example, the agent may not act in the best interests of the principal, or the agent may act only partially in the best interests of the principal. The agent may misuse his power for pecuniary or other advantage, and the agent may not take appropriate risks in pursuance of the principal’s interests. The principal and the agent may have access to different levels of information which means that the principal may be at a disadvantage because the agent will have more information.

¹⁸The Agency Theory (or Agency Model) presents a legal or fiduciary relationship between two persons who agree that one (agent) is to act on behalf of the other (principal), subject to the other’s control.

¹⁹Solomon, Jill in *Corporate Governance and Accountability* second edition, 2007, sought to explain agency theory by discussing its assumptions in the context of separation and control in the corporate governance context.

3.3.2 Shareholder versus Stakeholder Argument

The central position of the stakeholder theory is that the purpose of the firm should be more widely defined than the maximisation of shareholder welfare (Keasey et al., 1997). The welfare of other parties that have a long-term interest in the firm's activities and its performance should also be considered. The stakeholders are not merely the firm's shareholders and managers (the parties in the principal-agent framework of CG) but also its customers, creditors, suppliers, employees, etc. These stakeholders have a legitimate claim on the firm which derives from the existence of an "exchange relationship" (Hill and Jones, 1992). In order to maximise stakeholder welfare, there should be a sense of fairness in the way firms interact and conduct exchanges with other parties. Moreover, an important proposition of stakeholder theory is that such "fairness" leads to socially efficient exchanges.

In contrast to the above, the "agency model", which is an Anglo-American tenet, has long-term shareholder value maximisation as its main corollary. Indeed, the whole country's CG movement was born and grew to revive, enhance and protect the rights and interests of shareholders (Spencer Stuart 1997). The supporters of the "agency model" have another cogent point: there is a strong risk that a board accountable to many stakeholders may end up being accountable to none.

The detractors of the "agency model" contend that by focusing exclusively on the value of the corporation's shares, one deliberately ignores the other assets of the corporation such as the skills of its employees, expectations of its customers and suppliers, the company's role and reputation in the community, etc...They further argue that the "agency model" gives priority to short-term results and current shareholders, at the expense of long-term development and future stakeholders.

3.3.3 Transaction Cost Theory

Transaction cost theory provides views of the firm and of managerial behaviour in the context of CG. It assumes that people are often opportunistic and so managers opportunistically arrange their transactions. In this way, it bears similarity with aspects of the agency theory. The unit of analysis in the transaction cost theory is the transaction and it seeks to find answers to the problem of finding ways to persuade company management to pursue shareholders' interests and company/shareholder profit maximisation, rather than their self interest. Solomon (2007 citing Williamson, 1996:25) argues that transaction cost theory was '... an interdisciplinary alliance of law, economics and organisation...'. Cyert and March (1963) in *A Behavioural Theory of the Firm*, has been accredited with the initiation of this

discipline, and has become one of the cornerstones of industrial economics and finance theory. Transaction cost theory is based on the fact that firms have become so large that they, as a consequence, substitute for the market in determining the allocation of resources. Companies are so large and complex that price movements outside companies direct production and the markets co-ordinate transactions. Within companies, such market transactions are removed and management co-ordinates and controls production (Solomon, 2007, p.21). Therefore, it is the way in which the company is organised that determines its control over transactions.

Transaction cost theory views the firm as a governance structure and is concerned with managerial diplomacy in which it assumes that managers are given to opportunism and moral exposure, and that managers operate under bounded rationality and regard the Board of Directors as an instrument of control. Managers will tend to satisfy themselves rather than maximise profits which are not in the best interest of the shareholders. Solomon (2007) explains that it is important that company management internalise transactions as much as possible in order to remove risks and uncertainties about future product prices and quality. Evidently, there are similarities between agency theory and transaction cost theory as both theories present a rationale for management to be controlled by shareholders.

3.3.4 Stewardship Theory

Stewardship theory draws on the assumptions underlying transaction cost theory and agency theory. This theory was introduced as an alternative approach to CG by Donaldson and Davis (1991). Mallin (2007:17) in highlighting the work of Donaldson and Davis, opined that stewardship theory stresses the beneficial consequences on shareholder returns of facilitative authority structures which unify command by having roles of CEO and chair held by the same person...The safeguarding of returns to shareholders may be along the track, not of placing management under greater control by owners, but of empowering managers to take autonomous executive action. While this argument of unified command may have merits in Anglo-Saxon America, Britain, on the opposite side of the Atlantic, is rejecting this proposal. Cadbury (1992) and the Combined Code (2003) strongly recommended the separation of the roles of Chairman and CEO citing that it would render too much power in the hands of one individual. There have been cases of this misuse of power in the UK such as the scandals surrounding the Mirror Group with Robert Maxwell and Polly Peck.

Furthermore, British companies have been separating these roles more drastically than have been done in America in the last decade. Not surprisingly, Davis et al (1997) suggested that managers should be monitored as stewards or caretakers of organisational interests, which

is involvement and long-term oriented, and aims to maximise performance. Their (Davis et al, 1997) findings concluded that managers whose needs are based on growth, achievement and self-actualisation, and who are intrinsically motivated, may gain greater utility by accomplishing organisational rather than personal agendas. Davis et al further stressed that managers in situations with collective culture and lower power distance are more likely to identify with their organisations, commit to organisational values, and serve organisational ends.

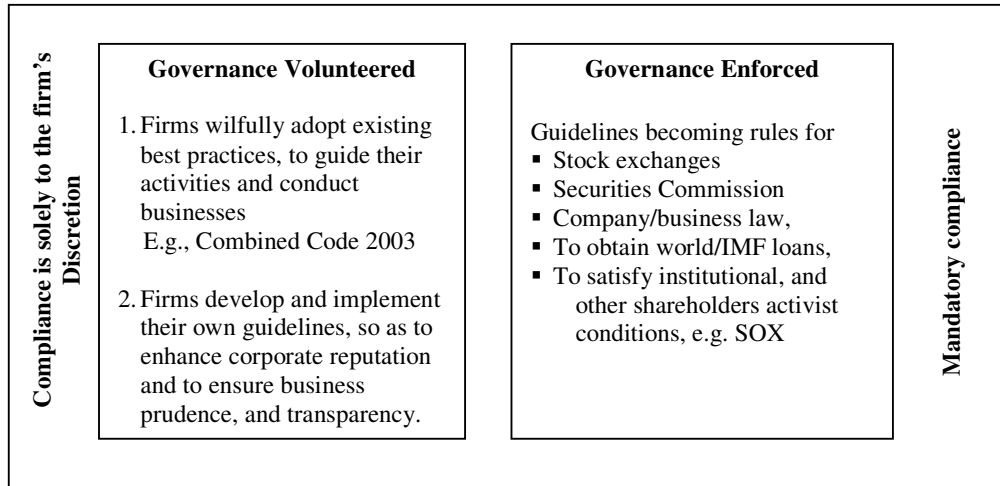
3.3.5 Volunteered Governance versus Enforced Governance

Since the Cadbury Report (1992), the term “self-regulation” has been widely used in similar, as well as widely diverging contexts. Many authors interpret and describe self-regulation as the voluntary or mandatory compliance to guidelines such as the Cadbury II and the Greenbury (1995) Reports. The literature, however, has not clearly separated the initiative by corporations to develop and implement their own guidelines from their adoption of or conformity with mandatory compliance requirements, based on laws or sector-specific operating guidelines. For example, the Bank of Jamaica, like many other Central Banks issues clear operating standards for institutions they regulate. These banking standards are usually rule-based or mandatory. On the other hand, many professional bodies may not choose to comply with industry-specific guidelines, even though there might be penalties for non-compliance. However, when the CG requirements are not legal requirements (rule-based), there are no legal sanctions against those refusing to comply.

This author, therefore, proposes two new perspectives which it is hoped will provide some clarity to the confusion surrounding self-regulation. The first is *volunteered governance*, which may be used interchangeably with self-regulation. With volunteered governance, firms willingly adopt established Best Practices such as the Cadbury (1992), or its more advanced Combined Code (2003), to guide their activities. Also, firms develop and implement guidelines to enhance corporate reputation and to ensure business prudence and transparency. These two scenarios are within the firm’s total discretion, hence referred to as self-regulation. See Figure 3.1. The next concept is *enforced governance*. With enforced governance, firms have no choice but to adopt Best Practices as dictated by markets, professional bodies or businesses to which they might have obligations. For example, the Combined Code of Best Practices (Cadbury II or Hampel, 1998) supplements the London Stock Exchange listing rules in some respects. According to the Combined Code, “corporations are required to report annually how the codes are applied, or provide explanations when they do not comply.” The

LSE listing requirements is one of the many examples of *enforced governance*. Another example is the requirements of the Sarbanes-Oxley (SOX) Act, 2002 (USA), following the scandals of Enron, Worldcom and Global Crossing. For example, the SOX requires the Chief Executive Officer and the Chief Financial Officer to certify that quarterly and annual reports filed on forms 10-Q, 10-K, and 20-F are fully compliant with applicable securities laws and present a fair picture of the financial situation of the company.

Figure 3.1: Governance Volunteered versus Governance Enforced



Source: Kerr, V (2005: 10)

3.4 REGULATION

3.4.1 Introduction

Regulation is the act of controlling and restricting human or societal behaviour by rules or restrictions. It may take many different forms; in the context of this thesis, it is the legal restrictions promulgated by government authority and agencies which are established to enforce these rules (Bert-Jeep Koops et al, 2006). A number of these institutions have been discussed in this thesis and they include the Bank of Jamaica (BOJ), the Financial Services Commission (FSC), the Office of the Contractor General, the Corruption Prevention Commission, just to name a few. There is also self-regulation by individual firms or industries such as associations (bankers associations, accountant associations, market regulation such as stock market regulation as well as regulation governing the import and export of goods by a country.

In essence, regulations can be considered as actions of conduct which improve sanction such as fine, suspension from a group, and in some cases, can lead to imprisonment. The most beneficial aspect to regulation is that it helps to create some order and consistency in markets and within each governmental body by prescribing the standard of behaviour and boundaries

which organisational mandate should be executed. Otherwise, what we will have is that market players will tend to do whatever they please –act like cowboys—and hence chaos will occur and businesses will be like casinos. Therefore, governments, through their public policy initiatives must play an important role in ensuring that adequate and appropriate regulations are in-place, enforced, and constantly reviewed.

3.4.2 The Role of Public Policy

In order to ensure soundness, preserve the integrity of the regulatory framework and satisfy the interest of the various players in the public and private sector communities, and others, the Government of Jamaica has undertaken a number of regulatory initiatives in the last decade, particularly in response to the financial sector meltdown of the 1990s. Since then, the BOJ has revised and strengthened financial legislations and developed, enacted, and enforced others. In 2001, came the Public Bodies Management and Accountability Act (PBMA), in 2002, the Access to Information Act, in 2003, the Corruption Prevention Act as well as the National Contracts Commission, in 2004, the Government of Jamaica Audit Commission as well as the Companies Act of Jamaica, 2004; and in 2007 the passage of the Electronic Transaction Act.

All these measures are aimed at strengthening the role of public policy and good governance in Jamaica, seek to promote and deliver an effective framework for guiding and monitoring corporations, and preserving the confidence of investors and other stakeholders in the soundness, integrity and transparency of business economic activities. Such a framework encompasses the internal structures of corporations that ensure effective and efficient management, as well as external relationships between a company and its community at large. This community of stakeholders includes shareholders, commercial lenders and other stakeholders, all of whom are important from a public policy perspective.

The incidence and consequence of corruption threat to corporate and political governance is another important issue of this study. Corruption disproportionately advantages the strong and disadvantages the weak. In economic terms, corruption increases transaction costs for investment, for the production and distribution of goods and services, and officials offload these costs disproportionately onto the backs of the powerless. It is the mass of people who for the most part, pay for any additional irregular cost (Transparency International, 2000).

For the purposes of this study, the analysis is limited to two areas of governance, that of corporate (the affairs of the corporation) and political (the affairs of the State or political directorate) which form the major planks in the overall governance framework. However,

there are other streams of governance such as democratic governance, social governance, and inclusive governance. See glossary in Appendix 12. In the next section, the different regulatory environments in Jamaica are discussed.

3.4.3 The Political Governance Environment

The failure of CG cannot be thoroughly explained without an analysis of economic political governance. This is how the Jamaican state conducts its businesses and regulates economic transactions. In this section, the drivers of political governance and a select number of the tools used in the regulation of economic transactions are analysed. For the purposes of this study, political governance refers to the system, structures, and processes of the day-to-day affairs of the political executive which is headed by the Prime Minister and his Cabinet. Specifically, political governance in the ensuing analysis focuses on the Constitution, Parliament, and its Houses (The House of Representatives or Lower House and the Senate or Upper House). Additionally, selected committees of the House of Representatives are discussed. The Committees of the Houses of Parliament can be likened to the Committees of the Board of Directors of a corporation, at which level the work of government or corporation is done, or at least discussed in great detail. See Figure 3.2.

3.4.3.1 The Constitution

Under the Jamaican Constitution, Queen Elizabeth II (since 6 February 1952), is represented by a Governor General (GG) as Head of State. The executive head of government is the Prime Minister. There is the Cabinet of Ministers who is appointed by the GG acting on the advice of the Prime Minister. The monarchy is hereditary; the GG appointed by the monarch on the recommendation of the Prime Minister. Following legislative elections, the leader of the majority party or the leader of the majority coalition in the House of Representatives is appointed Prime Minister by the GG and the Deputy Prime Minister is recommended by the Prime Minister.

Jamaica inherited its White-Hall Westminster bicameral Parliament from Britain when it gained independence in 1962. This bicameral Parliament consists of the Senate (a 21-member body appointed by the GG on the recommendations of the Prime Minister and the Leader of the Opposition. The ruling party is allocated 13 seats, and the opposition is allocated eight seats) and the House of Representatives (60 seats—members are elected by popular vote to serve five-year terms). The ‘winner takes all’ feature of the Westminster Model of governance is probably a major deterrent to achieving democratic, corporate and political

governance in Jamaica. Under this structure, the party gaining the majority vote in a general election makes all appointments of Cabinet Ministers, senior members of civil of service, the judiciary and the Foreign Service. For example, although the general elections results of September 2007 showed the ruling JLP in popular vote: 50.5% and 32 of 60 seats and the opposition PNP 49.5% of popular vote with 28 of 60 seats, the JLP appointed the full slate of Ministers (at the political level).

3.4.3.1.2 Selected Committees of the House of Representatives

Similar to Board Committees to which various tasks of the main board are delegated, the Committees of Parliament have been established to carry out specific functions of both Houses. Traditionally, the Government appoints one of its members to chair each House Committee, except for the Public Accounts Committee which the Constitution dictates must be chaired by a member of the Opposition. However, for the first time since Independence, recently installed Prime Minister, Orette Bruce Golding, has moved to ensure that all House Committees be chaired by a member of the Opposition. This, the Prime Minister claimed, is a move to provide a balance of power to governance and to reduce the power of the executive, which he has long felt, is vested with too much power under the Westminster system of political governance.

Public Accounts Committee (PAC): The Public Accounts Committee is assigned the responsibility of examining the accounts of Parliament. Specifically, this body must probe accounts recording the allotment of sums granted by the legislature to fund public expenditure. Accounts are also referred to the committee by the house or under the stipulation of particular laws. The Auditor General's report on these accounts is also examined by the PAC. The second major function of this Committee is to examine and report on the Accounts and Financial Statements tabled in the House from Statutory Boards, Public Corporations, and Public Companies in which the Government holds majority shares.

Standing Orders Committee: Headed by the Speaker of the House, the Standing Orders Committee meets occasionally to consider and report on any matters concerning the Standing Orders of the House that have been referred to it by that body.

Regulations Committee (RC): The Regulations Committee monitors the draft regulations which are being developed by various Ministries. The RC has a duty to bring these to the special attention of the House if it detects certain features in these documents. Regulations are flagged when they feature expenditure or collection of public money, resistance to legal challenge, the extraordinary use or misuse of powers under an Act. They also elicit the attention of the Committee if there is an inordinate delay in presentation of the

document and a lack of clarity in the composition of the document. This Committee is not mandated to comment on the merits or policy stance of the document, rather it is to apply the terms of the Interpretation Act, among others, to examine regulations which are to be laid before the House.

Public Administration and Appropriations Committee: This Committee monitors the spending and efficiency of Government Agencies in order to ensure that they are expending within approved parliamentary guidelines. The committee reports on this to Parliament and recommends ways in which the Government can operate more efficiently.

Committee of Privileges: The Speaker of the House chairs this committee, guiding the members as they examine any issue that pertains to the power or privileges of the House. Thereafter the Committee reports to Parliament on the matter considered. See Figure 3.2.

3.4.3.1.3 The Senate

The Senate is the 'upper house' of the legislative branch of government. This house reviews bills sent to it by the lower house—the House of Representatives. If the Senate is not in agreement with any aspect of the bill it sends it back noting the desired changes. The lower house will then return the bill to the Senate, having made the recommended adjustments, or with a request that the Senate reconsiders these. The Senate can delay bills for months, except in the case of those concerning finances which must be cleared within a month. The Senate's approval is only mandatory for constitutional amendments.

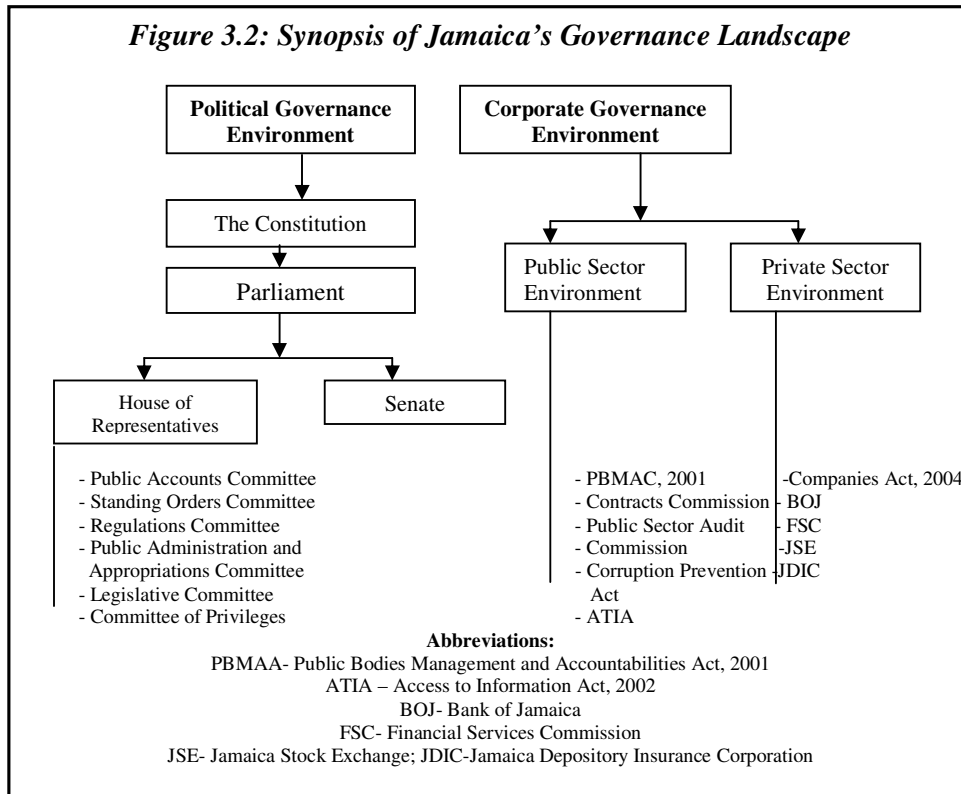
Senators are appointed by the Governor General on behalf of the British monarch. Unlike members of the lower house, they are not elected by the general electorate. This gives individuals outside of representational politics an opportunity to have an input in the governing of the country. Of the twenty-one (21) members and thirteen (13) are recommended by the Prime Minister and eight (8) by the Leader of the Opposition. Between two and four can serve as part of the Prime Minister's Cabinet. Others may serve as Parliamentary Secretaries, assisting the Ministers in their duties.

3.4.4 The Corporate Governance Environment

3.4.4.1 Key Players

Figure 3.2 shows that CG addresses selected institutions, laws and guidelines (“structures”) in the public and private sector alike. These structures serve as frameworks, rules and laws with which corporations and individuals, whether private or public are expected to comply. The CG environment includes both private and public sector institutions and

various stakeholders who, by virtue of their interdependency, benefit politically, economically, socially, and otherwise, from each other.



Source: Information extrapolated from the Standing Orders of the House of Representatives of Jamaica, 1964; personal experience

However, the primary players are shareholders, Board of Directors (BOD), top management, employees, regulators and auditors, investors, clients/customers and suppliers. Secondary players are all other stakeholders. The key players identified in Figure 3.3 can be further divided into three other categories. First are *CG Reputational Agents* who are responsible for policy and compliance such as the company's Board of Directors. Second, are CG targets for whom the CG project has been established, and these are principally the shareholders. Third, are CG regulators who in this context are those responsible for maintaining the CG framework and compliance practices, i.e., BOJ, the FSC, JSE, and the JDIC. The latter two are merely quasi-regulators²⁰.

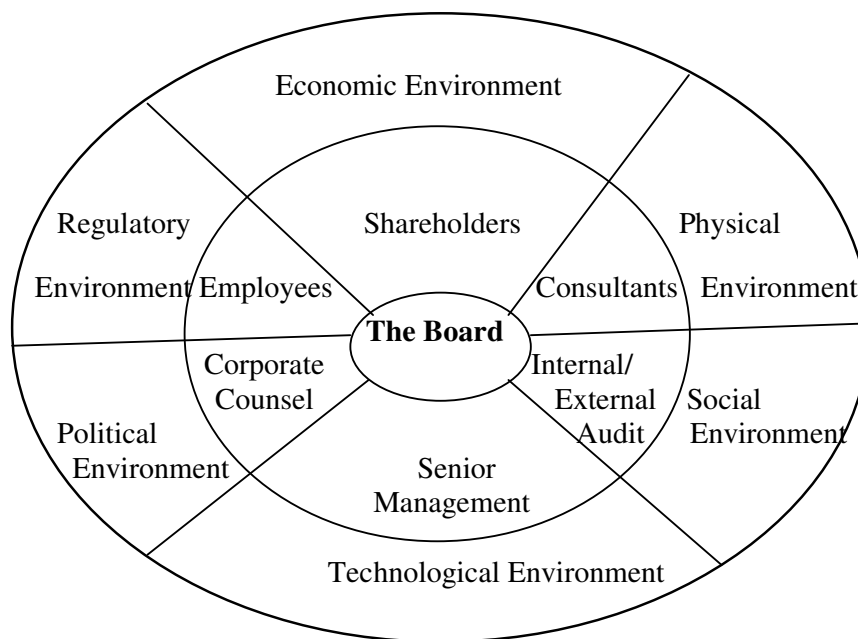
Irrespective of the many stakeholders, the centre of controversy, and responsibility, has been on the BOD. Rwegasira (2000) argues that the BOD represents an organ that largely represents most of the stakeholders and still others act primarily as a fulcrum of accountability

²⁰ These are institutions which do not have full regulatory powers but usually make basic provisions (guidelines) to which their members must subscribe. For example, the Corporate Governance Listing rules of the London Stock Exchange—make that exchange a quasi-regulator in this context.

to shareholders. Wang and Dewhirst (1992) suggest that the BOD is one of the greatest management innovations in the field of CG. The proposed prototype posits the board as a pivot, around which most corporate activities revolve, and identifies the shareholder as merely one of many claimants to the corporation. Therefore, the primary role of regulation is to shape a CG environment compatible with societal values that allows competition and market forces to work so that corporations can succeed in generating long-term economic gain. Specific governance structures and practices will not necessarily fit at all companies (OECD 1999).

How then does Jamaica regulate economic transactions within the CG Environment? Jamaica regulates economic transactions through CG structures otherwise called regulatory institutions and legislations which themselves were derived in response to failures in market forces and to protect the economy from systemic weaknesses. The soundness and integrity of these regulatory institutions and legislations have been undergoing perpetual testing as market dynamics change and thus infuse even greater demand for regulatory strengthening. They have been numerous incidents of failures, or “crashing”, of these private investment schemes. The most recent being several unregulated or “Pyramid Schemes” such as Cash Plus, Overseas Locket International Corporation, Inter Trade, and CARIEF, which had promised investors returns of over 100% per annum.

Figure 3.3: Prototype Model of Jamaica's Corporate Governance Environment



These like many others, were unregulated because of the intricacies of the transactions and general nature of the businesses. There have been assertions from various quarters

(investors, regulators, and even the political establishments) that laws were just not in place to deal effectively with these new investment schemes. Clearly, these calls have been given credence by former Minister of Finance, Omar Davies, who proposed, "...that the FSC and the BOJ (Bank of Jamaica) and the Ministry of Finance be asked to prepare in short order, a comprehensive assessment of steps which should be taken to improve regulatory efficiency," (Jamaica Observer, April 18, 2008). Hence, this call by the former minister points to systemic weaknesses in the way economic transactions are regulated—one of reactivity rather than proactivity.

3.4.4.2 The Public Sector Regulatory Environment

What are some of the relevant CG legislations?

Following on the features of the political governance environment described above, and which forms the umbrella structure of the public sector governance framework, the public environment can be further described as having several institutions and regulations. Many of these regulatory structures have had their origins in one crisis or another and represent the Government's responses to systemic weaknesses and attempts to enforce property rights and safeguard the integrity of the business and economic environment. A select list of these regulations has been examined in this chapter in the context of their importance in responding to one or more failures in CG in Jamaica, in addition to their coverage and effectiveness in addressing a broad spectrum of regulatory issues, as well as to ensure effective enforcement. These legislation include Public Bodies Management and Accountability Act, the Corruption Prevention Act, the Access to Information Act, continuous amendments and strengthening of a swathe of FSC and BOJ regulations, in addition to quasi-regulations and voluntary codes. In addition, a brief overview of a proposed Whistleblower legislation is provided as it is believed that such a move by the Government of Jamaica is timely as this should have implications in dealing with corruption, a major focus of this study.

There are also several key CG structural institutions that have been established to enforce and promulgate specific legislation in an effort to reinforce the effectiveness and success of implementation. The two most important ones are the Government of Jamaica Audit Commission and the National Contracts Commission.

*The Government of Jamaica Audit Commission*²¹ has been set up to ensure that Audit committees required in all entities are formed and function in accordance with Best Practice. In addition, given the universally accepted significance of the audit process (both internal and external), the Audit Commission was established as an independent parliamentary Commission that helps to maintain the effectiveness of Audit Committees across public sector bodies.

As recently as 2004, less than thirty per cent (30%) of all government departments and agencies had an internal auditor, or such mechanism, and not all had the experience of being externally audited (personal communication, Ministry of Finance). According to Section 33 of the Financial Administration and Audit Act (Amendment), each Government Ministry, Department and Executive Agency, should establish an Audit Committee to aid the Accounting Officer in effectively fulfilling his role.

The *National Contracts Commission* replaced the Government Contracts Committee as stipulated by the amendment to the Contractor General's Act in 1999. Given the incidence of "Fat Cats", the Financial Sector Melt-down and the extent to which the public sector was implicated, it was felt this body was needed to strengthen the Government of Jamaica's procurement procedures and to safeguard the integrity and credibility of the government's public officials while ensuring prudence, transparency and accountability in the business of Government. In spite of the presence of the Commission since 1999, unscrupulous persons have found creative ways of circumventing its stipulated procedures and have caused embarrassment to the Government by misappropriating billions of dollars through fraud, cronyism, nepotism, and sometimes negligence.

The Commission is mandated to ensure an open, efficient process characterised by integrity and fairness. In the execution of its duties, this 8 member team has authority to create regulations in keeping with the Contractor General's Act. These individuals drawn from the public and private sectors must inspect tenders, recommend awardees, create and maintain a registry of awardees with assigned skill areas, and present recommendations for improvement in procedures to the Cabinet. The Commission has established and now oversees sector committees in an effort to more efficiently manage the public sector procurement process.

(www.jis.gov.jm/gpages/html/20060517/; personal experience).

²¹ Sources: Audit Committee Policy for Ministries, Departments and Executive Agencies, 2007. Government of Jamaica, Cabinet Office, January 2007. <http://www.cabinet.gov.jm>.

3.4.4.3 *The Private Sector Environment*

In this environment, the importance and soundness of the regulatory framework of the private sector through the lenses of key regulatory institutions (CG structures) in Jamaica are examined. Notwithstanding the focus of this feature on the private sector, the institutions served the public sector on equal footing. The regulations include the Companies Act of Jamaica 2004, the BOJ, FSC, JSE (quasi-regulator) and the JDIC (non-regulator but a key complementary institution). Except for the JSE, the other institutions cited are all government established regulatory institutions whose day-to-day focus serves both the private and public sectors. The role of the regulatory environment is therefore to ensure the soundness, stability, security, and integrity of the financial sector.

3.4.4.3.1 *Companies Act of Jamaica, 2004*

In a move to strengthen the laws governing Directors' responsibilities, provisions in the Companies Act of Jamaica, 2004 now codify the common law standard of Director's Duty of Care and Skill. Under the new proposal, every Director and Officer of a company in exercising his/her powers and discharging his/her duties must act honestly and in good faith in the best interests of the company. This expressly recognises the broad scope of stakeholders. In spite of these efforts to address these deficiencies, there are many gaps to be remedied in the Companies Act. Some relate to the recourse of minority shareholders and others have to do with seeking more specific interpretation of such terminologies as "skill", "care", and "qualifications" and the like, as the Act has not gone far enough in providing minimum terms of reference or credentials for such issues. However, fundamental to the legal framework of Directors' duties, *Duty of Care* means that a Director must exercise due diligence in making decisions. He/she must discover as much information as possible, on the question at issue, and be able to show that, in reaching a decision, he/she has considered all reasonable alternatives (Nell and Minow, 2008).

To address these deficiencies, there are the conflict of interest provisions in the Companies Act of Jamaica, 2004, which require approval of material contracts in which Directors are interested, by the BOD, and notification of shareholders. The Act requires that such contracts involving Directors be kept at the company's office and be open to public inspection. Also, substantial property transactions (J\$500,000) involving Directors, would be disclosed and approved by shareholders. The Act prohibits public companies from directly or indirectly giving financial assistance for any purpose by means of a loan, guarantee, or

otherwise, a shareholder, Director or Officer of the company or an associate of the foregoing (in certain circumstances). In addition, the Companies Act of Jamaica (2004) gives clear authority to the Minister to exclude from bank ownership or management, persons who pose a threat to the interests of depositors by virtue of their historical record of business malpractices or deceitful oppressive behaviour, or where they are rendered incompetent or dishonest.

3.4.4.3.2 The Bank of Jamaica

The BOJ started operations in May 1961. It is a regulated financial institution whose main objectives are as follows: 1.) to issue and redeem notes and coins; 2.) to keep and administer the reserves of Jamaica; 3.) to influence the volume and conditions of supply of credit so as to promote the fullest expansion in production, trade and employment, consistent with the maintenance of monetary stability in Jamaica and the external value of the currency; 4.) to foster the development of money and capital market in Jamaica and; 5.) to act as banker to the Government. In an effort to encourage economic growth and development and to strengthen its capacity to implement monetary policy, in 1985 the Bank joined forces with the International Bank for Reconstruction and Development (IBRD) and introduced a programme for financial reform, dubbed the Financial Sector Reform Programme (FSRP).

Role in the Regulatory Economy: The Bank of Jamaica Act (1960) makes provisions for monetary policy: “the conduct of monetary policy is aimed at regulating the growth of money and credit in line with the resources expected to finance economic activity and generate employment, without undermining the conditions of price stability.” Certain considerations are taken into account when formulating this. These include: prevailing and prospective developments in the macro economy, fiscal operations, emerging and external sector developments; and any other market information that influences liquidity conditions.

According to Christie-Veitch (2000), the BOJ regulates and supervises its licensees as a first step to promoting their safety and soundness so as to protect confidence, in and the integrity of the banking system and the interest of depositors.

The central bank has the responsibility to “promote and maintain financial system stability.” This is done by overseeing the activities of deposit-taking entities (BOJ Act Section 34A) and of foreign exchange traders and remittance companies (BOJ Act Sections 22B and 22G). These systems, through which financial institutions execute and transfer funds for financial transactions, are supported and maintained by the BOJ. At the end of 2008, the supervised population numbered 14, down from 17 at the end of 2004 as shown in Table 3.2.

Table 3.2: Bank of Jamaica Supervised Entities

<i>Institutions</i>	<i>Dec. 2004</i>	<i>Dec. 2005</i>	<i>Dec. 2006</i>	<i>Dec. 2007</i>	<i>Dec 2008</i>
Commercial Banks	6	6	6	6	6
Merchant Banks	7	5	5	4	4
Building Societies	4	4	4	4	4
Total	17	15	15	14	14

Source: www.boj.jm/superv-deposit-taking.asp

As Christie-Veitch (2000), puts it: “In fostering the objectives of safety and soundness in the financial sector, the supervisory authority assesses how much risk (credit risk, liquidity risk, yield risk, market risk, operational risk, ownership/management risk and others) each licensee is undertaking, resources available to manage these risks, which may be tangible (capital) or intangible (internal control systems, management experience and competence)—and whether the identified resource (s) is/are sufficient to manage the risks.” In addition, it is there to promote an efficient and effective banking system that finances economic growth, allocates credit, and meets the needs of customers and communities they serve. According to the collective views of two respondents:

“The BOJ executes its supervisory functions in the following ways but not necessarily in the order or en bloc as presented, by: ensuring that licensees comply with all applicable laws and regulations—including the imposition of new regulations where the necessity arises, enforcing guidelines and performance standards; providing guidance through best practice standards, verifying and assessing the quality of licenses’ activities through annual on-site examinations and ongoing off-site monitoring; and seeking to achieve as much disclosure as is possible.”

Although regulations and guidelines are important, the cornerstone of a bank’s supervisory process is through on-site examinations¹ conducted at least once annually, along with off-site surveillance on an ongoing basis. With growth in a financial conglomerate and/or banks that form part of corporate groupings, there is the increased risk of financial losses or damaged reputation to the licensee itself due to the *contagion effect*, i.e., risk that financial difficulties affecting other members of the conglomerate either regulated or unregulated entities, will affect the licensed institution, leading to liquidity and solvency problems. As a result, the Financial Institutions Services Division also requires, on a regular basis, relevant information about related non-bank companies (BOJ Pamphlet No. 7, 2002).

BOJ's off-site supervision process involves a number of steps, namely, data collection and verification checks, data analysis, reporting of findings (up to the Governor and Minister), identifying and documenting recommendations for corrective action and monitoring of appropriate implementation of corrective action. Shippey and Christie-Veitch (2000) writes, "Off-site examination provides an important complement to on-site examination by providing early warning of actual or potential problems and a means of assessing broader patterns and trends within the system as a whole".

3.4.4.3.3 *The Financial Services Commission (FSC)*

The FSC was established on August 2, 2001 by an Act (the FSC Act), replacing the Office of the Superintendent of Insurance (OSI) and Unit Trust Securities Commission. The purpose of the FSC is to act as supervisor and regulator for the insurance industry, the securities industry, and the private pensions industry, in line with its vision which reads: "to be a strong, credible, impartial and effective regulator".

The FSC is an integrated financial services regulator structured with divisions such as: insurance, securities, examinations and investigations, legal, actuarial, corporate services, and pensions, all working towards achieving the organisation's mandate. The mission of the FSC is "to protect users of financial services in the areas of insurance and securities by fostering the integrity, stability and health of the financial sector, through the efforts of competent and committed employees."

What is the role of the Board of Governors of the FSC?: The Board of Commissioners of the FSC operates similar to the Board of Directors of a private company, in the sense that its basic function is to provide policy direction and oversight. Unlike the Board of Directors, the Board of Commissioners also has the responsibility for the development of public policy as it relates to the supervision of the pension, insurance and securities industries. In addition, the Commission has the responsibility for making certain supervisory decisions with respect to prescribed financial institutions.

How does the FSC do it? A function of the Commission is to ensure the proper administration of securities and insurance laws, thus the organisation oversees registration, solvency, and consultation of approximately 114 firms and over 1200 individuals in securities and insurance industries. It also has oversight responsibility for over 800 private pension plans. Some of these firms are listed as: Securities Dealers, Investment Advisors, Securities Dealers' Representatives, Investment Advisors' Representatives, Mutual Funds, Unit Trusts, Insurance Companies, Insurance Brokers, Insurance Agencies, Insurance Managing General

Agent, Insurance Sales Representatives, Insurance Loss Adjusters, and Insurance Consultants. To ensure order and proper functioning of these entities the FSC employs a number of statutes and regulations. Among these are the FSC Act, the Securities Act, the Unit Trust Act, and the Insurance Act. See Table 3.3.

Some of the FSC's regulations cover important aspects of CG, for example, the Insurance Regulations has provisions in respect of the following: Establishment of Audit Committee, Establishment of Conduct Review Committee, Establishment of Investment and Loan Committee, Qualifications of actuary etc., Form of Actuary Report, Actuarial Regulations, Qualifications of auditor, Appointment of Auditor for Subsidiary, Conduct Review Committee, Restrictions on Self-dealing as a Fiduciary, Certain Related Party Transactions Permitted, Conduct Review Committee's Power to Approve Other Transactions, Proper Transaction, and Disclosure by Related Parties.

The FSC has adopted several regulations within the last five years. First, Interim Capital Standards, which give the Commission ability to specify a capital adequacy ratio that must be maintained by its licensees. This ratio to be maintained by each licensee is expressed as a percentage and is determined by comparing the entity's capital base with its risk based assets, and its risk exposures after applying respective weights specified by the Commission. Second is Margin Requirements for Repurchase Agreements. The Securities Act provides for the making of regulations governing margin requirements. The guidelines for margin requirement for repurchase agreements will eventually be drafted into regulations. The guidelines were released to reduce risks arising from the practice of securities dealers financing large volumes of long term securities with short term repurchase agreements entered into with their investing clients instead of selling those securities outright to their clients. Third, are Early Warning Bulletins which involve key ratios to be used for the purpose of identifying signs of financial weakness in a licensee and determining whether a detailed assessment of the financial condition of a licensee should be conducted. Fourth, is enactment of the Pensions (Superannuation Funds and Retirement Schemes) Act. This law, among other things, establishes the FSC as the regulator for private pension funds and approved retirement schemes.

Source: Personal interview with George Roper, Deputy Executive Director

3.4.4.3.4 The Jamaica Stock Exchange (JSE)

The JSE is a privately owned limited liability company. It was incorporated in August 1968 and began operations on Monday, February 3, 1969. The JSE highlights its mission as

being “to provide a fair, efficient, ethical and transparent medium for the conduct of a viable securities market that facilitates the mobilisation of capital to finance the growth and development of the nation.”

The JSE has several objectives. First, is to promote the orderly development of the stock market and the Stock Exchange in Jamaica. Second, is to ensure that the stock market and its broker-members operate at the highest standards practicable. Third, is to develop, apply and enforce rules designed to ensure public confidence in the stock market and its broker-members. Fourth, is to provide facilities for the transaction of stock market business. Fifth and final, is to conduct research, disseminate relevant information, and maintain local and international relationships calculated to enhance the development of the Jamaican Stock Market. The JSE is governed by a BOD which comprises: the Governor of the BOJ (or his representative) and representative from the MOF, up to ten seat holders and any three other persons. Today the JSE has a BOD comprising seventeen members, six of which are independent Directors. The Executive chairman of the JSE reported in the 2005 annual report that:

“[C]onsistent with its stated position to improve its own corporate governance practices and with the adoption of its Statement of Corporate Governance Principles and Practices, the Jamaica Stock Exchange (JSE) now has independent Board members nominated by the Bank of Jamaica, the Ministry of Finance and Planning, the Jamaica Bar Association, the Institute of Chartered Accountants of Jamaica and the Private Sector Organization of Jamaica (Johnson, Roy, Executive Chairman, JSE, personal Comm., 2005).

It was also reported in the JSE Report that the JSE, in an effort to improve governance among its members, has implemented rule changes requiring these companies to operate with a board appointed audit committee. Since 2005, the JSE has been recognising listed Companies and stockbrokerages for upholding standards of best practices. They were adjudged in five areas, namely, Best Practices Annual Report, Best Practices Corporate Disclosure & Investor Relations; Best Practices Investor Relations Awards (Stockbrokerages), Best Performing Companies, and Best Practices Web Site.

There were at least three objectives of this competition. First, was to provide an avenue to recognise stockbrokerages and listed companies in the securities industry who uphold Best Practices standards. Second, was to enhance the relationship between the JSE and its stakeholders. Third, is to create an awareness of the standards for Best Practices in the areas to

be adjudged. The Judges were drawn from a wide cross-section of the Jamaican business, and academic communities and include the author of this thesis.

3.4.4.3.5 The Jamaica Depository Insurance Corporation

Established in August 1998, the JDIC was created by the GOJ to protect depositors, promote stability and confidence, and strengthen the Jamaican financial sector’s regulatory framework. This institution came about in light of numerous bank failures of the mid-nineties when the Government realised a need for a formal deposit insurance agency, as depositors were never guaranteed money when banks failed.

Table 3.3 details regulatory developments which have implications for an improved regulatory framework and hence good CG culture.

Table 3.3: Regulatory Developments (2002-2007, Jamaica)

YEAR	DETAILS
2007	Electronic Transaction Act, 2007
2006	<ul style="list-style-type: none"> • In March 2006, four Regulations were passed in the House of Parliament, allowing the Financial Service Commission to begin active supervision of the pensions industry. • In August 2006, the sale, issue and distribution of “stored valued cards” were designed as “banking business”. • Anti-Money Laundering/Counter-Financing of Terrorism Guidance notes were amended.
2005	<ul style="list-style-type: none"> • The Pensions (Superannuation Fund and Retirement Schemes) Act was made effective in March 2005. • The Companies Act, 2004, became effective in February 2005. • The Financial Services Commission (Overseas Regulatory Authority) (Disclosure), Regulations, 2005 became effective on May 6, 2005 • The Anti-Money Laundering/Counter-Financing of Terrorism came into effect on February 3, 2005.
2004	<ul style="list-style-type: none"> • The Pension Bill was passed in March 2004 and the Pension Act was passed in November 2004. • The 2004 Guidance Notes for the Prevention and Detection of Money Laundering and Terrorist Financing was finalized and took effect on August 31, 2004. • Amendments to the Banking Act, Building Societies Act, and the Financial Institutions Act were tabled and passed in the Houses of Parliament.
2003	<ul style="list-style-type: none"> • Amendments were made to the Banking Act, the Building Societies, Act and the Financial Institutions Act to allow for better information sharing law enforcement authorities and regulators of financial institutions. • A draft of Guidance Notes relating to the Money Laundering Act was issued by the BOJ to all financial institutions which it monitors. • The Pension Bill was tabled in Parliament.
2002	<ul style="list-style-type: none"> • Amendments were made to the Jamaican banking laws to give the Bank of Jamaica additional power to supervise deposit taking institutions and to further refine the role of the Financial Services Commission

Source: Economic & Social Surveys 2006 and 2007, Planning Institute of Jamaica

The institution is answerable to Parliament through the Ministry of Finance and Planning. The Deposit Insurance Act, The Public Bodies Management and Accountability Act, and the Financial Administration and Audit Act, provide the framework for operations of the JDIC. The primary goal of the JDIC is to manage a Deposit Insurance Scheme to protect

depositors from loss, up to a specified limit which is at J\$600,000 at the time of writing. The main objectives of the organisation are to: protect depositors by providing the highest level of coverage possible to small depositors, provide a clearly defined system for dealing with problems that may arise in financial institutions covered under the scheme, and restore and maintain confidence in deposit-taking institutions, and by extension contribute to stability in the financial sector (www.jdic.org; personal communication with legal counsel of JDIC and experience).

3.5 THE PERCEPTION AND INCIDENTS OF CORRUPTION

3.5.1 Introduction

This section presents a theoretical and empirical support on the perception and implications of corruption. It utilises mini case examples of the incidents of corruption and in the Jamaica context, particularly featuring public sector corruption and accompanied regulatory responses. These regulatory responses (laws and regulations) usually followed incidents of corruption and aimed at addressing severe regulatory deficiencies and systemic weaknesses, mainly in the financial sector.

First, what is perception in the context of corruption in this thesis? *Perception* is the process by which individuals organise and interpret their sensory impressions in order to give meaning to their environment. It is also argued that a person's behaviour is influenced by his perception or notion (his belief) of reality, but not necessarily of reality itself²².

Second, what is *Corruption*? It is never easy to define corruption as it is a most contentious issue in the literature. In essence, it is treated in various ways from one culture to the other. However, given that this study focuses on political (mainly) and corporate corruption, defining corruption will be therefore limited to these two areas.

Political Corruption: On the one hand, political corruption (the main emphasis of this section), is defined as use of legislated powers by government officials for illegitimate private gain. Misuse of government power for other purposes, such as repression of political opponents and general police brutality, is not considered political corruption. Neither are illegal acts by private persons or corporations not directly involved with the government. In sum, the World Bank defines political corruption as the misuse of public office for private gain. Forty five percent (45%) of Jamaican people define corruption as the misuse of public office for private gain (CaPRI, 2007:13).

²² CaPRI, Taking Responsibility, A Landscape Assessment of Political Corruption in Jamaica, June 2007

Corporate Corruption: On the other hand, corporate corruption is defined as the abuse of power by corporate managers against shareholders or consumers. Corporate corruption is closely associated with the science of criminology which refers to crimes committed by corporations (i.e., a business entity having its separate legal personality from the natural persons that manage its activities), or by individuals who may be identified with a corporation or business entity. Some recent examples are charges of conspiracy to defraud, corporate fraud, false statement and insider trading, for which top executives at Enron, WorldCom/MCI and Tyco have been imprisoned (all USA firms).

However, such would exclude the abuse of office for personal advantage in spheres outside the public sector, in particular, such as in corporations and business impacting integrity not only on workers and shareholders but on pensioners, depositors in banks, insurance policy holders, churches, media houses, and communities, to name a few. Therefore, corruption by definition, whether in the public or private sector, means a departure from rules (laws) and non-legally binding codes that govern behaviour. For example, paying to receive your driver's license without going through the due process of taking a standard driving test, paying off the police when you are stopped for speeding instead of paying the authorities or going to court, receiving and giving kickbacks on contracts, and granting investment concessions.

3.5.2 Theoretical and Empirical Discussion on Corruption

The issue of corruption is of academic interest to many scholars dating as far back as Plato (Onuf, 1998; Warren, 2004). However, in recent decades, writers such as Huntington, (1968), Leff, (1964), Nye (1967) and others, have drawn attention to the existence, prevalence, causes, and implications of corruption in many different forms of societies, spanning the pre- and post-industrial era until it was brought to the attention of current academic and public policy scholars. In recent times, other writers, and in particular Transparency International (2000-2008), have been at the forefront of studying the economic, political, and social aspects, and have been providing rich empirical and policy-driven literature about corruption.

It is not surprising therefore, that Jamaica was chosen for closer scrutiny in this study and the 'perceptions and incidences of corruption' as one of its major planks. Indeed, TI Corruption Perception Index, 2008, assigns Jamaica a score of 3.1—on a scale of 1 (bad) to 10 (good)—and a ranking of 96 out of 179 (the same as, among others, Guatemala and Gabon). As a broad measure of the pro-business environment, The Heritage Foundation 2009 Index of Economic Freedom ranks Jamaica 52 out of 157.

Many forms of corruption have been articulated and the list is inexhaustible, depending on laws—which include or exclude particular behaviour in one country or culture versus another. However, the most prevalent of these seem to suggest that corruption includes: misappropriation of funds, abuse of power, deceit and fraud, perversion of justice, treason, non-performance of duties, extortion, bribery and graft, nepotism, election tampering, unauthorized sale of public offices, misuse of insider knowledge and confidential information, manipulation of regulation, purchases of supplies, contracts and loans, tax evasion, acceptance of improper gifts, illegal surveillance, misuse of office seals and stationary, and public officials linking with criminal actors (TI 2000).

Lipset and Lenz (2000) find support in Merton's assumption that "corruption is motivated behaviour stemming from social pressures that result in norm violations" (2000:116). According to these authors, many societies have social goals which people aspire to achieve—institutionalised norms. Not all persons have the knowledge, skills nor—generally speaking—opportunities to do so legally, as many societies either directly or indirectly restrict access to resources or what may be called "opportunity structure". This is argued (Lipset and Lenz) to be as a result of class, race, ethnicity, gender, lack of capital, skills, just to list some. What these authors have argued, is that while societies have stressed economic success as an important goal, they have nevertheless strongly restricted opportunities (p.117) and in this way people reject the rules of the game and try to succeed by unconventional (innovative or criminal) means. The authors opined that this is atypical.

In testing their hypothesis with data from cross national 1990-1993 World Values Survey, it was found that "less affluent countries with high achievement motivation" were found to be the "most corrupt" (Ibid). The countries include Russia, South Korea, and Turkey, which were at the time deemed the most corrupt by Transparency International. By contrast, those societies with low achievement motivation and high access to resources such as Denmark, Norway, and Sweden had lower levels of corruption. Lipset and Lenz also performed multiple regression analysis using data from the 1990 World Values Survey. From the findings the following conclusions were drawn:

As to Merton's theoretical analysis, it implies that serious corruption will plague countries with high levels of achievement orientation and low access to means (Lipset and Lenz, 2000: p.118)

They further concluded that, "the availability of institutionalized means to achieve desired ends lowers levels of corruption," (Lipset and Lenz, 2000:p.118). The essential

themes highlighted in the work of Lipset and Lenz can be used to describe the Jamaican society as a less affluent country with high achievement motivation and very limited access to resources. Furthermore, from personal experience of the socio-economic and socio-cultural realities across all classes of people in Jamaica, it appears to me that the “haves” or more affluent Jamaicans are usually with low achievement motivation and are usually less inclined to be corrupt while the “haves not” are usually with very high motivation and more inclined to participate in corrupt activities in order to achieve their objectives. Therefore, the findings of Lipset and Lenz are truly applicable to some of the root causes of corruption in Jamaica.

3.6 OWNERSHIP AND CONTROL, STAKEHOLDER RELATIONS AND PERCEPTION AND ROLE OF INSTITUTIONAL INVESTORS

In this section, a literature review is presented for ownership and control, stakeholder relations, and the perception and role of institutional investors.

3.6.1 Ownership and Control

The potential problems of the separation of ownership and control were first identified by Adam Smith in 1776 in his seminal thesis, *“Wealth of Nations”*. According to Adam Smith, ‘...the Directors of such companies [Joint stock companies] however being the managers of other people’s money rather than of their own, cannot well be expected that they should watch over it with the same anxious vigilance [as if it were their own]’. In 1932, Berle and Means published their highly acclaimed seminal piece called *The Modern Corporation and Private Property*, in which they argued that as countries industrialised and developed their markets, ownership and control become separated. Mallin (2007) supports this by concluding that this was particularly so in the case in the USA and the UK where legal systems have fostered good protection of minority shareholders and hence there has been encouragement for more diversified shareholder bases. However, the protection of minority shareholders was not fully entrenched until the 1980s. In many other countries, there has been less impetus for a broad shareholder base, especially where there is a code of civil law as opposed to common law resulting in less effective protection of minority shareholders.

A drive for more effective shareholders, who act as owners, has come about because there have been numerous cases of corporate excesses and abuses, such as perceived overpayment of Directors for poor performance, corporate collapses, and scandals, which have resulted in corporate pension funds being wiped out and shareholders losing their investments. In the Caribbean, ownership is still not separated from control (in the majority of corporations)

as most stock market companies are still dominated by owner-managers who often own up to seventy-five per cent (75%) issued shares with approximately twenty-five percent (25%) owned by minority shareholders. Therefore, the shift of control that took place based on Berle and Means (1932) observations from traditional owners to a new group of professional managers (managerial elites) in the United States, has still not fully been accomplished in the Jamaican and Caribbean context, albeit, there is a gradual transition to total separation. The gradual transition is being partially facilitated by the children and grandchildren of the owner class, opting to go abroad for studies and remaining there rather than returning to Jamaica to join the family business. Hence, controlling families are being forced to hire more and more non-family (outsiders) professional managers.

3.6.2 Nature and Role of Stakeholder Relations (Representation)

In an abundance of literature on the role of stakeholders, critics have argued that this will lead to better decisions, more effectiveness in decision implementation and the possibility of better outcomes of intended business objectives (Filatochev et al, 2007). Much of this literature has been established in the fields of economics, accounting, political science, legal analysis, and sociology. In many instances, the stakeholder literature overlaps with the shareholder literature. Within the context of CG, there is an increasing amount of literature that draws parallels or contrasts between shareholder and stakeholders, some of which have been explored in this chapter under Shareholder-Stakeholder Theory.

The proponents of 'stakeholder representation' posited the moral or political argument that there is an intrinsic case for the involvement of stakeholders in the firm in terms of democratic rights and voice (Freeman 1984; Donaldson and Preston 1995). Another view is even more instrumental or economic, which holds that there is an intrinsic case for stakeholder participation in terms of team production, commitment, firm specific investments, and risk sharing (Parkinson 2003). This latter view is also seen as the *enlightened self-interest model*. However, there are those who hold differing views. Opponents against all forms of stakeholder engagement go back to Friedman (1962) and Hayak (1969). These critics wrote that apart from basic moral objections linked to the notion of private property, there were various practical problems with stakeholder representation: 1.) too many stakeholders, 2.) no clear task or accountability for management, 3.) the lack of pledgable income in the case of some, and 4.) problems of mechanisms and deadlocks in decision making (Filatochev et al, 2007 cf. Sternberg, 1997; Tirole, 2001).

Other writers have taken a middle ground and posit the *enlightened shareholder value* or *instrumental stakeholder theory*, or *strategic corporate social responsibility*, or ‘the good firm’ (Jones 1995, Campbell 1997; Keasey, Thompson and Wright 1997, Parkinson 1998). These writers argued that to forge meaningful stakeholder relations is both morally desirable, and makes good business sense, and that firms which build good relations with stakeholders gain competitive advantage. However, if this view is to be upheld, the primary responsibility for the running of the firm should be vested in managers, and their task is to balance or integrate the interests of the different stakeholders. More of these debates can be found in Vinten 2001; Kelly 2001; Letza et al, 2004; O’Sullivan, 2000).

The Identity and Role of Stakeholders: There is still no consensus in the literature as to which groups rightfully constitute stakeholders. The literature review included creditors and debt holders in the definition and posited that they have real claims on the firm, which are not necessarily the same as those of shareholders. Employees are very frequently included in the definition of stakeholders and do have a stake in the firm’s existence and an economic stake, a voice, in decision making in varying degrees, and their involvement arguably affects performance. As part of the outer circle of stakeholders, local communities are often included in the definition—they have a stake in the firm’s existence and disregarding their voice can have negative effects on the firm (Filatochev et al, 2007).

3.6.3 Perception and Role of Institutional Investors (IIs) in CG Development

A review of the literature (Clark and Hebb 2004) about the role of IIs revealed both an active and a passive role for these corporate players. Institutional investors contribute to CG as they ensure that board members have adequate experience and are truly independent. Due to corporate disclosure (chapter 7), IIs are privy to a wealth of information allowing for early detection of risk. They also monitor to ensure the prudent management of company funds and that the board and the CEO are not flagrantly overpaid. Institutional investors possess much clout as it relates to the operational and informational efficiency of the financial markets, which engenders liquidity and transparency, as well as guaranteeing good quality public information. They hold such power as they can “vote with their feet”, enter into dialogue with the management, stage a proxy contest and voice concerns, boycott, display, or withhold needed loyalty and vote on key issues. IIs have been successful in imposing new standards and regulations which favour the shareholder and ultimately put considerable pressure on Company Directors and business strategy (Morin, 2000; Orléan, 1999; Lordon cited in Theurillat, 2007).

In spite of the preceding, there are cases where IIs have played a rather passive role (Clearfield, 2004) and thereby have little power to implement original policy (Aglietta and Rebérioux, 2004 cf in Theurillat, 2007) or make their voices heard (Engelen, 2003). The activeness of the IIs is in part dependent on the country and the governance structures in place. Particularly in America, there is the view that “[institutional] investors [are] leading capitalism to a new stage of development (Clark and Hebb 2004) and have come to manage the majority of financial assets (Orléan, 2000; Giraud, 2001 cf. in Theurillat 2007). Radical IIs have gained quite a reputation for catalysing boardroom reforms and challenging boardroom ‘cowboyism.’ The latter is unlike Jamaica where, although institutional investors control in excess of seventy-five per cent (75%) of Jamaican listed companies, they have little or no interest and play insignificant roles in influencing CG on a day-to-day basis (Kerr 2006, interview with Iton²³, 2002). To remedy this passivity, IIs in the Caribbean are seeking to establish an investor code for regional institutions and to establish a CG code for listed companies that would be a part of the exchanges’ listing requirements.

Theoretical studies on the contribution of shareholder activism to the improvement of the financial performance of corporations were indeed limited. The few available studies have mostly concentrated on shareholder activism in the United States and information on the role of IIs in other countries remains scarce. The Greenbury Report (1995) states: “the investor institutions should use their power and influence to ensure the implementation of *Best Practices* as set out in the Code” (para. 3.4). Hampel noted, “the role of shareholders in CG will mainly concern the institutions, particularly [in the] UK” (paragraph 5.1) (Jackson, 2001).

Institutional investors are especially important in the UK and the United States. In December 1999, 57.7 per cent of UK ordinary shares were held by UK IIs whilst 23.3 per cent were held by investors outside the UK, also largely by institutions. In contrast, individual holdings only accounted 16% (Jackson, 1999:7). In the USA, IIs such as large pension funds, CalPERS, CalSTRS, TIAA-CREF, NYC and SWIB5, have taken the lead in shareholder activism. According to Pomeranz (1998), IIs have accounted for eighty per cent (80%) of all share trading in the US, which accounts for fifty-one percent (51.5%) of total market value of US equity securities in 1994—a potential to exert significant influences on corporations via the exercise of voting rights (Maassen, 2000).

Rob Bauer (2003) posits that well governed companies perform better at the stock market, and encourages IIs to account for CG in their investment strategy. In fact, IIs have

²³ Wayne Iton was the Managing Director of the Jamaica Stock Exchange in 2002. He is currently the General Manager of the Trinidad and Tobago Stock Exchange (April 2009).

been increasingly dominant players in the financial market and have an integral role in ensuring good CG. The latter is possible due to the increasing power of collective investment schemes and the concentration of these in the hands of IIs (Clark, 2000 citing Theurillat et al, 2007). To understand the influence which IIs possess, one must understand the historical phenomena of the all-powerful manager and the period of managerial capitalism.

Given the preceding, there should not be any doubt as to whether or not IIs have important roles in CG. The questions are: What are their roles in CG in Jamaica? How do they perceive the state of CG development? To what extent are they demanding, if at all, CG guidelines from their investee companies? These questions have been addressed in chapter six, section 6.4.

3.7 BOARD CHARACTERISTICS AND PROCESSES (CORPORATE GOVERNANCE PRACTICES)

3.7.1 Introduction

The CG practices of interest in this study have been guided by two of the most highly respected sources of literature that have influenced the field of CG, both in academia and practice, the world over. These sources are the *OECD Key Principles of Corporate Governance*, originally published in 1999 and revised in 2004 (*See Appendix 7*), and the *Cadbury Report (1992)*. See key elements/recommendations of the Cadbury Report (1992) in Appendix 8. While this study has drawn heavily on the OECD Principles for theoretical and practical generality, the Cadbury Report (1992) has been used for its concurring and diverging views in selected circumstances and its evolution over various stages—Cadbury 1992, Combined Codes 1998, 2003 and 2006. Therefore, this study assumes that the signposts for CG Best Practices have been mainly supported by the OECD Principles and the Cadbury Reports.

In May 1999, Ministers representing the twenty-nine (29) governments comprising the OECD voted unanimously to endorse the OECD Principles of CG. These principles were negotiated over the course of a year, in consultation with key players in the market (the views of many countries) including the International Corporate Governance Network (ICGN). The elements of CG from the ICGN were published, and, in doing so, took into account the views of many different countries and hence constitute the chief responses by governments and reflected the G-7 Summit Leaders' recognition of CG as an important pillar in the architecture of the 21st Century global economy. The principles were welcomed by the G7 leaders at the Cologne, France summit, in June 1999, and have since been adopted as the benchmark

standard for good CG on all continents, by the IMF, the World Bank, and the United Nations, and other international organisations. As earlier stated, Appendix 7 summarises the OECD Key Elements and Appendix 8 details the relevant sections of the Cadbury Report (1992).

However, in this section, the discussion is restricted to three broad areas which are: board characteristics and composition, board's role in a firm's strategic decision-making, and the nature and role of corporate disclosure in CG.

3.7.2 Corporate Governance Practices

In the past two decades, there has been increasing scrutiny of Boards of Directors, increased shareholder activism, and a raging public scepticism in light of questionable events of corporate failures. Codes and guidelines have been issued by institutional investor groups calling on boards to become more involved in firms' strategic decision-making processes. While there is evidence that boards are becoming more involved (Spencer Stuart, 2008 Index), the overwhelming impression, albeit, mainly from the business press, is one of boards' passivity and reluctance to introduce contestability into the boardroom (Stiles, 2001). Though research on board involvement in strategic decision making have increased since the start of this decade, there remains a dearth of academic studies featuring the perceptions of Directors themselves as to their roles and influence in the core decision-making process of the organisation.

The specific board characteristics and processes under review here are Chairman/CEO duality or separation, non-executive vs. executive Directors and director selection; board size; board committee and composition, director tenure, gender and inequality issues; board evaluation and training, and board's role in firm's strategic decision making.

3.7.2.1 Chairman and CEO Duality versus Separation

In many jurisdictions, the dual roles of Chief Executive Officer and Chairman of the board are often delegated to one person, hence Chairman and CEO duality. In other countries, banking laws, company laws or public policy regulation prevent this duality. For example, the very nature of the German and Hungarian two-tier systems (just to name two of the many examples) of a Supervisory Board imposed atop the management board renders one person holding both positions impossible. On the contrary, in French law, the positions of Chairman (*Président*) and Chief Executive Officer (*Directeur General*) are statutorily linked together and

must be exercised by the same person (the “PdG”). However, the second Viénot²⁴ Report is in favour of an amendment to the law governing commercial companies which would permit this separation, but the system would remain optional and left to the board’s discretion. The option of choosing between one and two-tier boards in France is also an option for a company which would affect the choice of having separation or duality of the positions. In the UK, the Combined Code (2008) states: “There should be a clear division of responsibilities at the head of the company between the running of the board and the executive responsibility for the running of the company’s business. No one individual should have unfettered powers of decision.”

The supporting rationale by the Combined Code is that the Chairman is responsible for leadership of the board, ensuring its effectiveness on all aspects of its role and setting its agenda, that the Directors receive accurate, timely and clear information, ensure effective communication with shareholders, facilitate the effective contribution of non-executive Directors in particular, and ensure constructive relations between executive and non-executive Directors.

Table 3.4: Separation of Chairman and CEO

<i>Corporate Governance Systems and Countries</i>	<i>Percentage of Companies with Separate Chairman and CEO</i>
Anglo-Saxon USA	24.9
UK	96.2
Canada	79.7
Australia	97.3
Non-Anglo-Saxon	
Germanic Germany	97.7
Netherlands	95.0
Switzerland	77.8
Sweden	100.0
Latin France	52.5
Italy	88.1
Spain	58.3
Belgium	84.6
Japan	50.8

Source: EIRIS DATA 2005, August

Table 3.4 shows the prevalence of the duality of Chairman and CEO in companies drawn from Anglo-Saxon and Non-Anglo-Saxon countries. In the USA, seventy-five per cent (75%) of the companies included in a study by Ethical Investment Research Services (2005), have the dual positions of Chairman and Chief Executive Officer (or only 24.9 per cent

²⁴ French Corporate Governance Report first published in 1995 and established by two employers federations (MEDEF and AFEP-AGREF) with the support of leading private sector companies.

separation). This very low level of separation of the roles of Chairman and CEO puts the USA in a rather unique position at this time.

A separate study conducted by Spencer Stuart Board Index (The Changing Profile of Directors, 2006:20) finds concurrence with the EIRIS Data. Based on Spencer Stuart data, in 2006, sixty-seven per cent (67) of all Standard & Poors (S&P) 500 companies have a combined Chairman and CEO, down from seventy-one per cent (71%), the previous year (2005) and seventy-four per cent (74%) in 2001.

According to the Spencer Stuart data, of the 158 companies that have separated the role in 2006, compared with 140 in 2005, 100 of these companies have a non-independent chair (compared with 94 in 2005) and 48 have an independent chair (compared with 43). Ten companies did not list a Chairman. Therefore, only ten per cent (10%) of boards (48/484) have a truly independent chairman. This represents a slight increase in 2006 over 2005's nine per cent (9%). At the 100 companies with a non-independent chair, the chairman is a former CEO at 67 companies and various non-independent categories (e.g., former executive officers, those who receive significant other compensation from the company, or relative of the CEO) apply in the 33 other instances (Spencer Stuart Board Index, 2006).

As the global debate rages over this very controversial CG indicator, this researcher scours the social science literature on CG for the opinions of some of the leading CG actors. Michael Useem, Management Professor and Director of Wharton's Center for Leadership and Change Management, points out that the CEO and Chairman's posts at Enron were held by different people—Kenneth Lay and Jeffrey Skilling—in the months leading up to the disaster at the energy company. Despite the separation of the CEO-ship from the chairmanship at Enron and the presumption of better oversight from the non-executive chairman, the company suffered a massive failure. Research has also shown that the performance of U.S. companies in which the Chairman and CEO positions are held by different people is no better than that of firms in which those posts are held by the same person. Further, the issue of separating the CEO and the Chairperson's jobs has been blown out of proportion (Ibid, <http://knowledge.wharton.upenn.edu/article.cfm>). In an opposing view, Kimbell²⁵ opined that the board as a critical entity set apart from the day-to-day running of the business, is vitally important to the health of the company. In this regard, the board should not be run by a CEO

²⁵Separating the roles of chairman and chief executive: Looking at both sides of the debate David Kimbell, Tom Neff, July 2006 (<http://www.spencerstuart.com/research/articles/1022>)

with his or her own agenda who seeks to dictate to, or unduly influence, the board on key issues such as the recruitment of Directors. Instead, a chairman who is independent at the time of appointment is better placed to run the board in an even-handed manner, with the interests of shareholders being paramount (David Kimbell, Co-leader of Spencer Stuart's Board Services in the United States).

Eisenhardt (1989) opined that separating the CEO/Chairman roles is consistent with agency theory based on his assumption that separation of ownership and control of corporations can lead to the self-interested actions of managers, and conflicts of interest in the role as agents of the owners. What is apparent is that Chairman/CEO duality reduces the monitoring effectiveness of board over management, and on this basis is suggesting (Eisenhardt) the separation of the CEO/Chairman roles. Stewardship theory (Davis, Schoorman and Donaldson, 1997), on the other hand, regards managers as inherently trustworthy and unlikely to appropriate organisational resources for their own ends. They view Chairman/CEO duality as fostering strong and unified leadership, rather than as weakening the board's independence from management and its monitoring role.

Empirical evidence, while sometimes supporting this CEO/Chair separation (e.g. Rechner and Dalton, 1991), at other times calls it into serious question. Daily and Dalton (1997), for example, found that CEOs who are also Chairpersons of boards are not necessarily more independent from board influence than CEOs who are not. Baligna, Moyer and Rao (reported in Heracleous, 2001), found no significant relationship between duality status and organisational performance, and suggested that a change in this status from duality to non-duality may be a symbolic move by board to signal that they are exercising their governance role rather than a substantive move that can affect performance. Also, Heracleous (2001) found no systematic link between duality status and organisational performance or market value, and is arguing that if anything, the evidence is suggesting that dual leadership is associated with systematically lower cash flows and value, as reformers claim (Ibid).

3.7.2.2 *Non-Executive Directors versus Executive Directors and Director Selection*

The increasing influence of Independent²⁶ Non-Executive Directors is another significant development in CG. Non-Executive Directors are there to protect shareholders

²⁶ An Independent Director can be considered as one who is not employed in the firm or closely related to the company or its management through significant economic, family or other ties. Further, the Cadbury report

interests, check the power of the executives, and bring outside experience and objectivity to the board (Spencer Stuart, 1997). Their workload is rising as important issues such as executive remuneration in the UK are developed exclusively by them. Preliminary research conducted by Kerr (2002) found in a case company that the Chairman/CEO and his senior managers' remuneration is now exclusively dealt with by the Compensation Committee. The European Board Index (1999)²⁷ found that non-executive directors make up the majority of both one and two-tier boards in all eight (8) countries it studied.

The agency theory supports the idea that boards should be dominated by NEDs to increase the board's independence from management. The Cadbury Code states: "the board should include NEDs of sufficient calibre and number for their views to carry significant weight in the board's decisions". Stewardship theory, on the other hand, suggests that control should accrue to the firm's managers rather than outsiders, since there is no need to monitor management who are regarded as able and trustworthy.

A study by Bhagat and Black (1999), found no evidence that increasing outsider board representation can improve firm performance, that firms with a super-majority of NEDs perform worse than other firms, and that firms with a higher proportion of inside Directors perform as well as firms with a higher proportion of outside Directors. The common assumption that the existence of social or business ties between CEOs and board members is detrimental to board effectiveness because it reduces the board's independence from management was shown to be inaccurate. In fact, such ties can promote more collaborative strategic decision making without necessarily reducing effective board control or vigilance (Westphal, 1998).

3.7.2.3 Board Size

In many countries, the minimum size of a board is determined by national laws or stock market listing requirements. There can be no appropriate board size as this would be challenged by a number of factors such as the qualifications, experience and ability of individual board members, and the nature and scope of the corporation, to list a few. However, an optimum number may be dependent upon company size and sector. Board size is hardly prescribed in most CG codes as they tend to shy away from such a restrictive task.

(1992) insisted that they should have no links, present or past that might affect the exercise of genuinely independent judgment.

²⁷ Is a publication of Spencer Stuart Board Services, the world's largest director recruitment firm with offices in over sixty two countries.

Instead, many codes have adopted a more general approach. For example, Higgs Review (2003), states:

An effective board should not be so large as to become unwieldy. It should be of sufficient size with a balance of skills and experience that is appropriate for the requirement of the business that changes in the board's composition can be managed without undue disruption.

While the practical concern of board sizes around the world is important, the theoretical implication is another consideration. According to Herman (1981), large boards are 'weak' boards since these boards make in-depth discussion unlikely, and increase the prospect for diversity and fragmentation.

There has been no limitation as to the maximum number of Directors a company may have. However, in Jamaica, the revised Companies Act 2004, states that "A company may have at least one Director, but a public company shall have at least three Directors, at least two of whom should be employees of the company or any of its affiliates". The Model Act²⁸ and Modern Corporation Law of Delaware require companies to have a minimum of one Director. The articles of incorporation establish the initial size of the board, and may determine a minimum or maximum number of Directors. The bylaws of the corporation finally prescribe the exact number of Directors (Maassen 2000, citing Varallo and Dreisbach, 1996).

Academic studies on board sizes while not profuse have been generated by both quantitative and qualitative research. Herman (1981) posits that large boards are usually 'weak' boards since these boards make in-depth discussion unlikely, and increase the prospect for diversity and fragmentation. Agency researchers are also sceptical about the effects of board size on monitoring capacity of independent Directors (Jensen 2003), claiming that when boards become too big, agency problems such as Director free-riding or 'social loafing' increase within the board, and it becomes more symbolic and less a part of the management process (Hermalin and Weisbach 2003).

In contrast to the likely agency problems articulated by the agency theorists, resource dependence theory has been the primary foundation for the perspective that larger boards are associated with higher levels of firm performance and suggest that board sizes may be a good

²⁸ Some 37 states, excluding the state of Delaware, have adopted sections from the Model Business Corporation Act (MBCA or "Model Act") to regulate the governance structure of corporations. Although no single state has fully adopted either the entire Model Act or the revised version of 1984, the Model Act is recognised as a codification of modern corporation law in the USA (Clarkson et al., 1989).

measure of an organisation's ability to form environmental links to securing critical resources (Dalton et al, 1999; Pfeffer and Salanick, 1978; Provon, 1980). Yet, there are still others who believe that, from a monitoring perspective, larger boards are less likely to suffer from managerial domination than smaller counterparts (Zahra and Pearce, 1989).

Table 3.5: Board Size in Selected Countries

	Average Board Size (Directors)	Minimum Size	Maximum Size	Range
Anglo-Saxon	10.8			
USA	10.7	5	23	18
UK	11.4	6	25	19
Canada	13.0	6	22	16
Australia	8.1	5	14	9
Non-Anglo-Saxon				
Germanic	14.43			
Germany	22.8	8	32	24
Netherlands	12.9	9	16	7
Switzerland	9.7	5	28	23
Sweden	12.3	6	15	9
Latin	14.65			
France	13.5	5	24	19
Italy	15.0	7	23	16
Spain	15.2	10	21	11
Belgium	14.9	8	27	19
Japan	13.0	3	50	47

Sources: EIRIS data: August 2005

As shown in Table 3.5, board sizes vary in non-Anglo-Saxon Europe, with an average of 14.54 Directors among eight countries, down to 13.0 in Japan and 10.8 in Anglo-Saxon countries. For Germany, average board size was 22.8, which is by far larger than in any other country. In a separate study by Spencer Stuart European Board Index (SSEBI), 2008, the average size of German boards was 7 for the management board and 19.3 for the supervisory board. This indicates that average size of German supervisory boards decreased by 15.4% between 2005 (22.8 %) and to 2008 (19.3 %). In the SSEBI study, the average number of Directors on a UK board was 11 with 5.4 Executive Directors and 6.6 NEDs. Also, a random sample of 150 Second SGX-listed Mainboard and Second Mainboard companies, based on their 1998 and 1999 annual reports found average board size in Singapore to be 7, with a range of 4 to 15 board members PWC, 1997 and PWC, 2000 surveys. In Jamaica, average board size was found to be 8, with a range of 4 to 22 (Kerr 2002). Therefore, it can be concluded, based on these data, that countries with an outright two-tier board system (such as Germany and the Netherlands) or partially, (such as France) have larger boards than countries of Anglo-Saxon origin (with exclusively one-tier boards).

3.7.2.4 Board Committees and Composition

Academic studies that have analysed board committees have been scanty. The few papers have focused mainly on how independent Directors can impose structural constraints on managers by limiting their participation in important committees such as audit, compensation, corporate governance, and nomination. The empirical literature finds that greater proportions of affiliated Directors on the audit committee have greater influence on the structure and length of bankruptcy procedures (Daily, 1995). Filatotchev et al, (2007) citing Tosi and Gomez-Mejia (1997), report that CEO compensation was related to the composition of the compensation committee. In examining the extent to which the CEO is involved in the board selection process, Shivdasani and Yermack (1999) found that the CEO's involvement in nomination committees decreases the firm's subsequent number of Independent Directors. See Anderson and Reeb, 2004; Golden and Zajac, 2001; Lorsh and MacLver, 1989.

3.7.2.5 Director Tenure

Tenure may be defined as the length of continuing appointment that may be granted and is made effective by nomination by the Chairman and election at AGM. What constitutes as an appropriate length of tenure is debatable as some academics argue that tenure should be limited to two terms to ensure the infusion of new and fresh Directors, skills and perspectives. (Director Compensation Report, 2008).

According to Gretchen Michals (2008), "Directors are also increasingly leaving, or being forced out, after shorter stays as disgruntled shareholders force boards to re-evaluate their term-limit and retirement-age policies." Shareholders are making use of "board evaluations as the impetus for a review of term limits and a discussion of retirement age policies²⁹". The result is that term limits are being imposed and present limits shortened in contrast to the 'long tenure' view (Michals, 2008). According to the Spencer Stuart Board Index Report (2008), the length of terms for Directors has been reduced from an average of 3 years to 1 year in two-thirds of America's S&P 500 companies. Added to this, there is the acceptance of majority voting, which results in the possibility of Directors losing their board seats, should they fail to secure a majority of the votes.

Opponents of term limits argue that while turnover is good and inevitable on a case by case basis, continuity and experience is just as important. In an attempt to balance the term limits and continuity, "some companies have opted to retain Directors with valuable

²⁹Spencer Stuart Board Index, 2008, found that 74% of Boards have a mandatory retirement age.

experience by permitting service beyond previously mandated age limits” and beyond term limits (Director Compensation Report, 2008).

According to the Executive Director Experience and Tenure Survey (2000)³⁰ the average length of a Director’s tenure is 6.1 years and in at least one instance, a Director had as much as 38 years experience in the post. In a different study by Spencer Stuart Board Index (2008), the average length of service was 4.2 years for non-executive directors as well as the Chairman. The length of tenure was not only influenced by mandatory term limits and organisational objectives, but personal term limits and personal goals as well. It has been observed that many Directors are also likely to leave the post of Director for other more profitable, meaningful or beneficial opportunities including other board positions.

The Executive Director Experience and Tenure Survey (2000) also revealed that six per cent (6%) of respondents expected to stay in their post less than a year, fifty-one per cent (51%) would remain for 1-5 years, seventeen per cent (17%) would remain 6-10 years and 8 percent would remain in excess of 10 years. In addition, thirty-two per cent (32%) of the respondents would take up another Executive Director position. The survey also revealed that tenure was dependent, in part, on compensation and salary, board support, belief in the mission, other professional opportunities, the desire to retire, a feeling of ‘burn out’ and whether Directors felt they were able to contribute meaningfully to the organisation. Other factors which have weighed heavily in deciding the length of a Director’s tenure include opportunities for professional growth (55%) and Directors feeling ‘burn out’ (56%).”

In concluding, there is a debate as to the appropriate length of tenure and the limits which should/should not be imposed. As shown in this study, the tenure of Directors is determined by several factors including support of the board, other opportunities and impending retirement. However, there is still very little or no evidence as to whether or not extended director tenure on a board, would increase board and organisational performance.

3.7.2.6 Gender and Inequality Issues

This section explores the importance of gender as it relates to the composition, impact, performance and governance of Boards of Directors. Traditionally men have held a tight monopoly on the positions of power in the public sphere and particularly in the corporate world. As the latter is being challenged, the issue of board composition as it relates to gender

³⁰ By Maureen Singleton and Renee Cunningham Daniel J. Evans School of Public Affairs in Partnership with: The Volunteer Centre, United Way of King County & CompassPoint Nonprofit Services. Web site: www.unitedwayofkingcounty.org

has surfaced. Issues of unfair opportunities, discrimination, ‘old boy’s club’, ‘glass ceiling’, women as solely the labor force, ‘sticky floor’, and the very ontological foundations of the commercial, managerial and directorial corps are being reevaluated in keeping with the value of good CG.

While women make up a majority of the voting population and of the civilian workforce, they constitute only 14.7 per cent of the total Directors and senior executive officer positions in the 100 largest public companies in New York (New York Census, 2007). Comparatively speaking, very few women are appointed to boards and the latter is attributed to the presence of a ‘glass ceiling,’ (Zelechowski, 2004). The presence of a glass ceiling results in the present situation where women “hold fewer directorships of corporations, less powerful corporate titles, occupy disproportionately more organisational responsibilities, are less likely to be top earners of the corporation”, (Zelechowski, 2004). A case in point is illustrated in the New York Census (2007) which showed that 1 in 7 of the top 100 New York firms have no women Directors, while less than twenty-five per cent (25%) had three (3) or more females. While women are increasingly holding positions of directorship,³¹ Catalyst (2008) posits that “at the current rate of change, it will take women 73 years to reach parity with men in the boardrooms of the Fortune 500 companies.”

The greater inclusion of women into corporate boards is credited to the changing outlook of younger men, the precedents set by women forerunners, their proven competence in management and executive positions, the increasing experience and knowledgeable pool of women to draw from, and benefits realised by a more diverse board. There has been a proven and significant correlation between women and better financial performance, a more positive business and political impact, greater competitive advantage, a more concerted strategic planning approach, and a better understanding of consumers of which women are the majority (Daily, 1999; Catalyst, 2008). The example of the first female board Director of Nike can be drawn on as she lobbied for the company to invest in sports shoes for women. This corporate venture accounts for thirty per cent (30%) of all Nikes revenue to date.

The debates are numerous but there is very little evidence to make conclusive decisions about the role of female Directors versus males on corporate boards. Research needs to be

³¹ Spencer Stuart survey of the United State found that 90% of Board of Directors had at least 1 woman Director in its composition.

directed at determining whether or not the inclusion of women on boards makes any significant difference on board performance, board attitude, and organizational outcomes.

3.7.2.7 Board Performance Evaluation and Training

There are few reasons posited by board process researchers in terms of the importance of performance evaluation and development of Directors. First, is that board should undertake a formal and rigorous annual evaluation of its performance, as well as, performance of individual Directors. Second, board assessment would lead to changes in the composition of boards to make them more effective (Shen, 2005). Third, an assessment of the skills, knowledge, and experience on the board, periodically and before making new appointments, is an important aspect of maintaining board effectiveness. Fourth, an orientation, indoctrination, and continued development programme could ensure that Directors are kept abreast with current best practices and trends in modern board operating practices (Roberts et al, 2005; Kerr, 2005).

3.8 BOARD'S ROLE IN FIRM'S STRATEGIC DECISION-MAKING PROCESS

3.8.1 Introduction

To formalise boards' involvement in these activities, theoretical models on corporate decision-making process generally identify a sequence of decision-making steps. In general, these steps concentrate on the formulation, the implementation and the evaluation/monitoring of decisions (Maassen, cf. Judge, 1989). Fama and Jensen (1983) recognise the following four steps in decision-making:

- **initiation** – the generation of proposals for resource utilisation and structuring of contracts;
- **ratification** – the choice of the decision initiatives to be implemented,
- **implementation** –the execution of ratified decisions, and
- **monitoring** –the measurement of performance of decision agents and implementation rewards (Maassen, 2000); Fama and Jensen, 1983:278).

3.8.2 Theoretical Models of Board Involvement in Strategic Decision-Making

The Separation and Integration of Decision-Making Steps in Board Model Prototypes:
The presentation of different board models in this review suggests that the two-tier board model is based on a structure that separates these steps in decision making. Maassen (2000) argues that decision management is delegated to the managing Directors in the executive

management board while decision control lies in the hands of non-executive supervisory Directors in the supervisory board.

Figure 3.4: Board Roles in the Two-tier and One-tier Board Models

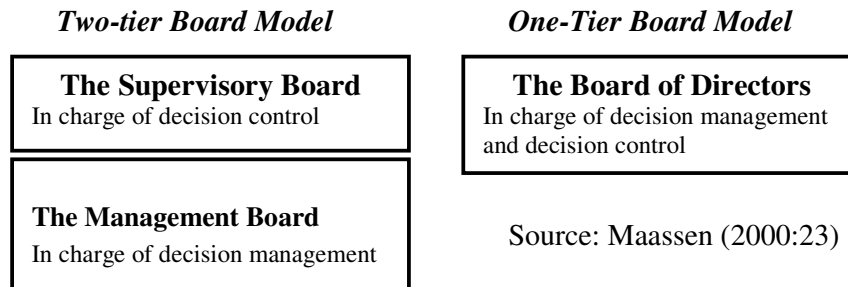


Figure 3.4 shows that one-tier boards are formally based on a structure that integrates the four steps in decision management with decision control. According to Fama and Jensen (1983), decision management involves initiation and implementation (steps 1 and 3), while decision control involves the ratification and monitoring processes (steps 2 and 4). Fama and Jensen suggest that service roles are responsible for decision management function, while the control roles are performed under decision control. A combination of both service and control roles forms the strategic roles of boards (Table 3.6). Furthermore, the distinction between decision management and decision control is useful in understanding the roles of boards in decision making.

Role of Corporate Board of Directors: A Theoretical Classification: The literature on CG recognises different roles of BOD in decision-making (McNulty and Pettigrew, 1996; Hung, 1998). The resource dependency theory and the stakeholder theory emphasise the resource allocation and boundary spanning roles of corporate boards. Goodstein et al. (1994), Pearce and Zahra (1991), Pfeffer and Salancik (1978), argue that by increasing the size and diversity of the board, the links between the organisation and its environment and the securing of critical resources (including prestige and legitimacy) will be strengthened, and this boundary spanning activity can bring new strategic information. Directors interlocking corporate networks seem also to support this boundary-spanning role.

Zahra and Pearce (1989), suggest that theories originating from organisational economics, such as the *agency theory* and the *legalistic approach*, focus on boards' roles to mitigate agency problems and to monitor management. Further, they argue that the agency theory places a premium on board's strategic contribution, specifically the board's strategic contribution in the articulation of the firm's mission, the development of the firms strategy and

the setting of guidelines for implementation and effective control of the chosen strategy. The involvement of Directors in the strategic course of the corporation is mainly understood by the stewardship theory. The managerial hegemony theory, however, describes the board as a *de jure*, but not the de facto governing body of the organisation. Corporate management assumes the real responsibility of running and controlling the company. According to this theory, the BoD is, in effect, a legal fiction and is dominated by management, making it ineffective in reducing the potential for agency problems between management and shareholders (Stiles, citing Kosnik, 1987; Mace, 1971; Vance, 1983). Taking a similar view, organisational theorists who traditionally recognise the peak of organisational structure as the CEO, and the BOD as mere imposition on such structure, strongly believe the board will remain a mere rubber stamp of the CEO's decisions (Yakasai, 2000).

Zahra and Pearce (1989), Gopinath et al. (1994) and Jonnergard et al. (1997), suggest that these theoretical schools recognise three generally accepted board role categories. These roles are shown in Table 3.6 as 1.) service roles, 2.) control roles and 3.) strategic roles of corporate boards of Directors. Also, the Table 3.6 shows that the strategic roles of corporate boards combine boards' decision management and decision control activities. These roles show similarities with the four decision-making steps identified by Fama and Jensen (1983). The service roles can be derived from resource dependency theory, *stakeholder theory*, the *managerial hegemony theory*, and can be related to the decision management activities of the board. Proponents of the agency theory and the legalistic approach to board organisation suggest the control roles strongly focus on decision control activities of the board. Daily (1991) indicates that these perspectives are not necessarily mutually exclusive.

3.8.3 Competing Theoretical Perspectives of Board Involvement

The theoretical perspectives of board involvement in decision management and decision control are also summarised in Table 3.6. The table indicates that proponents of the resource dependence theory, the stakeholder theory, and the managerial hegemony theory, have recognised boards' service roles. With regard to the four steps in decision making as identified by Fama and Jensen (1983), it is suggested that service roles of boards concentrate on activities related to the support of management such as the initiation and the implementation of strategic decisions (decision management). The control roles are best explained by theories originating from the organisational economics school, i.e., the agency theory and the legalistic approach to board organisation (Maassen, 2000). The ratification and monitoring steps of strategic decision making process (decision control) are usually associated

with board control roles. Table 3.6 further illustrates that the stewardship theory and organisational theory recognise the strategic roles of boards. Board involvement in the initiation and implementation steps, as well as ratification and monitoring steps in the process of strategic decision making, explains the strategic roles of board.

Table 3.6: Theoretical Schools of Board Involvement

Decision Management	Decision Control	Decision management + decision control
<ul style="list-style-type: none"> ▪ Resource dependence theory; ▪ Stakeholder theory ▪ Management hegemony theory 	<ul style="list-style-type: none"> ▪ Agency theory; ▪ Legalistic approach 	<ul style="list-style-type: none"> ▪ Stewardship theory ▪ Organisational theory
Service Roles	Control Roles	Strategic Roles

Sources: Maassen (2000: 24) based on Kosnik (1987); Mace (1971); Vance (1983); Yakasai (2000)

The role of the board in the managerial hegemony approach is, therefore, limited by the domination of management. Consequently, the board is passive, and neither has any input in organisational decision-making nor does it exercise control over the performance of the chief executive or the company as a whole, which, in the eyes of shareholders, makes the board ineffective (Maassen, 2000).

3.9 THE NATURE AND ROLE OF CORPORATE DISCLOSURE

Corporate disclosure encompasses the processes of communication and dissemination of information to the public. Theoretically, a thorough disclosure regime contributes to market transparency and arguably creates an impediment to fraudulent activity. Eccles, 1995, argues that corporate disclosure in the last decade has been strengthened by increased management credibility, analysts' understanding of the firm, investors' patience, and potentially, increases in share value. The starting point for most analysis is that 'information asymmetry' (Akerlof, 1980) or 'information impactedness' (Williamson, 1985) is pervasive in firms and has negative effects in terms of uncertainty, adverse selection, moral hazard, and opportunism. This then leads to higher transaction costs, the false pricing of assets, misallocation of resources, and lower liquidity.

There are various holders, producers, withholders, donors, recipients and users of information, dubbed, the stock and flow of information. The main producers and holders are usually the top management. However, even within the managerial hierarchy there are vertical

and horizontal flows of information that may have implications for CG, business strategy, and performance. Different levels of authorities will have information which they may or may not give to their superiors; junior managers may or may not provide critical information to senior managers and senior managers will have information relevant to Directors (Ibid). Many jurisdictions have codified the duty of Officers (senior executives) to provide accurate, relevant and timely information to the Board of Directors, failing to do so may result in serious penalties. Finally, information may flow from senior managers to fixed claim holders, employees, and other stakeholders. In this section, the literature perused and presented herein, focuses on the importance of the information provided.

The literature is mainly concerned with voluntary disclosure and refers to information disclosure in terms of both quality and quantity of information (Healy and Palepu, 2001; Core, 2001). The essential notion gleaned from the literature is that greater disclosure will allow investors to monitor management better and to effectively exercise their rights. It also makes a number of distinctions, which are useful for analysis. As earlier said, information disclosure can be divided into mandatory and voluntary, the latter also encompasses requirements of a “comply and explain” nature (Cadbury Report, 1992). There can also be the distinction between private and public information and there are various kinds of information. Case in Point: financial information (profits, losses, etc.), operating information (strategy, performance against objectives), and CG information (board composition, executive remuneration etc.). Information may also be backward, or forward-looking, with the latter usually adjudged to have a premium.

Even as debates rage over the appropriate extent and frequency of disclosure, and there is no universally accepted model of disclosure, corporations are expected, if not required, to publicly disclose certain basic information such as their standing, address, officials, and constitution. In conclusion, there are several roles of corporate disclosure. Among them is the facilitation of CG, the evaluation of management and the board, the assessment of the performance of the firm, an increased understanding of the firm by potential investors and present shareholders, and the regulating of the market.

Given perennial market failures and out of fears of competitive disadvantage, most states have intervened with laws to make firms disclose. In this regard, firms themselves have an interest in disclosing above what is legally required with the hope of accruing benefits such as reduction of uncertainty and the price of capital. To a large extent, much of the literature argued that an optimal disclosure regime is one where firms supply maximum information (Filatochev et al, 2007), subject to legal, cost, and propriety constraints. More in-depth

reading on the concepts and theoretical literature can be had from Jensen and Meckling, 1976, Grossman and Hart, 1980, and Milgrom, 1981.

3.10 CHAPTER SUMMARY AND CONCLUSIONS

This chapter examined a broad spectrum of social science literature in CG covering business history, accounting, economics, political science, finance, law and sociology. The analysis integrates several specific areas of CG into a broader perspective which in turn is deeply grounded in theoretical and empirical research findings, rather than conceptual and theoretical debates. The study reviews the literature in line with the key elements (research questions) and the problems under study as introduced in chapter 1. The main issues that were examined include, but are not limited to: a theoretical discourse on the definition of CG; a history of CG development, relevant theories of corporate governance; regulation; corruption, ownership and control patterns; role of stakeholder relations (representation), perception, and role of institutional investors, CG Practices such—board characteristics and processes (board size, Chairman/CEO duality or separation, NEDs and Executive Directors and selection; board committee and composition, tenure of Directors, gender and inequality issues; board performance evaluation); board's role in strategic decision-making; and the nature and role of corporate disclosure.

The review led to several interesting conclusions. First, the historical development of CG (albeit limited) is replete with corporate crises followed by reforms. From the failure of the Mississippi Company (France) and South Seas (Britain) in 1720, during which time both crises appeared to have partially influenced the invention of the Joint Stock Company, through to the 1929 stock market crash in the USA (period familial governance and economic enfranchisement) which was followed by the creation of the Securities and Exchange Commission in 1933, to the demise of Enron in 2002 (a period of popular governance and representation), which was met by the passage of the Sarbanes-Oxley Act of 2002.

Further examination of the scholarship on CG reveals that serious gaps exist. Hardly any, or at best, few empirical studies are available that yield sound and conclusive results in areas of director tenure, board-related issues, such as gender and inequality, board size, majority of NEDs versus insiders, types and composition of board committees, board performance evaluation, training of Directors, employee and trade union representation, and the quality and quantity of corporate disclosure. While there is a preponderance of sound empirical evidence on Chairman/CEO duality and the separation of the roles; corruption; the

role of the board in strategic decision making, stakeholders, corporate disclosure and institutional investors, findings remain inconclusive as to the net and effective contribution of these factors on company bottom-line as these findings have been limited in many regards based on cultural, political, economical, and methodological differences. The latter three issues--stakeholders, corporate disclosure and institutional investors have been highly studied. However, the scope of studies was either too narrowly focused (IIs--mainly USA information, stakeholders (mainly shareholders), and has not been addressed for more contentious issues. Corruption (mainly economic and political, rather than the social and behavioural causes) has also not been addressed in addition to voluntary disclosures, in preference of legal reform – disclosure of Director inter-directorship, remuneration and age and stockholdings.

The basis of the findings of this chapter will serve to refine the direction of the remainder of this study and the motivation of the research questions in the next chapter. The research questions and key elements are aimed at addressing theoretical and empirical gaps, and to provide a framework for recommendations to resolve issues in public policy corporate governance in Jamaica.

CHAPTER 4.0: THE RESEARCH STRATEGY AND METHODOLOGY

4.1 INTRODUCTION

This chapter adopts a method triangulation (interviewer's administered questionnaire survey, case study and focus group) of data collection approach. Given that a primary focus of this research is on theory testing and theory development, it is necessary to follow a clear and concisely documented research protocol. In this regard, a research protocol is outlined, which is accompanied by a framework of an audit trail. An audit trail facilitates a quick and easy retrieval of the step-by-step approach taken in the study for access by other researchers who might be interested in the study.

The remainder of the chapter includes: section 4.2, research objectives and themes, 4.3; the research strategy—this includes the focus of the research, epistemological issues, and research design and data collection issues; 4.4, the research methods and populations; 4.5, data analysis and coding issues; 6.6, fieldwork overview; 4.7, aims and target users of the research; and 4.8, chapter summary and conclusions.

4.2 RESEARCH OBJECTIVES AND KEY ELEMENTS

4.2.1 General and Specific Objectives

Given the overarching emphasis on the exploratory nature of the research, the problems under study, and a need to satisfy different but complementary groups of beneficiaries (academicians, and public policy professionals and private practitioners), this study explores CG Structures and Practices in Jamaica with a view to influence policy reform.

The two general objectives of this study are: 1.) to acquire appropriate knowledge about the realities (the regulatory framework, structures, and practices) of CG in Jamaica so that a framework for reform can be recommended, and 2.) to influence international CG development agenda by disseminating findings at conferences, seminars and through publications in recognised academic journals. The emergent theory-testing and development aspects will add to, and influence, the already growing volume of academic literature, and provide new knowledge from a developing country's perspective. This study is, therefore, designed to find answers and to determine the “what”, “how”, and “why” of the regulatory governance framework and CG structures and practices of Jamaica.

4.2.2 Research Key Elements (Questions)

The key elements or main issues of focus of this thesis are listed below (sections 4.2.2.1 through to 4.2.2.8), represent both broad and narrow issues, and are not complete without the inclusion of the more refined questions to be found in the IAQS instrument, Focus Group Moderator's Guide, and Case Study respondent questionnaire (Appendices 2, 3, and 5). The key elements listed and briefly defined hereunder have been earlier introduced in the introduction of chapter 1 and comprehensively discussed in the literature review of chapter 3. These key elements are meant to address several weaknesses in the existing literature by the utilisation of different research methods and techniques summarised in the introduction and methodological overview above and elaborated in the remainder of this chapter. The areas presented hereunder serve as the basis for the analysis and discussions in chapters 5, 6, 7 and 8. See Appendices 3A, 3B and 3C for research questions associated with the key elements identified immediately below.

4.2.2.1 Regulation

This study seeks to determine the nature, structure and effectiveness of the regulatory framework in response to the hypothesis/problem of systemic weaknesses in the financial sector and a weak and inadequate regulatory framework of Jamaica.

4.2.2.2 Corruption

This study seeks to explore available empirical evidence on the perception, incidence of, causes and impact of corruption on Jamaica, and efforts to reduce corruption. This comes against overwhelming claims that corruption is a serious problem in Jamaica.

4.2.2.3 Ownership and Control

This study investigates the nature of existing corporate ownership in Jamaica and how, if at all, it influences important CG drivers such as board composition and leadership responses to emerging CG practices. High ownership concentration is assumed to characterise Jamaican firms and is associated with several governance problems.

4.2.2.4 Stakeholder Relations (Representation)

Given the growing importance of stakeholder relations and representation in the international CG debate, and based on claims of stakeholder underrepresentation and voice among Jamaican corporate boards, this study explores a wide range of stakeholder issues to better understand how employees, trade unions and others, contribute in firm-stakeholder interrelationships to organisational outcomes.

4.2.2.5 Perceptions and Role of Institutional Investors (IIs)

Jamaican IIs have been reported to control 75% of listed firms and are primarily concerned about investment decisions that directly impact corporate profits (JSE Report, 2008). They are not keen on adopting or applying CG Best Practices (personal information). Therefore, this study seeks to obtain a firsthand empirical understanding of these assumptions and their underlying and potential CG problems.

4.2.2.6 Board Characteristics and Processes

The specific issues of importance here are board size; Chairman/CEO duality or separation, non-executive versus executive Directors' on boards, board committees and their composition, director tenure, gender and inequality issues, board performance evaluation and director training, frequency of board meetings and timing of distribution of board papers and proxy forms.

4.2.2.7 Board's Role in Firm Strategic Decision-making

With the one-tier board in Jamaica which gives rise to a mix of executive and non-Executive Directors, it is often difficult to define the role and contribution of the board as a whole versus that of management. Also, the literature (Maassen, 2000; McNulty and Pettigrew, 1996) has overwhelmingly positioned the role of the management to be limited to initiating and implementing strategy while the board (NEDs) monitors management and ratifies strategic decision. However, with a mix of NEDs and executives, this has raised new concerns that warrant further research in Jamaica and in the context of this study.

4.2.2.8 Corporate Disclosure

This area is critical in any CG debate and hence no less in the Jamaican context. There are many claims of weak disclosure regimes and inadequate coverage of published CG information. In response, this study seeks to determine the nature, role, coverage, appropriateness of existing disclosure regimes and downsides, if any, with the intent of proposing others and strengthening existing regimes. See Appendix 3C for the detailed questions under the respective broad themes. Having outlined the research objectives and the key areas elements of this thesis, the next section outlines the research strategy.

4.3 THE RESEARCH STRATEGY

Exploratory research into CG in Jamaica required an appropriate research strategy that would provide an operational framework which stipulated the nature and sources of

information to be collected. This research strategy was used to determine the appropriate research techniques (interviews, case studies and focus groups etc.) for data collection, measurement, and analysis. The research strategy was guided by several factors. First, it depends on the purpose of the research (exploratory, descriptive and prescriptive). Second, it depends on the focus of the research. In this study, it aims at both theory testing and theory building. Third, it depends on the research questions and practical research constraints (time, access, resources, etc.). Fourth and finally, it depends on the degree of researcher control over the phenomena under study.

There is a huge body of prescriptive literature available on how Directors should govern corporations, but not enough literature that actually describes real happenings in the boardroom. Although there is growing interest in the role, behaviour, and characteristics of boards, from both the perspectives of academicians and practitioners, there are several factors that challenge a broader CG agenda, such as the nature of this study, particularly involving the issues that take place behind closed boardroom doors. It is reported by Judge (1989) and Judge and Zeinhaml (1992), that researchers simply do not know what boards' roles are in decision making. Therefore, the factors that challenge the research agenda on Boards of Directors, specifically, and CG structures and practices, generally, are discussed in the next section. Figure 4.1 provides an illustrative view of the research strategy and methodology employed in this study.

4.3.1 The Focus of the Research

In this exploratory study, the focus is on theory-testing and theory-development. To the extent that a beneficial aspect of this study is to prescribe a policy framework for improvement in CG in Jamaica, this research therefore, presents a third focus. However, given the existing limited literature and empirical work on CG among organisations in Jamaica, the study is more concerned with generating a dualistic theoretical and practical (policy-driven) framework for CG structures and practices. The theory building process adopts a research triangulation approach (IAQS, Case Study and Focus Group) which is inductive as much as it is deductive in methodology and relies primarily on the interpretation and analysis of data collected from closed and open-ended, semi-structured and unstructured questions, unpublished archival data and secondary published data (Figure 4.1).

In addition, this study seeks to contribute to the growing literature on CG structures and practices by examining and analysing how empirical data from Jamaica compares with similar research in other countries and regions. In this way, this study combines the inductive

and deductive methodology. The deductive methodology starts from a pre-determined theoretical perspective and thus evolves theory-testing or, more accurately in this study, theory development.

Several researchers have noted that in combining elements of induction and deduction, this can be both necessary and useful in providing greater insight and understanding into complex phenomena under study such as the context of this study. For example, Strauss and Corbin (1990:148) opined:

[D]eductive as well as inductive theory are both very much a part of the analytical process. For instance, there may be times when the analyst is not able immediately to find evidence of process in data....When this happens, the analyst can turn to deductive thinking and hypothesise possible potential situations of change, then go back to data or field situation and look for evidence to support, refute, or modify that hypothesis.

Finally, this thesis attempts to apply findings on the existing realities of CG structures and practices in Jamaica for the purpose of prescribing appropriate and workable policy solutions for the way forward. In this way, it relies on and engages several experts for their views in fulfilling the above stated objective. In sum, the study seeks to understand and build on existing theoretical developments in as much as it attempts to develop new theories and to determine how the study either fits in or changes the paradigm.

4.3.2 Epistemological Issues

In an attempt to detail the proposed research strategy of this study, it is helpful to be engaged in a brief discussion on the main philosophical approaches to research in the social sciences. In this section, views from positivism and anti-positivism are briefly discussed. According to the positivist epistemology, science is seen as the way to get at truth, to understand the world well enough so that it might be predicted and controlled. Flowing from its scientific assumptions, the positivist adapts the quantitative stream of research and their perspective focuses on issues of testability, replicability and feasibility. Thus, the ultimate aim of positivism is to understand, manipulate, and control the natural world. As such, positivists separate themselves from the world they study, while researchers within other paradigms acknowledge that they have to participate in real-world life to some extent so as to better understand and express its emergent properties and features (Healy and Perry, 2000).

In contrast, many anti-positivists are usually loyal to the qualitative research paradigm, which may operate under different ontological assumptions about the world. They do not assume that there is a single unitary reality apart from our perceptions. Since each of us view

the world from our point of view, each of us experiences a different reality. As such, the phenomenon of “multiple realities” exists. Conducting research without taking this into account violates the qualitative researcher fundamental view of the individual. Consequently, they may be opposed to methods that attempt to aggregate across individuals on the grounds that each individual is unique. Anti-positivists also argue that the researcher is a unique individual and that all research is essentially biased by each researcher’s individual perceptions. There is no point in trying to “establish validity” in any external or objective sense (Krauss, S., citing Trochim, 2000).

Contrary to Anti-positivists, the positivists see science as largely a mechanistic or mechanical affair. Deductive reasoning is used to postulate theories that can be tested. Based on the results of studies, we may learn that a theory does not fit the facts well and so the theory must be revised to better predict reality. Also, positivists believe in empiricism, the idea that observation and measurement are at the core of the scientific endeavor. The key approach of the scientific method is the experiment, the attempt to discern natural laws through direct manipulation and observation (Healy and Perry, 2000).

In contrast, the purpose of social investigation for anti-positivists is to make human behaviour intelligible by interpreting it in relation to subjective intent. Importantly, anti-positivists feel that such interpretations involve a projection of cultural prejudices grounded in a network of socially-constructed expectations and assumptions that make up a cultural tradition. Thus, the aims of naturalistic inquiry are not to duplicate or confirm previous research, but to revise prejudice by illuminating new dimensions of a phenomenon. From the two broad philosophical approaches presented, a continuum of research methodologies can be identified which are based on their relative emphasis on deduction or induction, their degree of structure and the data they generate, and the explanatory forms they create (Gill and Johnson, 1991:36). At one extreme, is the nomothetic methodology that falls into the positivist realm and is based on systematic protocol and emulates natural science methodology by focusing on the process of testing hypotheses in accordance with standards of scientific rigor. As such it calls for accurate models and adopts standardised research instruments and techniques that are used to measure, quantify and operationalize concepts. At the other extreme, is the idiographic methodology that emulates from anti-positivist views.

Idiographic methodology in contrast to nomothetic, adopts a subjective account generated by “getting inside” situations. It emphasizes theory grounded in empirical observations that take account of subjects’ meaning and interpretive systems in order to

acquire greater understanding. Ethnography is the dominant branch of idiographic research and is derived mainly from anthropological and sociological research traditions. Ethnography enables the cultural settings of an organisation to account for the observed phenomenon and its ultimate aim is to uncover, understand, and explicate the ways in which individuals and groups understand and take action of situations in their environment (Samra-Fredericks, 2000).

Nomothetic methodology places a priority on quasi-experimental designs and quantitative surveys. It often includes statistical measurements that are cross-tabulated with one another to explain the variability of social events. Idiographic methodological approaches, and particularly ethnography, rely instead on fieldwork and case studies that use interviews and participant observations (and sometimes surveys) as its main research technique. The aim of these designs is to provide an in-depth, detailed descriptive account of social actions occurring at a specific time. This qualitative technique allows the researcher to uncover complex and dynamic interactions among organisational actors, functions, and processes.

In contrast, quantitative approaches associated with nomothetic methodology have been argued to provide greater objectivity, reliability, and generalisability (Panton, 2002:55), but often ignore many important and complex organisational realities. It is these organisational realities that are most important in this thesis in uncovering what goes on in the boardroom. How Directors behave, what structures and processes of CG exist in the Jamaican context, and how these realities are impacting public policy decisions. An understanding of these organisational realities can help to shape the way forward for the improvement of organisational effectiveness and inform public policy directions and decisions.

4.3.3 The Research Designs and Data Collection Issues

4.3.3.1 Research Designs

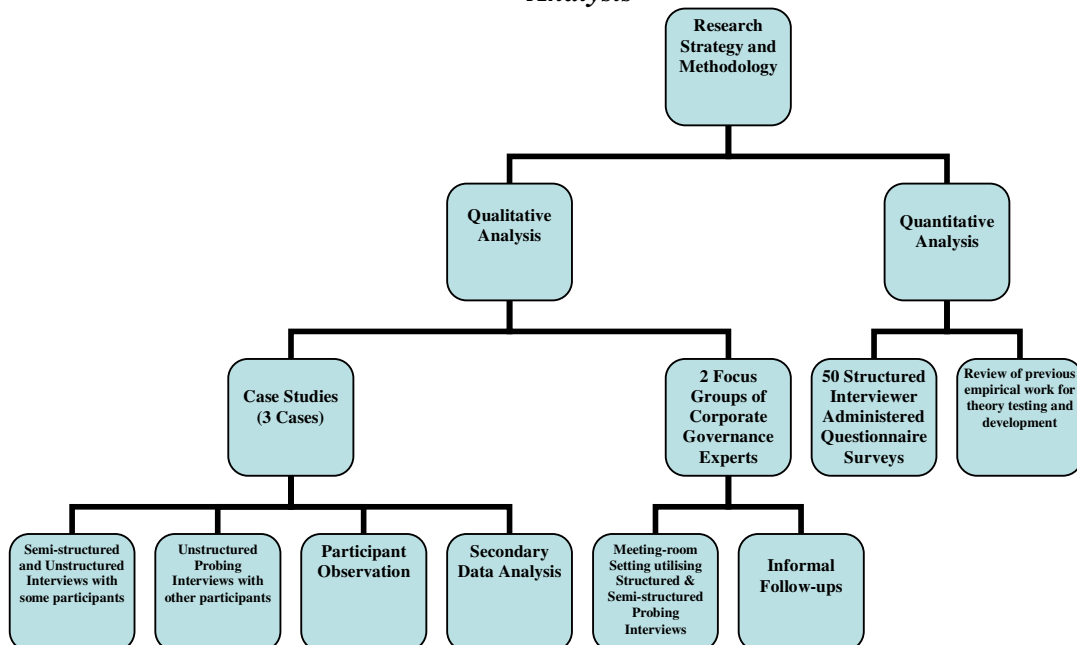
In the last decade, much research on CG has been conducted, but little of it from inside the boardroom. Research conducted on such issues as CG structures and practices (ownership and control, board practices, CEO/Chair duality, balance between executive and non-executive Directors, executive compensation, board committee structures) have been conducted using secondary information and archival data. In addition, researchers have attempted to show correlations between variables (Stiles, 2001).

Although many of the studies on CG can be considered methodologically sound, they suffer from the lack of peer review. According to Tricker (1994:2), such research is produced without talking to a Director, or anyone else in the CG power base. There is, therefore, a

dearth of primary research on Boards of Directors (from developing countries, for emphasis) from which to draw any methodological insights. In a concurring position, Stiles (2001) argues that to understand the nature of boards in operation, we must have reports from Directors themselves. This study is, therefore, grounded primarily on the perceptions of senior executives (Chairmen, CEOs and Company Secretaries) from main boards and subsidiaries of similar entities.

In the application of case study, three companies were studied in-depth, a conglomerate, a mutual society and a merchant bank, and involved interviews with twenty-eight (28) respondents. All three case companies were domestically owned and controlled. The techniques applied were structured and semi-structured interviews with Chairmen, CEOs, and Company Secretaries and semi-structured and unstructured interviews with several external stakeholders. In addition to structured, semi-structured and unstructured interviews, informal discussions were held with several parties external to the case companies but who could relate in some way or another to the review cases, or other aspects of this study (Appendix 15). These external parties include members of the PSOJ, JSE, JCC, the institutional investor community, politicians, senior civil servants, international corporate governance experts and others. Also, there was a deliberate approach adopted by the author to sample a wide range of Jamaican companies to mirror the diversity of the economy under study.

Figure 4.1: Research Methodological Model for Data and Information Collection and Analysis



The third strand includes the conduct of two Focus Group studies. The total respondents between the two groups were fourteen (14), with seven (7) respondents each. Additionally, the research design and data collection techniques detailed the research populations, the construction of the sample frame, reliability of data, fieldwork overview, the different strands of research (IAQS, case study, focus groups), and data collection and analysis of issues. Figure 4.1 summarises these approaches. The research techniques and data collection methods applied included: open-ended questionnaires in face-to-face interviews; tape-recorded and transcribed responses; observation and interaction with case companies' CEOs and Board of Directors, staff, managers and Directors in a natural setting (snippets); and the analysis of secondary data on Jamaican case companies, regulators, watchdog groups and institutional investors.

4.3.3.2 Data Collection Issues

Notwithstanding that data collection techniques would have been dealt with in earlier sections, the focus here is on the integrity, credibility, and reliability of the data sources, collection and analytical processes. The goal of any reliability test is to minimise errors and biases in a study. Essential to the reliability of the research findings is the accuracy of the collected data. Where possible, the research should focus heavily on primary data collection (Yin, 1989).

The primary data in my study was obtained first hand from institutional actors who themselves were briefed on the nature and purpose of the research and therefore provided the most credible data and information available at hand and via several in-house and public documents. Secondary data though was sometimes dated, in which case updated versions were sought and obtained, from annual reports, press releases, media briefs at investor briefing meetings, as well as newspaper clippings, archival databases and publications by executive search firms and many other sources.

While the data in some of these publications of executive search firms were mainly derived from proxy statements and annual reports, corporations were generally requested by these executive search firms to verify the information before publication of such information as part of their research tradition. In this thesis, the accuracy and reliability of data were directly controlled where it concerned secondary data from annual reports, published surveys, and information from proxy forms and other company documents. From these secondary data sources, reliable and accurate information were obtained from credible sources such as the JSE, the FSC, BOJ and the ICAJ. The information was obtained either verbally, from

authoritative sources, or from study visits to the various institutional libraries, published reports the printed and electronic media. Therefore, there can be no doubt that data and information obtained was accurate, credible and reliable.

In addition, with access to the various CG reputational agents, where there was any doubt about any information, verifications were made easily as the researcher remained in Jamaica for the entire period of the fieldwork and beyond. An added advantage of being in the research environment is that he was kept abreast of CG developments as they unfolded, and was able to make necessary adjustments to the research strategy which would have influenced the outcome. The SPSS software was used and a framework designed and followed for inputting and analysis of the data. See data analytical model in Appendix 10. Initially, the IASQ consisted of sixty-six (66) questions. However, several of the questions had to be broken down further for easier interpretation and convenience in data input and analysis.

Finally, the researcher was the sole interviewer for the majority of the IAQS, all institutional investors and case study respondents, and served as moderator at the Focus Group Discussion forums. Several other shorter interviews and follow up activities were made across the Research Design Methods to clarify responses and obtain more detailed explanations.

4.3.3.3 Arguments Against Open-ended Questions

The use of open-ended questionnaires is by no means perfect and it is often the subject of various criticisms for being prone to bias and veracity by respondents (Panton, 2000). In addition, though the level of quantitative rigor in the survey administered was limited to basic statistical analysis, the strength of balancing quantitative with qualitative and vice versa was recognised. As Miles and Huberman (1994:42) put it: "When they [quantitative and qualitative] are combined with the up close, deep, credible understanding of complex, real world contexts that characterise good qualitative studies, it makes a powerful mix." Furthermore, with open-ended questionnaires, interview supervision and control is difficult to achieve. According to Churchill, Jr., & Gilbert (1991), the open-ended questionnaire is generally the most expensive method to administer, costly to revisit, is subject to interviewer bias and can be slow to administer.

4.3.3.4 Arguments in Support of Open-ended Questions

The use of open-ended questionnaires proved to be important for a number of reasons. First, it ensures that the highest response rate is achieved. Second, it allows the use of any type of question/questionnaire. Third, most Researchers find it easier to

communicate by the application of probing questions. Finally, it permits easy use of visuals (Churchill, Jr., & Gilbert, 1991). The use of open-ended questions, as is assumed, would have revealed accurate and truthful perceptions from respondents about CG issues. As Miles and Huberman (1994) suggest the researcher, in identifying the primary associations and similarities of responses, made an attempt to dissect comments and then grouped them in the various categories of responses. This improved accuracy and expedited the research initiative.

4.4 THE RESEARCH METHODS AND POPULATION ISSUES

This section examines and rationalises the theoretical basis for this study as an essential building block for theory-testing and theory development. It spans all three methodological approaches (interviews, case studies, and focus groups) by rationalizing their theoretical foundation in the introductions, study sample frame, and research populations. Section 4.4.4 summarises the approach to studying eight (8) of Jamaica's largest institutional investors.

4.4.1 Interviewer's Administered Questionnaire Survey

4.4.1.1 The Approach

While an interviewer's administered questionnaire survey (IAQS) was utilised, the emphasis was on qualitative analysis rather than quantitative, albeit there were some elements of the quantitative in as much as processing the data was concerned. Justifiably, there are serious problems associated with quantitative survey designs that collate numerical data on frequencies of Board of Directors' actions and operationalised written questionnaires to ascertain board attitudes. First, board structures and practices (including board processes and attitude) may be very difficult to predict using a quantitatively designed instrument without getting into the boardroom (as in 'board-in-action' observation and recording, and bringing Directors and Officers together in focus group settings) to see, hear, interpret, and understand how, why, and under what circumstances Directors take certain strategic actions about the firm's direction. Moreover, written questionnaires offer only a snapshot of Directors' views at a particular time, and purpose of board performance from a historical perspective, or what Directors advised had been implemented or would happen. Again, written questionnaires can merely reflect what is actually happening, particularly in a changing organisational setting. Heracleous (1999:262) suggested that:

[D]eveloping criteria of effectiveness based on actual behaviours and group dynamics within the board goes at the heart of what we see as an important issue in existing research. If quantitative

designs are not based on adequate qualitative in-depth data, this can lead to potentially vital factors being ignored... [and] untenable assumptions (Heracleous, 1999:263).

Notwithstanding the above, an IAQS was used in this study as the most appropriate means of capturing a sense of existing CG practices, what they were, why they were used and among whom (which companies) of the respondent companies. Given the broad spectrum of areas covered in the questionnaire and the number of companies involved, a qualitatively-designed approach ensured the attainability and practicality of this research project. Following the stream of the idiographic case-study approach, and rather than be concerned about testing hypotheses and measuring effects and relationships, the substance of the analysis of this section was used to identify and explain trends and produce hard descriptive interpretations about board practices, characteristics, composition and attitude. The questionnaire covers three broad areas: 1.) ownership and control patterns; 2.) board characteristics and processes (composition and other issues); 3.) the involvement and role of the Board of Directors in the firm's strategic direction. The SPSS Package was utilised to produce the data analysis that is reflected in the descriptive statistics developed in this study (Appendices 2 and 10).

With prior knowledge that research on Board of Directors specifically and CG generally in developing countries is still underdeveloped, there was a desire for exploratory research in Jamaica. For this reason, the research approach focuses on the interviewer's administered instrument as the primary means of collecting data, while incorporating focus group discussions and case studies as well as informal discussions with CG experts. This multi-technique approach rests on the premise that the limitations of a given technique are compensated by the counterbalancing strengths of other techniques. Also, the use of multiple techniques increases the confidence of the researcher that variance among subjects reflects differences in subjects' attitudes rather than in techniques (Snow and Thomas, 1994).

4.4.1.2 Construction of Study Sample Frame

The interview schedule (Appendix 2) was mainly structured with closed-ended questions and a minority of open-ended questions that allowed for probing, thus facilitating the participants' revelations about a range of organisational issues to be captured and recorded. A separate semi-structured questionnaire instrument was used to collect data on institutional investors (Appendix 3).

In addition to seventeen (17) respondents interviewed in the preliminary phase of the fieldwork (doctoral project proposal), an additional five (5) questionnaires were used as pilot

during the first week of the fieldwork. The experience with these schedules led to slight adjustments to the final schedule, particularly in the aspects of technical language used as well as the reconstruction of a few questions. Revisions to the first draft interview instrument were also inspired by several suggestions made during the doctoral research proposal presentation. This led to further improvement in the final script, particularly the conciseness of questions.

Notwithstanding the consideration that access to board Chairmen, CEOs and Company Secretaries would be a problem, and given that there was prior knowledge on the researcher's part that the quality of information to be had from the second tier (top 200) Jamaican companies would be patchy, and unreliable at best, it was decided to limit the sample frame to Jamaica's 100 largest companies (by annual revenue) which included all forty-four (44) JSE listed companies.

With this first constraint, the selection of respondents was further restricted to Chairmen, CEOs and Company Secretaries. The reason for this is simply, Chairmen, CEOs and Company Secretaries represent the ultimate or highest power centre in each organisation. The Chairman heads the Board of Directors who monitors the CEO and signs off on strategic decisions. The CEO runs the day-to-day operations of each entity and therefore has intimate and first-hand knowledge of the company's present and future strategies. The population included Chairmen (8), CEOs (20) and Company Secretaries (22). Company Secretaries completed a majority (44 per cent or 22/50) of the interviews (Table 4.1).

Table 4:1 Categorization of Respondents of Administered Survey

Respondents Group	No.	Percentage (%)
Chairmen	8	16
CEOs	20	40
Company Secretaries	22	44
Total	50	100

The Company Secretary is the chief custodian of detailed minutes, confidential and private information on individual Directors and most importantly, records of minutes of board meetings and distribution and filing of these minutes. Furthermore, the position of Company Secretary is provided for under the revised Companies Act of Jamaica, 2004 which prescribes that all companies must name and register a Company Secretary. Finally, the Company Secretary plays a critical role in filing statutory returns and by virtue of not being a Director, is less prone to self-serving. Therefore, responses from Company Secretaries can be more objective than those from Directors in questionnaires (Stiles, 2001:633). It was not surprising

that on many occasions, sections of the questionnaire when completed by Chairman or a CEO had to be sent to the Company Secretary for final completion or vetting.

Obtaining critical information on Directors' roles, attitudes, board characteristics and functions can be best done by studying Directors and/or executives who have in some sense, real power within the companies (Stiles, 2001 citing Fidler, 1981). Furthermore, the issue of ownership and control which forms a central plank of the CG debate was bound to be reflected in the make-up of the board. It was felt that studying publicly-listed companies would advance the debate on the role of NEDs. This has to be reinforced as a key focus in both academic and policy driven research in CG.

4.4.1.3 Industry/Sectoral Distribution of Research Population

There was a deliberate effort to include a wide cross section of Jamaican companies. Also, given the significant interest being given to CG relating to stock market-listed companies worldwide, there was the need to include as many Jamaican listed companies as possible. Of the fifty (50) companies which participated, twenty-seven (or 54%) were members of the JSE. The research population of this aspect of the study was further divided according to industry sector representation. See Table 4.2.

Table 4.2: Research Population: Interviewer's Administered Survey

Industry	Frequency	Percentage (%)
Non-Banking Finance	12	24
Banking	8	16
Generic Services*	5	10
Agriculture	5	10
Media	5	10
Hospitality	4	8
Retail	4	8
Manufacturing	3	6
Insurance	2	4
Distribution	1	2
Others	1	2
	50	100

*Conglomerate or multi-domestic

Table 4.2 also reflects a representativeness of the targeted sample of the 100 largest Jamaica firms by annual revenues. It is merely coincidental that 27 firms or 54% of the actual

informant companies are stock market listed companies. Within this group, there is also a diversity of industry sectors (manufacturing, conglomerate, media, retail, agriculture) and a dominance of financial firms, which are usually the largest and most highly profiled. The financial sector which comprises commercial, merchant, and investment banks, mutual societies, thrifts or credit unions, and insurance (life, health, property and general) forms the bedrock of the Jamaican business sector and plays a critical role in driving the rest of the economy. Therefore, with 44% representation (Table 4.2 above: non-banking finance, banking and insurance, in addition to financial firms under Generic Services and agricultural finance), the informant companies have been heavily weighted towards the financial sector. From the ten (10) identifiable categories above, it can be concluded that all leading sectors and subsectors of the 100 targeted sample, have been adequately represented in the fifty (50) actual interview surveys conducted, and thus reflects a true representation of the largest of Jamaican firms. See Section 4.5.2 for Data Analysis and Coding.

4.4.2 Case Studies

4.4.2.1 Approach and Methodological Issues

An idiographic approach utilising the case study method, and particularly the qualitative technique of analysis was chosen as one of the most appropriate strategies because it satisfies the need for exploration, obtains explanation and provides description of complex and dynamic interactions among organisational actors, functions and processes. Case study requires the researcher to make an effort to retain the holistic and meaningful characteristics of real-life events within the cases and to acquire a greater understanding of the contemporary historical context in which the firm functions (Yin, 1984). On the other hand, these interactions would be too complex to be captured by applying purely a quantitative methodology. Supporting the theoretical arguments of the preceding, are many other reasons why utilising case studies is beneficial. In the next section, some of these arguments are examined.

4.4.2.2 Arguments against Case Study Research

Case study, notwithstanding its many benefits may pose some challenges. Critics feel case study is too specific and unique, is prone to researcher bias (in data selection, collection, and interpretation), cannot test hypotheses well, and cannot be replicated, compared or generalised (Panton, 2000). In response, Lincoln and Guba (1985) posit four streams of

qualitative research constructs similar to those for the positivist research that are designed to establish the “true value” of the study, as well as its applicability, consistency, and neutrality.

While the case study method is not the sole research technique in this study, an attempt was made to review at least four critical constructs. First, *credibility* (internal validity) questions whether the subject was accurately identified and described. Second, *transferability* (external validity) assesses the applicability of the study’s findings to other similar contexts. Third, *dependability* (reliability) seeks to account for changing conditions in the phenomenon being studied. Fourth and finally, *confirmability* (objectivity) determines if other researchers can confirm the study’s methodology and findings.

The issue of credibility was addressed by attempting to obtain an intimate knowledge of the case study organisations. Using a combination of techniques, standard criteria across cases and different organisational actors within each Company is the best method to accomplish this goal. As indicated earlier, the multi-technique ensures that the limitations of a given technique are compensated for by the counterbalancing strengths of other techniques (Snow and Thomas, 1994). Not surprisingly, at least one researcher has posited that the unique strength of the case study method is its ability to deal with a full variety of evidence from different sources (Yin, 1984). As such, various research techniques were utilized to obtain responses from participants. These included a semi-structured interviewer’s administered questionnaire and several informal meetings and one-to-one telephone conversations. In addition, several company documents (published and unpublished) such as formal archival records, annual reports, brochures, a book published about the conglomerate case company, board minutes and internal memoranda were used.

In addressing transferability, an attempt was made to develop in-depth studies that provide rich descriptions and contextualization that allow practitioners to assess the applicability of the findings to their own particular circumstances. This required the establishment of a sufficiently adequate database that involves interviews with several members of each case company, and external stakeholders. To address confirmability, an audit trail was established which included a delineated record of the research material collected and analysed in this study. As such, the different categories of research materials, namely: 1.) interview questions; 2.) raw data (interview transcripts, field notes, all company documentation, 3.) summaries of notes, changes to research questions/working hypotheses, 4.) notes on research procedures, strategies and rationale, 5.) disposition materials (inquiry letters and notes, appointment dates, and 6.) findings and conclusions and final report have been kept.

In anticipating the need to address dependability, an effective record keeping system was maintained to ensure that the methodological approach remained transparent. In addition, field notes, transcripts, and research design strategies were kept, as well as rationale and justifications for decisions and changes provided. Keeping data on decision-making in an organised and retrievable form ensured easy access for interested researchers (Panton, 2000).

In addition to the above multi-approach applied to data collection, three sources of research triangulation were applied in this study: data, source, and technique triangulation (Bennett, 1983; Sieber, 1982). The data collected included factual information on the structure, composition, characteristics of the Board of Directors, role of each interviewee in the case company, company performance, history and leadership continuum, as well as subjective information (e.g., attitudes and behavior) from various parties, both internal and external to the case companies. Source triangulation was to ensure that the information came from a wide variety of sources.

4.4.2.3 Arguments in Support of Case Study Research

Notwithstanding the foregoing criticisms and methodological solutions based on Snow and Thomas et al (1994), there is still further support for the use of the Case Studies as one of the most appropriate approaches to this study. Maassen (2000) indicates a number of characteristics of case studies that make the use of this research design particularly useful in my study. These are as follows: the phenomena are examined in a natural setting; data are collected by multiple means; one of few entities (person, group, organisation or country) are examined; changes in site selection and data collection methods can take place as the investigator develops new hypothesis or research questions; the complexity of the unit is studied intensively; case studies are more suitable for the exploration, classification, and hypothesis development stages of the knowledge building process; the investigator should have a receptive attitude toward exploration; where no experimental control and manipulation are involved, the investigator may not specify the set of independent or dependent variables; and case study research is useful in the study of the “why” and “how” questions because these deal with operational links to be traced over time rather than with frequency or incidence.

Also, according to Panton (2000), a focus of case studies is on theory-testing and theory development. In this study, the emphasis is on theory-testing and enhancement through analysis of primary and secondary data and information. As such, less emphasis was placed on statistical generalisation and more on evaluating the different CG practices and structures against what existed elsewhere in an effort to identify patterns and to illuminate interesting

dimensions, and to allow greater understanding of the role of the different “actors” in influencing CG practices and structures. In spite of these arguments for case studies, there are opponents who believe this research approach is beset by many challenges, as discussed earlier.

4.4.2.4 Process of Soliciting Responses

It was very important to solicit information based on the objectives of my research and in so doing, to satisfy the beneficial aims of this study. As such, a very careful approach was employed in soliciting responses to fulfill the aforementioned criteria. The first was to build a coherent, logical, factual and sound basis to achieve replication logic, like an experiment – and validate reliability. Second, the researcher wanted answers to the “what”, “how” and “why” questions—a basis to cross-check and confirm statements. This was more than just doing detective work; it was a matter of strengthening validity. Third, there was the need to gain historical perspective, current views and a prognosis for the future from those currently employed. These were particularly important for this research.

Fourth, is to establish the basis for views on different areas and gain insight on similar company issues from these persons with a likelihood of differing perspectives. Fifth, but by no means exhaustive, was to track operational links over time in conjunction with frequency of incidence (Maassen).

Several factors directly and indirectly influenced the selection of each case. First, it was based on published information in the printed press of Jamaica. Second, is the popularity of each case company in their respective business segment or (industry sector) as a ‘model’ company. Third, was a perusal of several other company websites, my personal knowledge of the CG landscape, and preliminary informal interviews with senior officials who were responsible for major CG initiatives in the three cases selected (conglomerate, merchant bank and mutual companies). These cases were chosen for their varied activities in CG and social responsibility in the local environment. The standard menu of themes across cases was directly linked to the research objectives and outlined in this Chapter.

Although statistical generalisation was not a primary goal in selecting these case companies, the three companies (two shareholding and a mutual society) came from various industries, had different sizes and backgrounds, with Headquarters in the capital city of Kingston, Jamaica, and had extensive networks of agencies island-wide. These companies provide a depth of diversity, demonstrated capacity to rise above challenges, economic and other contextual realities other than being known for their CG activities. Although the

companies agreed to have their names used in this study, industry-based pseudonyms are used for simplicity and ease of reference for the convenience of the researcher.

Three (3) main research techniques were used in this segment. First, was semi-structured interviews (all open-ended questions) administered on a one-to-one basis with respondents of all three case companies. Second, was a detailed analysis of a wide range of written published and unpublished company documentation. Third, was participant observation in the case study companies. This strand of fieldwork was conducted over a six year period (2003-2008) formally and informally—as board invitee, attending AGMs and investor briefing meetings, as well as interviewing company executives and Directors, and accumulating press releases and financial analyst reports and Annual Reports. Questions posed to external respondents were framed differently and had differing objectives from those fielded at the internal respondents (Company Directors, executives and other members of staff). See Appendix 15.

Against the preceding contextual realities, this researcher had to make repeated appointments for face-to-face meetings and telephone calls to update data and information, and kept abreast with developments, both within the case companies and those associated with the regulators, and attended AGMs, investor briefings, collected newspaper clippings on the review cases and analyst reports, all in an effort to stay abreast with developments in these companies.

4.4.2.5 Selecting Case Companies and Respondents

As intimated earlier, predetermined and standard frameworks were devised for consistency in analysis. The in-depth study into the cases served to reflect the complexity of the issues that take place in these organisations. First, the conglomerate was chosen on both practical and theoretical grounds. While there is a dearth of empirical information on CG in Jamaica, a book published by the late, distinguished Professor Douglas Hall about the conglomerate has helped to fill critical information gaps in my study pertaining to this specific case company. Professor Hall employed interviews, archival data analysis, observations and case study approaches and provided insightful and in-depth theoretical knowledge on the development, history and performance of one of the most recognised and resilient Jamaican brand names. In addition, the following factors justified the importance of the conglomerate's existence among the cases studied. Second, it is multi-domestic (as well as multi-jurisdictional) and is influenced in one or more ways by regulatory institutions, watchdog

groups, institutional investors—thus impacted by almost, if not all, relevant stakeholders. Therefore, these features provided much scope for and an in-depth analysis of both theory-testing and theory development. Second, the conglomerate has a strong and positive corporate reputation for quality products, profitability, integrity and corporate social responsibility. Third, it is the first Jamaican firm to have made public its adoption and implementation of principles associated with good CG, this was about January 2000.

Unlike the conglomerate, the merchant bank is exclusively in the financial services business, ranging from money market-type instruments to the trading of foreign exchange, investment banking, corporate finance activities, and the issuing of loans and internal money transfers. At 15 years old (January 2009), it has become Jamaica's largest and most profitable merchant bank with assets under management of more than US\$606 million (as at Dec. 31, 2007) and shareholders' equity of approximately US\$65 million (as at Dec. 31, 2007). The merchant bank operates businesses primarily in Jamaica with a recently established subsidiary in Florida, USA. Bank of Jamaica regulations prevent financial institutions directly under their supervision from having the position of Chairman and CEO being held by the same person. To this end, there is a separate Chairman from the CEO of the merchant bank. The holding company, of which the merchant bank is its flagship business, has the duality of positions being held by the same person. The duality of positions remains a topical issue in the global CG debate as a key area of focus and also in this study.

The third case, a mutual society which was established in 1874, stood the test of time and has become Jamaica's largest specialised home mortgage provider and most capitalised financial institution with approximately US\$750 million of assets held (as at March 31, 2008). A mutual society is an organisation which is often, but not always, a company or business based on the principle of *mutuality*. Unlike a true cooperative, members usually do not contribute to the capital of the company by direct investment, but derive their right to profits and votes through their customer relationship. Research into the CG practices of mutual societies is at best scanty globally and non-existent within the Caribbean. Therefore, choosing a mutual society as one of the subjects for theoretical examination, albeit exploratory, is meant to unearth new understanding of the CG realities in one of the largest and oldest of all Jamaican organisations.

All three cases present many opportunities for analysis given their differences and similarities. When blended and analysed, it is hoped that the process will yield theoretical variety and understanding into CG realities of these Jamaican companies.

Both the conglomerate and mutual company have significant international presence spanning the United Kingdom, Canada, the United States, and the Caribbean, particularly concentrating businesses in the Jamaica Diaspora of these major markets. The mutual company is a leader among the few mutual societies to be found in Jamaica.

4.4.2.6 The Case Study Respondent Populations

See Table 4.3 below for Case Study respondent populations. The respondents of the cases studied have been categorised into two groups: 1.) Internal respondents and 2.) External respondents. In terms of internal respondents, the primary subjects were drawn from amongst the Board of Directors, former Directors, senior executives, middle managers and entry level employees. They were interviewed with the aim of discovering important facts and acquiring explanations.

In the case of the conglomerate, the internal respondents include the following current and former Directors: 1.) a retired Chairman & CEO—who is still a director, 2.) the Chairman & CEO, 3.) the appointed lead Director who had served for thirty unbroken years, 4.) the NED who is Chairman of the compensation committee and is also Chairman of the National Investment Fund (at the time of interview); 5.) a former director (casualty of board size reduction) who is Chief Operating Officer (COO) of the conglomerate's Information Technology Division; and 6.) a former Director who was Chief Risk Officer and Secretary of the CG Committee and Trustee of the conglomerate pension fund (now retired from active service).

In the case of the merchant bank, the internal respondents were the Group President and CEO, the President of the merchant bank, who is also a Director, a senior vice president of risk management, its Company Secretary, and three members of staff at entry and supervisory levels. For the mutual society, the internal respondents were the CEO/General Manager, a Director, the Company Secretary, a marketing executive, an accountant and two entry level staff members. The external respondents have been discussed as a group given the importance of stakeholder representation to the general analysis of this chapter and the thesis by extension. Additionally, several respondents from outside the case companies were interviewed formally and informally to solicit information. By way of the organisations represented, they included the Companies Office of Jamaica (COJ), BOJ, PSOJ, FSC, JSE, Institute of Chartered

Accountants of Jamaica (ICAJ), Jamaica Chamber of Commerce (JCC) and at least one radical independent shareholder. Also, see *Appendix 13*.

Table 4.3: Case Study Respondent Populations

Company	Tot. # of interviews	#of interviews with Chairs/ CEOs	Directors	Company Secretary	Executive	Entry level staff	External Actors ³²
Conglomerate	17	2	3	0	1	-	11
Merchant Co.	17	1	1	1	1	2	11
Mutual	17	1	1	1	1	2	11
	51	4	5	2	3	4	33

There were good reasons why these stakeholder groups, as well as the respective respondents were chosen. First, they cover the gamut of the primary CG influencers—those whom regulate, those whom lobbied government, and those whom dominated the investment landscape—and the institutional investors (pension funds). Second, the respondents were either proactive or being perceived as influencers of public policy initiatives on CG. Third, the Companies Act of Jamaica 2004, administered by the Companies Office of Jamaica, aims to regulate all Companies in Jamaica, including activities such as registration and de-registration, filing of annual returns, changes in shareholdings and Directors, and many other transactions which need to be reported. Fourth, the BOJ regulates all deposit-taking institutions, building societies, and credit unions. Fifth, the PSOJ has a membership of about three hundred, including all stock market-listed companies. Sixth, the FSC regulates all non-deposit-taking financial institutions—pension funds, insurance and securities dealers, while the ICAJ monitors and registers all members of the chartered accounting profession.

In addition to the above, non-case study respondents were chosen based on their ability to identify with and respond to in-depth and probing questions which at times, though not personal, could be construed as intimidating.

Preliminary scouting was necessary among the major external respondent organizations to make certain that potential interviewees were well-informed and able to effectively articulate, in great detail, the issues of interest. It was also important to ensure that targeted subjects were thoroughly informed about many aspects of the companies and were key players in the decision-making processes. As such, senior Directors and executives were targeted and while years of service was not a requirement, careful attention was paid to securing

³² External respondents were interviewed about all three case companies.

interviewees who would have gained long tenure with that organisation, or alternatively, a longstanding relationship with the firm. See Section 4.5 for more detail.

4.4.3. The Focus Groups

4.4.3.1 Introduction

Human-to-human interaction revolves around group discussions in families, workplaces, peer groups and communities, but not all of these discussions are usually structured. However, focus groups are structured, guided discussions that have their sole purpose as the gathering of data and information for scientific purposes (Mirton, et al, 1956; Billson, J. 2006). As a type of in-depth interviewing, focus groups are used to provide invaluable insights into complexities of different fields of study and professional practices. They harness the collective views and understanding of complex human interaction and seek to uncover information that are not easily obtainable or accessed through other scientific methods such as structured questionnaire survey designs that require quantitative analysis.

Focus groups are forms of group interviews that capitalise on communication between research participants in order to generate data. Generally, group interviews are often used to collect data in a simple and quick way from several persons simultaneously. Although focus groups are explicitly used to respond to a question in turn, people are encouraged to talk to one another--asking questions, exchanging anecdotes and commenting on each other's experiences and view points (Kitzinger, J., 1994:16).

The review of literature conducted for this study has identified several critical factors appropriate for explanatory and, in some cases, in-depth study on the existence, use, and impact of CG structures and practices in Jamaica, how these (structures and practices) impact the system of governance, and their potential for policy reform.

Given the dynamic nature of human behaviour and the unpredictability of one's motivations and emotions during complex and sometimes little understood phenomena, quantitative design with measurability which provide multiple answers from which respondents are asked to "select one of the following" or "the one most closely related to your situation," is not accurate enough to provide or reflect the exact realities of what happens in the boardroom, how Directors behave or the pros and cons of having a chairman also serving as the CEO versus the separation of these two roles.

4.4.3.2 Arguments against Focus Group Research

Like many other research techniques used to collect and analyse data, focus group study has often come into question for various reasons. First, for its accuracy and legitimacy (or inaccuracy and illegitimacy) being a part of qualitative research in general (Luntz, F. (1994). Second, the problem might be associated with the end users of the results themselves. Many persons do not understand enough about focus group research, especially because it does not appear with the numbers and hard numerical data like other techniques (surveys and more controlled laboratory experiments). However, absence of “hard numbers” and a formal structure does not make qualitative research unscientific, but often times too few users are academically trained behavioural scientists, and they are intimidated by what they do not understand. Third, group data are neither more nor less authentic than data collected by other methods, but focus groups can be the most appropriate method for researching particular types of questions. Fourth, the participants are usually chosen scientifically, but, as a group of 10-12 people, these findings cannot be projected onto the entire population. The results are dependent upon the interaction between the respondents and moderator, and unprofessional moderating can lead to inaccurate conclusions (Luntz, F., 1994).

4.4.3.3 Arguments in Support of Focus Group Research

Although there are several justifiable criticisms levied against focus group research, when properly applied, this highly used social science technique can produce reliable, hard data. A key element to its application is that it is a versatile and flexible technique which has been successfully applied in very different settings and to varied questions. It affords depth and insight into the research questions and helps contextualise quantitative data (Krueger and Casey, 2000; Billson, 2006; Puchta and Potter, 2004). Focus groups were one of several methods employed by Sir Adrian Cadbury and his team who gave life to the highly published Cadbury Report (1992), now known as the Combined Code (2003) and the most recently revised version, Combined Code 2006.

In spite of the shortcomings of focus groups, as identified in the previous section by authors such as Luntz, this unique interaction between participants can be used to achieve at least seven main aims according to Kitzinger (1994:16, 103-21). First, is to highlight respondents’ attitudes, priorities, language, and framework of understanding. Second, is to encourage research participants to generate and explore their own questions and develop their own analysis of common experiences. Third, is to encourage a variety of communication from participants tapping into a wide range and form of understanding. Fourth, is to help identify group norms and cultural values. Fifth, is to provide insight into the operation of group social

processes in the articulation of knowledge. An example is through the examination of what information is censored or muted within the group. Six, is to encourage open conversation about embarrassing subjects and permit the expression of criticisms. Finally, to facilitate the expression of ideas and experiences that might be left underdeveloped in an interview and to illuminate the research participants' perspectives through the debate within the group.

In the final analysis, the most effective uses of focus groups, depends on the objectives and purpose of the qualitative stream of data required. It is definitely a more effective technique than quantitative measures when the interviewer has a series of open-ended questions and wishes to encourage research participants to explore the ideas of importance to them, in their own vocabulary, generating their own questions and pursuing their own priorities.

4.4.3.4 Aims, Objectives and Research Questions

The general aim of the focus group section of this study was to provide a discussion on critical themes with a view of obtaining deeper and richer insight into how practitioners and policymakers feel about critical and emerging CG issues in Jamaica.

In summary, the focus group strand of this study was designed to achieve five aims outlined below. First, was to determine and develop an in-depth understanding of the adequacy of CG structures and practices identified and how these structures and practices impact the adaptation level of CG Best Practices in Jamaica. Second, was to obtain from respondents their views on gaps which might exist among the practices and structures and the implications for specific areas of public policy. Third, was to generate practical insights about pressures for and against CG reforms. Fourth, was to determine the players' exerting these pressures as identified in the preceding, and what are the suggestions for improving CG in Jamaica. Fifth, was to provide opportunities to respondents to identify other relevant themes which could impact the overall outcome of this study from theoretical, practical, and public policy perspectives. See Appendix 5.

4.4.3.5 Focus Group Participants and Methodological Issues

Two half-day focus group sessions (one session for each of two Focus Groups) were conducted to discuss the issues under review, as well as identify gaps in public policy as they present potential impacts on key CG development in Jamaica. The utilisation of the Focus Groups allowed for and enabled various governance-related aspects to be discussed in a more

unstructured way and then further incorporated within the overall view of CG, and in identifying gaps as presented in chapter 8.

This study benefitted from a third Focus Group which draws on the views of one hundred and twenty (120) participants from sixteen (16) countries who attended a two-day Corporate Governance Forum which focused on current, emerging and future issues affecting Caribbean CG. The Forum was held at the Eastern Caribbean Central Bank Headquarters in St. Kitts from September 3–5, 2003. Sponsoring organisations included Caribbean Development Bank (CDB), Commonwealth Secretariat (COMSEC), Eastern Caribbean Central Bank (ECCB), Eastern Caribbean Securities Exchange (ECSE), Global Corporate Governance Forum (GCGF), and various Associate Partners. Countries represented were: Anguilla, Antigua & Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, St. Kitts & Nevis, St. Maarten, St. Lucia, St. Vincent & the Grenadines, Suriname, and Trinidad and Tobago. The respondents were regional and international academic experts and policymakers who participated in specialist subject matter sessions (groups) of between 10 to 25 persons. The focus was on theory-based deliberations, interactive sessions through the use of short presentations, and panel and group discussions. Finally, a set of recommendations for enhancing CG practices for the Caribbean was weaved from the discussions.

4.4.3.6 Selecting Participants and Sample Frame Issues

The participants in Focus Groups 1 and 2 were chosen for various reasons. First, the researcher had prior knowledge of the expertise and CG mindset of most, if not all, the respondents. Second, the respondents having drawn from a depth of experience and knowledgeable persons provided concurring and opposing views from their respective organisational context and individualistic positions as well as the broader national perspectives. Third and final, the respondents have collectively in one or more ways been involved in some form of CG issues either at the organisational (public and private sector), national and/or international level. Given the level of complexity and depth of the issues explored in this research, it was felt that an expert panel of at least six (6) was needed to provide the impetus and direction for the way forward for CG development in Jamaica.

Focus Group 1 consisted of all senior and retired (or soon to be retired) professionals. There were 5 males and 2 females all representing 7 different organisations with one being an independent consultant. They were homogeneous from the perspectives of their involvement in the local CG debates as practitioners representing their respective organisations and

professions. Additionally, these respondents collectively had significant experience and academic accomplishments in various disciplines related to CG. Their focus was on sharing views about pressures for and against CG reform in Jamaica.

Focus Group 2 included 7 participants (6 males and a sole female) with average age of approximately 50 years, an exceptional track record in their respective fields, and high visibility in the Jamaican corporate landscape. They were also chosen for their knowledge on the local issues affecting CG and their perceived ability to understand and inform the study. Also, group 2 experts were drawn from the finance industry, academia, public policy, the central bank, public sector, politics, and the legal profession. The wide spectrum of individual attributes was chosen to reflect the variety of issues that were under discussion. This group explored the following themes:

- Board Composition and Director Selection
- Chairman/CEO Duality or Separation
- Separation of Ownership and Control
- Director Age, Gender and Years of Service
- Training and Evaluation of the Board
- Corporate Disclosure
- The Role and Perception of Institutional Investors in Corporate CG Development
- The Role of the Board in Strategic Decision Making

Finally, the presence of several participants, seven (7) in Focus Group 1 and seven (7) in Focus Group 2, was necessary in order to provide adequate diversity in terms of the stakeholder interest, which spans many sectors and enterprises.

In line with research protocol and grounded theory in conducting focus group research, some of which would have already been established in this chapter, all participants were sent an introductory note prior to each session and this was further reinforced by an introductory briefing on the given day. Team members were subsequently encouraged and allowed to be facilitators and managers of the discussions in order to encourage involvement by all members of the group and to maintain its intended focus. Participants also were informed at the time of invitation that their participation in the debate about the various issues was needed for academic purposes but more importantly, to be informative and practical enough in contributing to the future of public policy concerning CG in Jamaica.

4.4.4 Assessing the Perception and Role of Institutional Investors (IIs)

Given the limited number of IIs in Jamaica, a deliberate effort was made to carefully select the largest and most established entities to serve as respondents to this study. At the end

of the attempts to solicit the participation of the identified IIs, the eight largest companies were interviewed. These represent US\$2.73 billion of Jamaican institutional investment funds, of which the total remains unknown. An open-ended semi-structured interviewer administered survey instrument was employed. See Appendix 3. After having asked wide-ranging questions, selected aspects of the responses were chosen to narrow the focus of discussion for this purpose.

The key areas covered included total asset under management by the informant companies, key elements of their portfolios, and the respondent companies' investment criteria, if any, on which they rely as pre-conditions before funds are placed with investee companies. The other key criteria were CG guidelines used by informant companies to determine potential companies in which to invest.

4.5 DATA ANALYSIS AND CODING

4.5.1 Introduction

The data were analysed using a mix of approaches given their nature of being quantitative and qualitative approaches. The survey information was analysed using the Statistical Package for the Social Sciences (SPSS), focusing on key descriptive variables collected by the questionnaire, as well as exploring possible significant co-relational associations between variables. Given the small number of questionnaires (respondent companies), analysis was limited to a few highly aggregated levels in keeping with the indicative nature of the study. Analysis at the level of economic sector and industry sectors (public versus private, retail, manufacturing, banking, agriculture, etc.) was not possible due to the very small sample size.

The case study interviews and focus group discussions were examined for main themes and key issues, with the analysis closely linked to primary data form and to the secondary data. In the next sections, more detailed discussion is ensued under each broad methodological approach about the analysis and coding of the data in this study.

4.5.2 Interviewer's Administered Questionnaire Survey

Using a data set representing data collected on ninety-seven variables from fifty (50) Jamaican firms, the following statistical tests were completed:

1. Percentage
2. Means
3. Median Values

4. Cross tabulations (Chi Square χ^2)

The nature of the variables (ordinal) did not facilitate accurate calculations of averages. This was especially true in the instance where scales, which have no exact mathematical value, were used. Means were, however, performed using the sum of all the available values divided by the number of values. The **mean or the arithmetic mean** is the sum of all the values and dividing by the number of values. Equal to the sum of n divided by the number of n. This is a method of measuring the average of a distribution. Given the preceding, median values (the mid-point in a distribution of values) were used in strengthening the validity and presentation of data. In many of the variables analysed, percentage calculations were used as the most appropriate means for presenting the descriptive data.

Cross tabulations were used in addition to median values for a selected number of variables. While these values derived are indicative of association, they do not explain causal relationships. Additionally, for ease of analysis, two variables were 'recoded', this action was taken to create new variables that would be useful for more defined analysis, the data transformation (recode) was also done to ensure the reliability of data being analysed.

1. The variable 'owner', which refers to the dominant ownership structure of a firm, was recoded to a dichotomous variable '**Rowner**', which indicated listed and unlisted firms. This transformation of the variable allowed for easier and more accurate analysis and for trends between listed and unlisted companies to be identified.
2. Further data transformation was done to create a variable '**NRowner**', which indicated the kind of ownership structure of a firm, whether dispersed or closely held firm, among the listed firms.

Ordinal Variable: categories associated can be ranked from highest to lowest based on specific criteria. A set of data is said to be ordinal if the values/observations belonging to it can be ranked (put in order) or have a rating scale attached. You can count and order, but not measure, ordinal data. The categories for an ordinal set of data have a natural order.

Chi Square Coefficient (χ^2): used for measuring relationship between variables. This nonparametric test was applied to determine whether there is a significant association between two variables.

Formulae:

$$\chi^2 = \sum \frac{(\text{Observed frequency} - \text{Expected frequency})^2}{\text{Expected frequency}}$$

A

number of cross tabulations were performed between dominant-owned **dispersed** and **closely-held** listed firms which have been disaggregated from the findings based on different categories and groups. Against the forgoing groups/categories, several variables were then

tested. These variables are board size, Executive Directors, Independent Non-Executive Directors, female Directors and Executive Chairmen. Similar cross tabulations were done using the said variables but looking for relationships between **listed** versus unlisted **listed** companies as two broader categories.

This method is not without limitations. In the interpretation of the results, it is important to note that due to the size of the sample (50 cases), while the data may be indicative of trends within the Jamaican business sector with regards to practices of corporate governance, the data will not hold up to robust statistical data analysis, which would require a far more comprehensive data set, nor can it be totally applicable to the broad context of Jamaican corporate structures.

Furthermore, there are only 27 listed companies under the dominant owned dispersed and closely-held firms. This therefore limits the effectiveness of applying statistical analysis to these data.

4.5.3 Focus Group and Case Studies Data

Pre-Analysis Considerations: Analysing focus groups is no different from analyzing any other qualitative self report data (Blitten, N., 1995). However, for optimum and meaningful results to be obtained and subsequently reported on, even the pre-analysis arrangements are necessary. Adequate arrangements were put in place (including both tape recording of the discussion and note taking) to capture all the discussions. Although it was sometimes difficult to cope with the range of behaviours taking place at once, and while the facilitation was taking place, probes and follow-ups were carefully conducted to ensure that all participants were given the opportunity to voice their comments. Another consideration addressed was that enough time was given to members before the closing and dismissal of the focus group to clarify specific questions. This was important to verify accuracy of recording of information brought forward in the previous two hours (during each focus group).

Data Analysis: To utilise information obtained from focus groups, researchers must engage in the process of analysing data. Analysing qualitative data involves development and assignment of themes and categories and looking for patterns and contrasts. The process includes data reduction and interpretation of meaning.

In analysing the data of the focus groups in this study, discussions, and data of common themes were drawn together and examined in accordance with the questions posed. While it is not always appropriate to give percentages in reports of Focus Group data, it was important to try to distinguish between individual opinions expressed versus the actual group

consensus (Kitzinger, 1995). Like all qualitative analysis, deviant case analysis can add a rich dimension to the essence of discussions and as accommodating a minority of opinions and examples that do not necessarily fit with the researcher's overall position. For this reason, the researcher and even more so if he/she is the moderator, must remain neutral throughout the process of the discussions during the group studies.

In this research, keen attention was given to both collective as well as minority opinions and examples that did not fit the overall theory or expectations. These anomalies in the line of discussions were often captured and documented uniquely. Where there was no supporting consensus on the opinions, they were 'thrown out' from the accepted responses in the final analysis.

In analysing the data from the Focus Group, an attempt was also made to extract the impact of group dynamics and analyse the sections in ways that full advantage was taken of the interaction between participants. Consistent with Kitzinger (1995), a focus group that is true to its data should also usually include at least some illustrations of the talk between participants, rather than simply presenting isolated quotations taken out of context. In this regard, real anecdotes of some of the discussions held between participants were presented in my analysis of the findings of the focus group.

Method of Coding: While there were two approaches available (or appropriate for this study) to code the focus groups data, namely, open coding, in which the researcher remains as open as possible in his attempt to "uncover" what is the data, and focused coding, in which the researcher identifies themes and looks for associated data fitting under categories of interest. In coding the focus group data in this study, the latter was opted for (focused coding) as the most convenient method. Here, the approach was taken first by following the typed transcripts under each research question as guides, and highlighters used (different colours to denote different meanings or responses), paragraph by paragraph, to identify relevant and similar themes. As themes were developed, a working definition was assigned to each code. In this way, in going through the transcripts, the definition was continually being challenged, and sometimes new codes were developed where the properties did not fit the text. Also, codes that were rarely used were dismissed and some categories were broadened to accommodate the lost code. It is important to note that this type of analysis is not linear, but circular. Constant comparison (See Glaser and Strauss, 1967) means that the researcher must continually compare the categories and codes of new transcripts with existing categories and codes in order to more fully develop the properties of the overarching categories for individual codes. This process is on-going until saturation is reached. Simply put, saturation is the idea that no

new codes or categories emerge and that coding more transcripts would only produce repetition of themes. See Appendix 5.

Case Studies: Like the focus group approach, the case study method was used to support the findings of the Interviewer's Administered Questionnaire Survey (IAQS). This study, accordingly, chose to concentrate on qualitative research as the primary means of collecting data. The interview schedule was semi-structured and intended to allow Directors to reveal their perceptions concerning a range of board activities. The schedule was drawn from an analysis of existing literature. Like the larger study (IAQS), the interview schedule was piloted by a few Directors and following revisions of some questions on the basis of ambiguity or framing, an initial schedule of sixty-six (66) questions was settled on and then extended to ninety-nine (99) for final statistical analysis.

The process of analysing the interview and coding data followed that of the initial round of interviews. Patterns were matched to the model, with checks made for new information of potentially new categories. This buttressing of the original findings through testing in three different research sites (cases), affords a further element of triangulation into the study, with the new data from the cases testing the validity and generality of the initial findings. This corroborative work is advanced by Yin (1984) and Eisenhardt (1989b) as an important source of validity and reliability. A further source of confidence in the findings rests on the fact that a draft of the findings was sent to the case companies who were invited to give any comments. These comments were incorporated into the final draft and served as a valuable reliability check to the interpretations of the researcher.

4.5.4 Secondary Data Analysis

Sections of this study were made possible through access to and reliance on a number of secondary sources of information. These sources were particularly reliable as most companies were either publicly listed and/or operated within the financial sector. Stock market listing requires stringent compliance with onerous Stock Market Listing Rules—to be found in the Rule Book of the JSE. Additionally, credible and factual information was obtained through access to the following documents: a book written by the late, distinguished historian, Professor Douglas Hall about the Conglomerate, *A Story of a Jamaican Enterprise*; other publications by case companies including *Philosophies & Policies of Grace, Kennedy & Company Ltd.*; selected annual reports of all case companies and other individual stakeholder groups; text of presentations made at the Investor Briefings held between March 2002 and March 2008; media appearances and

statements, third party sources connected to participant companies; other respondents of this study, information posted on case companies' websites; official publications—technical reports, brochures published by respondent groups named in the study; and the printed press.

4.6 THE FIELDWORK OVERVIEW

In relation to the IAQS, the initial approach was to send questionnaires with a letter to Chairmen, CEOs and Company Secretaries. This was done and a telephone call followed, but the rate of response was extremely low and the length of time that some respondents took was in excess of three months. There were many instances when the questionnaires could not be found and had to be resupplied, at least three times in about 10% of the cases. After about 6 months elapsed, with a completion rate of about 25%, it was decided to schedule face-to-face interviews at the offices of the targeted respondents. This approach resulted in a significant increase in the success rate of those interviewed within a short period of time thereafter. On the best days, up to three interviews were completed with each lasting approximately 120 minutes. A total period of 18 months had elapsed between the completion of the first and last of the 50 completed interviews (37 actually as 13 were done by the respondents themselves—without the presence of the researcher).

More than half of the 13 respondents who independently completed the questionnaire instrument took an average of 12 weeks to return the documents. For those completed independently of the researcher, only 4 respondents contacted him for clarifications. One participant was keen enough to point out that the numbers for two questions were repeated (questions 62 and 63). Two other respondents requested that the difference between an 'independent' Director vis-à-vis a "Non-Executive" Director, be explained to them.

Similar approaches in fieldwork were taken to conduct and complete interviews in the cases and focus group studies in terms of preliminary arrangements, experiences with downtime and availability of potential participants for interviews with watchdog groups and institutional investors. See Focus Group Moderator's Guide in Appendix 5.

There are many reasons for this. First, interviews had to be scheduled at the convenience and availability of the targeted respondents. Often times, they would call to re-schedule. Second, with re-scheduling, the time elapsed was sometimes up to a month. Third, the researcher was engaged in professional work during the course of doing interviews. This was unavoidable due to a high demand for his newly acquired expertise in the field of CG.

Additionally, as a self-funded doctoral student, he had no alternative but to ‘earn while he learns.’ Fourth, was due to the long time period that would have elapsed between scheduling of the first appointment and the actual time of conducting the interview. For example, the questionnaire instrument often times was misplaced and had to be re-supplied. Fifth, the rate of completion was also affected by attrition among executives and/or within managerial and board level ranks, that rendered the process frustrating at times, as new respondents had to be sought.

In spite of the fact that there was an 18-month time horizon between commencement and completion of the IAQS, there was only one contextual change which was not significant enough to alter the credibility and reliability of my findings. That change was the release of a revised Companies Act of Jamaica 2004. These changes were noted and appropriately dealt with and recorded in the relevant sections (chapter 2) which deals with the contextual and regulatory setting of Jamaica. In fact, many informants of the Focus Groups were very aware of these changes to the extent that they believed there still remained many gaps in the revised Company legislation.

Finally, the researcher was also engaged in completing his first book. Therefore, in many instances interviews were done at the mutual convenience and availability of the researcher and interviewees.

4.7 THE AIMS AND TARGET USERS OF THE RESEARCH

The findings will be aimed primarily at academics and individuals in organisational contexts and policymakers (e.g., members of the private sector of Jamaica, regulatory institutions, watchdog groups and institutional investors). First, the results are intended to contribute to their understanding of what CG structures, board practices and composition exist. Second, an improved understanding of CG realities will redound to better equipping practitioners in building awareness and better inform the public at large about the importance of good governance. It is felt that the more aware the public is the greater will be the likelihood of CG reform being demanded. Third, the results may be used by any organisation in guiding it towards the establishment or improvement of its own governance principles and practices. Fourth, the findings may serve as relevant reference material from which sophisticated technical proposals and background information can be accessed by international funding agencies such as IDB, USAID, British Council and others, who have already been involved in financing governance initiatives throughout the Caribbean.

4.8 CHAPTER SUMMARY AND CONCLUSIONS

A clear and concisely documented research protocol is important to any successful research initiative. Therefore, a research protocol was outlined and accompanied by a framework of an audit trail. An audit trail will provide a reliable and organised retrieval system to facilitate other researchers who might be interested in this study to follow the step-by-step processes applied. This chapter also discussed aims and objectives of the research, its purpose and interviewees, and presents a reasoned account for the research approach chosen, and attempts to fulfill the needs of target users. It argues for and against the methods and techniques chosen for data collection and analyses.

The Research Design used was both descriptive and explanatory. The Survey Research Methodology was complemented by the Case Study and Focus Group Methodologies. While there are possible methodological disadvantages, it was deemed feasible as the questionnaire was self explanatory and the education level of the target audience high. The approach also helped to increase the rate of response and captured a wider spectrum of critical respondents. This multi-technique approach seeks to ensure that the limitations of a given technique will be offset by the counterbalancing strengths of other techniques. The data collection occurred over a period of approximately 24-36 months. Approximately 100 individuals were interviewed directly, based on pre-determined design arrangements: Interviewer's Administered Questionnaire Survey (IAQS) (sample size: 50), Case Studies (28), Focus Groups (14) and Institutional Investors (II) (8). Additionally, the study benefitted from the views of an unspecified number of informal respondents—approximately 15.

The next section of this study is Part three (3) which synthesises the results of the fieldwork into three chapters, namely chapters 5, 6 and 7. The more detailed themes are identified and explored under the respective chapters. Chapter 5 examines regulation and corruption, chapter 6 addresses ownership and control, stakeholder relations (representation) and the perception and incidences of corruption in Jamaica. Chapter 7 explores CG practices that cover three broad areas: board characteristics and composition, board's role in firms' strategic decision-making, and the role and nature of corporate disclosure.

PART THREE: RESULTS, FINDINGS, AND ANALYTICAL DISCUSSIONS

CHAPTER 5: REGULATION AND CORRUPTION: ISSUES FOR PUBLIC POLICY ANALYSIS

5.1 INTRODUCTION

This chapter examines regulation and corruption by utilising secondary data from Transparency International (TI), the World Bank, Caribbean Policy Research Institute (CaPRI), Bank of Jamaica (BOJ), Financial Services Commission (FSC), Jamaica Stock Exchange (JSE), Jamaica Depository Insurance Corporation (JDIC), Government of Jamaica (GOJ) Audit Commission, and the Jamaican printed media, among other sources. Primary data was generated through personal interviews with several executives of the institutions already named, and additionally, an in-depth case study of three companies utilising face-to-face personal interviews (unstructured and semi-structured instruments).

The remainder of the chapter addresses in sections: 5.2, the role of public policy; 5.3, the regulatory and governance framework; 5.4., the impact of regulation, utilizing a case study approach; 5.5, evidence of systemic weaknesses; 5.6, perceptions and incidents of corruption, and 5.7, summary and conclusions. The more detailed themes (sub-sections) have been provided under each salient heading, where necessary.

5.2 THE IMPACT OF REGULATION: A CASE STUDY APPROACH

5.2.1 Introduction

Weak regulatory framework and systemic weaknesses have been argued (chapter 1) as a critical plank of the problem statement. From these stages of development of the ‘regulatory thesis’ of this study, critical questions evolved in chapter 4 which sought answers and explanations for the nature of the regulatory framework in Jamaica and the relevance of CG legislations. Have regulations been helpful or inimical? Have legislation been helping to minimise corruption and CG misdeeds? Some of these have been addressed in the preceding sections.

The remainder of this section includes a conceptual framework: findings cover a wide range of issues examining the relationship between the case companies and institutions such as BOJ, FSC, JSC, JDIC and the PSOJ, as well as local and international enforceable and emerging legislation, and proposes a case study prototype regulatory framework. This expresses the theoretical underpinnings of the complex relationship existing between the review cases and their stakeholders. The final sub-section features systemic weaknesses and again, utilises case evidence.

Given the myriad industries and sub-sectors, products and services the case companies' business represent (conglomerate, merchant bank, and mutual society), these cases are entangled in a web of legislation, spanning banking, financial, international, labour and employment, stock exchange rules, private sector guidelines, and even emerging legislation, and a voluntary compliance regime.

The regulatory framework of the case companies in this study is also influenced by the nature and type of services and products they offer. In other words, while a commercial bank, for example, is regulated by its local central bank because it is a deposit taking institution (the nature of service), an investment bank (like the case study merchant bank), not being a deposit-taking institution, instead offers investment type products (T-bills, different bonds, and mutual funds) as well as financial advisory services, attracting a different set of regulations (though it may share some in common with commercial banks). Therefore, the principal regulator of the merchant or investment bank happens to be the FSC.

Table 5.1: Case Companies' Product and Service Menu

Products/ Services	Food Manufacturing & distribution	Commercial Banking	Merchant & investment banking	Money Market & Fund Management	Home Mortgage	Remittance Services	FX Trading	Bill Payments	General Insurance	IT consultancy and Products	Motor Industry
Cases											
Conglomerate	Yes	Yes*	Yes*	Yes	No	Yes	Yes	Yes	Yes	No	Yes
Merchant Bank	No	No	Yes	Yes	No **	Yes	Yes	No	No	No	No
Mutual Society	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Key: Yes—in this business; No—not in this business. *Through First Global Commercial Bank and FGB Securities; **While the bank provides home mortgages it does so under its credit department as it does not have a dedicated business in this segment of the market.

Against the preceding background, it is therefore necessary that the products and services offered by the case companies be presented and examined as the basis for understating their regulatory framework. *Table 5.1* highlights eleven portfolio areas in which one or another of the three case companies is engaged. The conglomerate provides services in all but two areas (home mortgages and IT consultancy) while the mutual society competes favourably with both conglomerate and merchant bank in all areas except food business, and commercial, merchant and investment bank. The merchant bank on the other hand, having a presence in only four (merchant banking, money market funds, remittance and foreign exchange trading) of the eleven areas listed in *Table 5.1*, and with all its portfolio cannibalised by the conglomerate and the mutual—except merchant banking—has to contend with much

less revenue and profitability. This product and service diversity and multiple jurisdictional nature of the operations of these case companies, demanded compliance with both local and international financial regulations.

5.2.2 Findings

To what extent have regulations impacted good or bad CG in Jamaican firms? Is there an emerging framework model?

5.2.2.1 The BOJ and Case Companies

The role of the BOJ in the Jamaican regulatory economy has already been established. Therefore, the focus in this section is on its relationship with the case companies in as much as it regulates and monitors them. The BOJ's supervisory authority and responsibility for deposit-taking financial institutions (mutual company) is established by virtue of a number of primary and secondary Legislative Acts of the Jamaican Parliament. These laws form the legal and policy framework for the licensing and supervision of financial institutions like the merchant bank company and the mutual society. The companies it regulates are required to supply a wide range of financial data based on strict guidelines set out in '*FIA Licensees' Comprehensive Financial Return*' (BOJ, June 1996).

5.2.2.2 The FSC and Case Companies

The FSC being the primary regulator for insurance, securities firms/dealers³³, unit trusts, private pension funds, and mutual funds, as discussed earlier, plays a key role in regulating the activities of the case companies. The merchant bank and its subsidiaries and the securities' arm of the conglomerate, are licensed under the Financial Institutions Act and are regulated by the FSC rather than the BOJ since they are not deposit-taking institutions. Likewise, the case companies at one level or another deal in foreign exchange trading and as such are mandated to be licensed FX dealers.

The case companies' regulatory framework is presented in Table 5.2 and Figure 5.1. Apart from the traditional commercial and merchant bank, the case companies have established relationships with Affiliated Financial Institutions (AFIs). As such, they are able to access cheaper funds from AFIs such as the Development Bank of Jamaica (DBJ) and the Export Import Bank of Jamaica (EXIM), which they then un-lend at a pre-determined interest

³³The BOJ has designated 12 of these institutions as 'BOJ Primary Dealers' which provide access to BOJ's Open Market Operations Instruments and GOJ instruments in the primary and secondary markets. These entities must simultaneously satisfy the requirements of their regulator, the Financial Services Commission, and the specific BOJ requirements for Primary Dealers to be designated as such (www.boj.org.jm).

rate with a narrow spread built-in as interest income. These added arrangements are bound to intensify the regulatory regime and hence cause compliance to become even more onerous for these companies. Licensees of the FSC are required to meet a number of compliance issues, including the payment of prescribed fees when become due, maintaining liquidity requirements, the return of Certificate of Registration, maintain record of securities, issue Notice of ceasing to be a dealer, the disclosure of interest in securities, the keeping of proper accounting and the appointment of auditors, to name a few (Securities Act 2001).

Table 5.2: Regulatory Framework of Case Companies

Case Companies	BOJ Principal & Subsidiary Legislation(1)	Other Legislation (2)	FSC Regulations(3)	Applicable International Legislation(4)	Emerging Legislation – amendments (5)	JSE Rules (6)	PSOJ Code (7)	Self-regulation (8)
Conglomerate	No*	√	No	√	√	√	√	√
Merchant Bank	√	√	√	√	√	√	√	√
Mutual	√	√	√	√	√	No	√	√

*The Conglomerate operates several financial subsidiaries locally and internally.

Key: (1) **Bank of Jamaica (BOJ) Principal and Subsidiary legislation:**-The BOJ Act, 1960 (amended 1992, 1994, 1995, 2001, 2002, 2004, 2005), The Banking Act,1992 (amended 1997, 2002,2004), The Financial Institutions Act, 1992 (amended 1997, 2002, 2004), The Building Societies Act,1897 (amended 1995, 2002, 2004), Subsidiary legislations: The Bank of Jamaica (Building Societies) Regulations, 1995 (amended 2005), The Building Societies (Licences) Regulations, 1995, The Banking (Establishment of Branches) Regulations, 1996, The Banking (Amalgamation and Transfers) Regulations, 1996, The Banking (Licence Fees) Regulations, 2003, The Financial Institutions (Establishment of Branches) Regulations, 1996, The Financial Institutions (Licence Fees) Regulations, 2003, The Banking (Capital Adequacy) Regulations, 2004; (2) **Other Legislation:** Companies Act 2004, Terrorism Prevention Act, 2007, Deposit Insurance Act, 1988, and the Income Act, Proceeds of Crime Bill,2007; (3) **Financial Services Commission (FSC) Regulation:**-Securities Act, The Insurance Act, The Pension Fund Act, the Unit Trust Act; **Applicable International Legislation:** The Patriot Act, Securities and Exchange Commission Regulation: Securities Investor Protection Corporation Regulations; (5) **Emerging Legislation:** Credit Classification Provision, Qualifications of Auditors, Omnibus Bill, Conglomerate/Consolidation Provision, Financial Investigations Division (FID) Bill; (6)**Jamaica Stock Exchange (JSE)** and (7) **Private Sector Organisation of Jamaica (PSOJ) Corporate Governance Code;** (8) **Self-regulation**—auditing and internal control, code of ethics and business conduct, CG policy and risk management policy.

5.2.2.3 Other Local Legislation of Relevance to Case Companies

This a select group of legislation which includes *Companies Act 2004, Deposit Insurance Act, 1988, the Income Tax Act, 1955, Proceeds of Crime Bill, 2007, and Terrorism Prevention Act, 2005.* The Deposit Insurance Act, 1988 (under JDIC) and The Companies

Act, 2004, have been discussed earlier. The merchant bank and the mutual society are members of the JDIC and hence are subjected to its requirements. Like all registered companies, these case companies are subjected to the stipulations of the Companies Office of Jamaica and hence have to file Annual Returns in accordance with the Companies Act of Jamaica, 2004. Likewise, all Companies in Jamaica are required to file Income Tax Returns annually, failing to do so, they can be held liable and be prosecuted for breaches under the Income Tax Act.

Proceeds of Crimes Act (POCA): POCA is a wide-ranging legislation that targets the benefits (proceeds) of crime and incorporates the concept of money laundering as well as introduces the principle of civil procedure. With the passage of POCA since March 2007 and which came into effect on May 30, 2007, the Drug Offences (forfeiture of Proceeds) Act, Dangerous Drugs Act, Money Laundering Act, 1996, and the Money Laundering Regulations, 1997, have been effectively repealed and replaced. The merchant bank and the mutual society are expected to comply with the relevant requirements and to file, as necessary, suspicious transactions under this piece of legislation.

5.2.2.4. *International Regulations and Case Companies*

A few of these regulations are highlighted to provide completeness to this discussion. The ones under consideration are the Patriot Act, the Securities Exchange Commission, and the Securities Investor Protection Corporation, and Basel Standards for Banks.

First is the *Patriot Act*³⁴, the merchant bank, through its Florida-based subsidiary, as well as financial subsidiaries of the mutual and conglomerate operating in US territories, are required to designate an anti-money laundering compliance officer, establish training programmes for appropriate personal, arrange independent testing for compliance with related laws and regulations and to establish policies and procedures to detect and report suspicious transactions. In response to anti-money laundering measures, potential customers must provide various identification documents, without which an account may not be opened on their behalf. Additionally, the Act increases the power of law enforcement agencies to search telephone, email, communications, medical, financial, and other records, and eases restrictions on foreign intelligence gathering within the United States. Under an agreement with the BOJ,

³⁴The Act gives law enforcement agencies the power to search telephone, e-mail communications, medical, financial, and other records thus easing restrictions on foreign intelligence gathering within the United States, and targets financial transactions, particularly those involving foreign individuals and entities.

local financial institutions are now required to produce a range of information about their customers.

Second, is the Securities Investor Protection Corporation (SIPC) of the United States which protects investors up-to the amount of US\$500,000 while the JDIC in Jamaica provides protection to depositors of up to J\$600,000 (US\$6,800) for every account held by a depositor in any of their member institutions (commercial banks, merchant banks and building societies), in the event there is financial distress which leads to ultimate failure. However, the SIPC restores funds to investors with assets in the hands of bankrupt and otherwise financially troubled brokerage firms. None of these two entities is entrusted with direct regulatory power. The licensees of deposit-taking firms hold membership with the JDIC unlike the SIPC, which caters only to securities houses.

Third, the SEC of America covers a wide gamut of legislation to which publicly-listed companies and securities brokers must comply. The case companies at one level or another and through their subsidiaries, (merchant bank subsidiary in Florida, conglomerate remittance business in the USA, and the mutual society in the Cayman Islands), are obliged to meeting SEC stipulated regulations while trading in the US territories.

Fourth, Basel II regulations seek to create an international standard as a guide for banking regulators when creating regulations on capital adequacy (how much money to put aside) to guard against all types of financial and operational risks. It is felt by advocates that such an international standard can help protect the international financial system from the types of problems that might arise should a major bank or a series of banks collapse, and therefore, encourages the establishment of rigorous risk and capital management requirements designed to ensure that a bank holds capital reserves commensurate with its risk exposures.

These four pieces of international legislation are not exhaustive as local institutions, even many other than the case companies and many more operating in various other jurisdictions, are obligated to meeting the compliance requirements of their host countries. These laws can only serve to safeguard individual territories and organizations from reputational damage and the erosion of credibility, from illicit activities—hence reinforcing good corporate governance.

5.2.2.5 JSE Listing Rules and the Case Companies

The role of the JSE has been discussed in chapter 2. Given that both the conglomerate and merchant bank companies are members, they are therefore, subjected to the listing rules

of the JSE that are contained in the JSE Rule Book. There are strict guidelines for acceptance into membership and members are expected to comply with various requirements outlined in the Rule Book. Amongst the most onerous is the JSE Policies on timely disclosure of Information and disclosure of material informationⁱⁱ in particular.

5.4.2.6 PSOJ Corporate Governance Code and the Case Companies

This Code has been adequately discussed in chapter 2 and reference is made of the relevant sections in *Appendix 11*. In spite of a very close relationship between the PSOJ and each of the case companies, very little interest has been shown in adopting part of, or all, aspects of the PSOJ Corporate Governance Code (personal knowledge). Notwithstanding this, these case companies have long established their own voluntary-governance policies and have remained committed to the tenets of self-imposed regulation.

5.2.2.7 Case Companies and Self-Regulation

Complementing mandatory requirements are self-regulatory activities initiated by the case companies which sometimes exceed stipulated legal requirements. The case companies are found to have been operating for an extended number of years, with their own Code of Ethics and Business Conduct policies, board operating (corporate governance) manuals, and risk management policies and practices. All three case companies have established well-documented policies of risk management (including the appointment of Chief Risk Officers—merchant company and conglomerate, while merchant company maintains the position of vice president for risk management) Codes of Ethics, and Business Conduct for management officers, as well as BOD. All three case companies report on their CG and risk management practices in their Annual Reports, in keeping with both mandatory and self-regulatory practices.

Additionally, auditing and internal controls while having been prescribed for all financial and stock market listed firms worldwide, and hence are seen as a part of mandatory regulatory framework, are equally self-regulatory in many instances based on the rigidity and details each individual institution may include. Like auditing and internal controls which have not been given significant attention in the literature as self-regulatory measures, reporting on Corporate Social Responsibility (CSR) is a growing trend in Jamaica and all three case companies, especially the merchant bank and the conglomerate companies, have been reporting on CSR, at least since the last four years with the advent of the JSE Best Practice Awards Competition.

5.2.2.8 Emerging Legislation and Case Companies

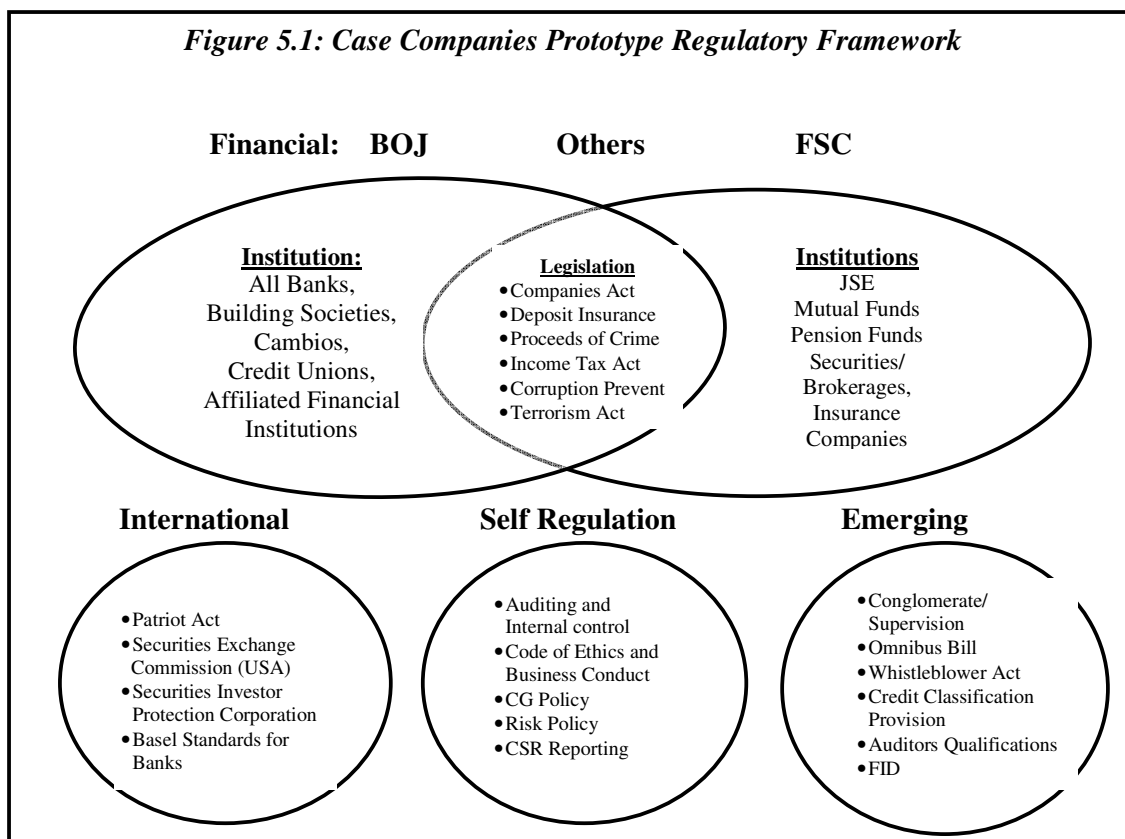
In order to keep relevant, and in light of the dynamic nature of the international regulatory environment, particularly in banking, case companies must at all times be in a state of readiness to respond to the emerging and sometimes sudden demands of the regulatory authorities, especially the financial sector primary regulator, the BOJ. BOJ has been involved with making amendments to several pieces of legislation and developing others. First, *Credit Classification/Provisions* which will regulate loan accounting, credit classification, and loan provision requirements, that take into consideration developments in Basel Core Principles, Basel Standard for Sound Credit Risk Valuation Loan, as well as IFRS while meeting relevant local conditions and requirements (Figure 5.1).

Second, *Qualifications of Auditors*: Regulations that specify expectations for auditors in undertaking an external audit of a supervised financial institution specify the criteria related to independence, experience and academic qualification of the external auditors. These proposed regulations would also require prior notification to the BOJ of proposed appointments. One would hope that these new developments will go as far as regulating the rotation of external auditors and their signing partners in spite of the small pool of local external auditors available.

Third, *Omnibus Bill*: the need has been identified to consolidate the Banking Act, the Financial Institutions Act and the Bank of Jamaica (Building Societies) Regulations, in tandem with related subsidiary regulations. The new 'Omnibus' Bill also seeks to include all legislative amendments necessary to achieve the fullest possible compliance with the Basel Core Principles for Effective Banking Supervision.

Fourth, *Conglomerate/Consolidated Supervision*: although aspects of this supervision has been in place for 'fit and proper' assessments of principals of parent companies of licensed entities, requirements for submission of audited financial statements of all members of the conglomerate group of which the licensee is a part—there is need to widen the supervisory scope consistent with international standards. These regulations are intended to allow the Supervisory Authority to regulate not only the activities of the licensed deposit taking entity, but also of the financial holding company, as well as facilitating supervisory reach to the entire financial group of which the licensee is a part.

Figure 5.1: Case Companies Prototype Regulatory Framework



* The case companies have been duly registered under the relevant business laws in the jurisdictions they operate, both locally and internationally.

Fifth, the *Financial Investigations Division Bill*: The BOJ by virtue of its chairmanship (at the request of the Minister of Finance) of the Task Force on Financial Crime has been involved in the development of a law to govern Jamaica's Financial Intelligence Unit (FIU), namely the Financial Investigations Division (FID). When passed, the FID legislation will, it is hoped, among other matters, establish the FID on a statutory basis thereby increasing the independence of this Unit and facilitating the Unit's admission to membership of the Egmont Group (the international body of FIUs), expand the investigative tools available to the FID for the investigation of suspected financial crimes, and establish specific penalties for non-compliance with directives or requests for information issued by the FID.

Sixth, but by no means exhaustive, is the *Whistle-Blower Legislation*. The Government of Jamaica has identified the enactment of Whistle blower legislation as a matter of priority. Whistle-blowing involves a person making a disclosure about an act of wrongdoing or procedural breach which occurs within an organization. The enactment of whistleblower legislation is usually one of the measures employed to combat corruption. Other legislative measures include the Access to Information Act, 2001, and Corruption (Prevention) Act, 2001,

which currently exist in Jamaica and are examined in the next section of this chapter, featuring the perception and incidence of corruption in Jamaica.

An important advantage of whistle-blower legislation is its tendency to require or foster development of internal mechanisms for handling disclosures of wrongdoing within organisations, as this helps to increase accountability and transparency. Also, the extent to which wrongdoers will go to protect themselves from the consequences of their actions can be quite varied, and potentially dangerous, depending on the individual in question (www.mns.org.jm). It is for these reasons that Governments have sought to enact the whistle-blower legislation in several countries. The main objects of such laws are usually to facilitate whistle-blowing by establishing clear procedures and to offer protection to whistleblowers. This legislation is to be debated before the Jamaican Parliament in the ensuing months (at the time writing).

5.2.3 Evidence of Systemic Weaknesses: Causes of Jamaica's Financial Sector Meltdown and Lessons Learnt

5.2.3.1 Introduction

In spite of the comprehensive and detailed regulatory regime presented in the preceding section, and the fact that The World Bank Institute's Governance Research Indicator puts regulatory quality and control of corruption above average in Jamaica, there remain regulatory gaps and systemic weaknesses which could continue to constrain growth and threaten financial stability (David Atkinson)³⁵.

In this section, the case of the Financial Sector Meltdown of the 1990s in Jamaica is explored as an illustration of how systemic weaknesses led to the collapse of the general financial system and how public policy responses (and regulation) through governmental intervention have helped to create financial stability, albeit at a high cost and through a rather treacherous period.

5.2.3.2 The Crisis

Between the mid and late 1990s Jamaica experienced a Financial Sector Melt-down which resulted in the demise of more than 150 companies, including 15 banks (5 commercial banks accounting for about sixty per cent (60%) of deposits in the population of nine commercial banks), 21 insurance companies (including all major life insurance companies with five accounting for over 90% of premium income in business), one-third of all merchant banks, 34 securities firms, and several building societies (Bonnick, 1999).

³⁵ Analyst, Euler Hermes UK Plc, *Country Review Jamaica*, February 12, 2009, pg. 5 of 6.

The meltdown of the financial sector triggered a “ripple effect” throughout the entire Jamaican economy resulting in loss of thousands of jobs, loss of national ownership of several financial institutions, and a general erosion of business confidence. Many key institutions once seen as national symbols were now in the hands of foreign ownership or were no longer in existence. See Appendix 1 for a comprehensive list of affected Companies.

The privatisation of some government institutions that had been acquired from foreign interests during the 1970s favoured indigenous investors. For example, 51% of shares in National Commercial Bank (formerly Barclays Bank) were offered to the public in 1986. Groups of domestic entrepreneurs owning several types of financial institutions gained increased importance in the ownership and control structure of the sector. Each group would seek to include a commercial bank, merchant bank, building society, life insurance, investment trust, and a leasing company (Bonnick, 1999). In 1991 Jamaica began to relax controls over the borrowing, dealing, and surrendering of foreign exchange. Restrictions were removed from the domestic requirements of customers to prevent illegal outflow, gradually liberalised and then totally eliminated. Exacerbating the situation, in 1992 the Exchange Control was repealed, effectively ending controls on capital transactions between residents of Jamaica and residents of other countries.

Another critical economic development was in the annual rate of inflation (point-to-point) that increased from 17% in 1989 to over 80% in 1991. This was brought under control through monetary and fiscal policy and gradually reduced to 9% in 1997, and to 7% by 2006. Further, there was rapid growth in the sector that was attributed to the increasing number of financial institutions—mainly banking and insurance businesses—from 67 in 1989 to 105 in 1995, with majority increase among building societies and merchant banks (PIOJ Data).

Critical to the above discussion must be the role played (or not played) by government policies (of absence thereof). The rapid growth of the financial sector during the 1990s was not met with commensurate establishment and enforcement of financial sector regulation. As a result, many of the activities of the newly created financial institutions were either inadequately supervised and monitored, or not at all, given the lack of appropriate legislation to do so. Therefore, the inadequacy and absence of appropriate government policies were partially responsible for the nature and magnitude of the crisis (personal experience).

5.2.3.3 Possible Causes of the Crisis

According to *Ministry Paper No. 13* that was submitted to Parliament with the 1998 budget, the rapid expansion in the Financial Sector placed severe strain on the management of financial institutions. In addition, poor CG practices intensified the problems arising from an under-developed macroeconomic and regulatory framework. Many management weaknesses contributing to the failure of the Jamaican financial sector have been argued (Hilton, P., 1998). Some of the weaknesses that have been indentified include: failure to exercise due diligence and care on the part of corporate Directors, specifically, lack of, or non-compliance with proper internal control procedures and ineffective risk management, inadequate credit/investment monitoring, poor strategic planning and CG oversight, inadequate capital levels, ineffective supervision of the management of these institutions by their BOD, and excessive credit concentration.

In critically assessing these causes against the responsibilities of Directors in the Jamaican context, it appeared evident that several Directors of these distressed companies failed in upholding their fiduciary responsibilities. Personal interviews conducted with many respondents (casualties) by a former Managing Director of FINSAC, and consultant reports, have concluded that Directors did not fully understand their roles, duties and responsibilities. The lack of knowledge and understanding among Directors of their roles and responsibilities, particularly in the Caribbean, comes as no surprise as duties and responsibilities were not codified (or only minimally where this existed—emphasis added) in law until significant improvements in the revised Companies Act of Jamaica, 2004.

In spite of the enormity of the above crisis and its implications on the financial sector, the labour market, economic growth, and significant social deterioration in the economy, the causes and full impact of the crisis was not investigated until the current Jamaica Labour Party (JLP), which formed the Government in September 2007, established a Commission of Enquiry to investigate such. The Commission of Enquiry is being held at the time of writing.

5.2.3.4 Other Public Policy Responses to the Financial Crisis

Most fundamental to the government's intervening measures was the creation of the Financial Sector Adjustment Company (FINSAC) in 1997, to deal with the troubled institutions. This was followed by an announcement in Parliament on the 7th of February 1997 by the Prime Minister, that the government would guarantee depositors' funds in licensed deposit-taking institutions, pension funds managed by authorised institutions, and policy-

holders' funds in insurance companies. The work of FINSAC was initiated in three phases. First, was intervention—there was negotiation with owners/managers leading to FINSAC's provision of recapitalisation based on an agreed rehabilitation plan or acquisition, or closure where rehabilitation did not seem a feasible option. A sector overview study was completed during this stage. The second phase was the rehabilitation of institutions (including restructuring of portfolio of investments and work-out of non-performing loans, and improvement of management and control), and the strengthening of the regulatory and supervisory framework of the sector. The third phase would complete the divestment of assets acquired in the process of liquidating entities for which deposit guarantees were called, review of the legislative framework, and winding down of FINSAC operations, among others.

The overall rehabilitation of the Jamaican financial sector could be described as a long and onerous process that has remained a work-in-progress approximately twelve years later at the time of writing. Other critical elements in the process of reform include, but were limited to, the following four measures 1.) the conduct of *Diagnostic and Overview Studies*. This was completed in 1997. The major findings concluded that domestic banks suffered from poor credit management, portfolio divestment into areas where they had no comparative advantage; insurance companies suffered from mismatch of assets and liabilities and banks were inefficient; requiring large spreads between overall lending and deposit rates; 2.) Intervention, this involved the negotiation of agreements with troubled institutions to close, support or acquire them; 3.) *Rehabilitation*: This involved evaluation of recovery possibilities, forensic audits of acquired institutions, asset management and disposal, work-out of non-performing loans—brought from intervened banks with FINSAC bonds, sector and institutional re-development, and re-privatisation, and 4.) *Regulatory Reform*—overview studies identified regulatory weaknesses among the important contributory factors to the crisis.

5.2.3.5 *Lessons from the Financial Sector Crisis*

A number of lessons can be learnt from this devastating experience suffered by the Jamaican economy and people. Some of these can be seen as: 1.) *Entry Criteria*—High entry barriers as well as screening out the “unfit” applicants; 2.) *Investments*—Paying greater attention to the investment portfolio of institutions and ensuring greater transparency of the risks taken by investment managers—may need a mandatory risk management framework for Jamaica; 3.) *Leverage*—Regulators should watch whether leverage is excessive and establish alerts for early warning signs; 4.) *Off the Balance Sheet Transactions*—Particular attention should be paid to off the balance sheet transactions. Regulators should require fuller and

timely data on such transactions; 5.) *Foreign Exchange Reserve Position*—Since the foreign exchange market has been liberalised, banks and other institutions should be required to present timely and complete data on their foreign exchange reserve positions and on forward transactions which could influence their short-term debt; and 6.) *Exit of weak institutions*—Regulations in the future must prompt weak institutions to close before a point of insolvency is reached.

Sources: Ministry Paper #13, 1998 Budget Presentation, Ministry Finance and Planning; Bonnick, G. (1999) and Hilton, P. (1998).

In addition to the above, the causes of the Jamaican financial crisis showed that weak CG structures do lead to financial and economic instability and the erosion of investor confidence over time. The Jamaican experience has also shown that the financial cost of recovery is almost immeasurable since it is difficult to determine the real social cost to the economy—brain drain, hardships suffered from unemployment, closure of businesses, and the decline of the productive sector, among others. The most fundamental lesson is that a severe financial crisis can be contained by a timely and successfully executed intervention and subsequent rehabilitation as demonstrated in the case of the Jamaican experience through such intervention measures as a financial sector adjustment mechanism such as FINSAC.

5.3 PERCEPTION AND INCIDENTS OF CORRUPTION

5.3.1 Introduction

The Caribbean people have been concerned about corruption in public life since the 1990s. This concern pre-dated the anti-corruption priorities later elaborated by the World Bank, IMF and other international bodies. For example, National Public Opinion Polls carried out in 1995, 1996 and 2001, revealed that sixty-four per cent (64%), seventy-seven per cent (77%) and forty-nine per cent (49%), respectively, of the Jamaican people felt that all or most politicians were corrupt (Rodriquez, 1996; *The Gleaner* May 3, 1999; *The Daily Gleaner*, Sept. 7, 2001). In a recent survey conducted by CaPRI (2007), 81% of respondents felt the Jamaican police was most corrupt while Parish Councils and the Customs Department trailed at 62% and 61%, respectively. See Table 5.5.

These statistics reflecting the opinion of the Jamaican people on the question of corruption and governance mirror a fairly typical opinion of people in neighbouring Latin America, Africa, parts of Europe, Asia and North America. In Latin America, 96% across the continent in 2000 regarded corruption as a serious or very serious problem (Global Corruption Report 2001:14). In post-communist states, the popular perception of the majority was that the

level of corruption and bribe taking had increased by comparison to the former communist regime. In Russia, the most important of these states, this was the view of the population. Across Southern Africa, opinions on corruption were somewhat varied: In Zimbabwe, 69% said that most government officials are involved in corruption, 50% of Zambians and South Africans shared similar view while only 28% in Lesotho and 20% in Namibia had a negative perception of government officials (Global Corruption Report, 2001:307).

5.3.2 Some Causes of Corruption

The causes purported for corruption are innumerable. Some of the most dominant of these are indicating that corruption stems from poverty and inequality, personal graft and greed, low risk of detection, over-bureaucratic structures, inadequate remuneration, cultural configurations, low risk of punishment, political patronage, weak enforcement mechanisms, absence of an ethical framework—in the individual or in the company or agency, low levels of transparency, low levels of public accountability, weak management systems, powerful network of ‘secret’ organisations, and societal pressures. It is argued that many of these causes are inextricably linked with prevailing conditions in certain societies (Stokes, 1997; Transparency, 2000; Huntington, 1968).

Table 5.3 summarises the views of respondents who believe the three main causes of corruption are personal graft and greed (65%), high reward for corruption, and (61%), cronyism (60%). In addition, Kaufman (2009)³⁶ posits that corruption comes from state capture where powerful companies (or individuals) bend the regulatory, policy and legal institutions of the nation for their private benefit. In this regard, Kaufman insists that the perception of the existence and actual incidents of corruption is prevalent in the private sector as it is in the public sector. He (Kaufman) posited that corruption is typically done through high-level bribery, lobbying, or influence peddling.

It might be a firm wanting a permit, a corporation with the desire to influence the regulatory framework, or another wanting to shape the rules of the game so as to get monopolistic rights. In elaborating his position, Kaufman further argues that: "In industrialised countries undue influence is often legally exercised by powerful private interests that in turn influence the nation's regulations, policies and laws." In interpreting Kaufman's reasoning, Buddan (2009) explains that corruption is built into and normalised by 'the

³⁶ http://www.forbes.com/2009/01/27/corruption-financial-crisis-business-corruption09_0127

economy' where it can be subtle and legal. For example, a political campaign contribution might be made with an understanding that strings are attached.

Table 5.3: Key Indicators of Corruption in Jamaica

	QUESTIONS	EXTENT OF SUPPORT (%)
1.	Which of the following statements match closest your understanding of what 'corruption' is?	Misuse of public office for private gain (45)
2.	What is your perspective of the prevalence of corruption in Jamaica among the following institutions?	Police (81); Parish Council (62); Customs department (61)
3.	How easy can a public official be corrupted in Jamaica?	Relatively easy (85)
4.	Do you believe the Jamaican public sector is more corrupt now more than it was in the past, or, is it about the same?	Much worse (36); about the same (28); somewhat worse now (27)
5.	What do you think are the causes of corruption in the Jamaican public sector?	Personal graft and greed (65); high reward for corruption (61); Cronyism (60)
6.	Do you believe that corruption has hindered Jamaica's development?	Yes (87)
7.	How likely is it for corruption to be detected in the Jamaican Public Sector?	Difficult (50.1); easy (32.2); very diff (21); very easy (5.7)
8.	How easy is it that the corrupt individuals will be punished for their actions?	Not likely (56); very likely (12.6); likely (31)
9.	What are the possible mechanisms preventing corruption from being punished in Jamaica?	Anti-corruption rules are adequate, but government agencies are too weak to enforce them (44); anti-corruption rules are inadequate (31)

Source: Extrapolated from CaPRI Report, *A Landscape Assessment of Political Corruption in Jamaica*, 2007. Authors: Dr. Lloyd Waller; Mr. Paul Bourne; Ms. Indiana Minto and Dr. John Rapley.

5.3.3 The Economic Implications of Corruption

Very little is known about the real economic cost of corruption, as so many aspects remain underground. Moreover, it would be difficult to accurately measure socio-political cost such as when it denies individuals and ruins the livelihood of entire communities thus causing long-term suffering. Daniel Kaufman (2009) wrote: "corruption is not just a problem of developing countries, but developed ones as well, and has not declined on average". Bribery, he estimates, amounts to an astonishing US\$1 trillion each year. In recent times, Switzerland has returned US\$6 million in assets stolen by former dictator, Jean Claude 'Baby Doc' Duvalier to Haiti. Swiss banks stand at the centre of the Swiss economy so one has to think that the Swiss economy is to a great degree, a criminal economy. However, this is not how the world works. United States tax authorities, who have been bled by tax avoidance, are pursuing a civil case against a leading Swiss bank to access thousands of names of US citizens who are hiding about US\$14.8 billion in secret Swiss bank accounts. The bank has paid over US\$780 million to the US and has had to disclose the names of 250 Americans who the US said

committed tax fraud. In spite of this, TI ranks Switzerland as one of the five most honest countries in the world (Buddan, 2009). In Jamaica, a few of the known costs of corruption were estimated to be approximately US\$0.5 billion in the last decade. See Table 5.4.

In the context of economics, corruption is argued to inhibit growth in several ways. First, corruption increases transaction costs for investment, for the production and distribution of goods and services, and offloads these costs disproportionately onto the backs of the poor and powerless (Munroe, T 2003: 373). Second, Transparency International in citing Dieter Frisch, a former Director-General of Development at the European Commission, indicates:

Corruption raises the cost of goods and services; it increases the debt of a country, and carries with it, recurring debt-servicing costs into the future; it leads to lowering of standards of goods provided and inappropriate and unnecessary technology is acquired; and it results in project choices being made based more on capital to be able to reward for the perpetrator of corruption than for manpower—the more useful element of development (Transparency International 2003:3).

Third, corruption occurs in systems where there are instances of violations in economic norms, legal systems and standards which govern economic transactions, thus distorting private and public investment, i.e., channelling funds into highly competitive sectors such as construction (Olson, 1996; North, 1990; and Transparency International, 2000). In this context, it subverts the merit principle by rewarding those who do not play by the rules (suppressing competition), weakens the authority of the rules (laws) and the mechanisms and processes that are at the heart of the democratic institutions. Corruption therefore contributes to the undermining of sustainable livelihoods in these countries, especially for the poor and dispossessed.

Fourth, socio-politically, corruption “breaks the link between collective decision-making and people power to influence, through speaking and voting, the very link that defines democracy” (Warren, 2004; Johnson, 2005; della Porta, 1996). Indeed, corruption can have a deleterious effect on the functioning of a nation and on the ability of institutions in society to attain stated objectives. Critical to this point are key institutions such as political institutions, the judiciary, and administrative systems. In essence, corruption undermines a culture, shrinks the fabric of democracy, and inhibits innovations, upward mobility, and social progress (CaPRI, 2007).

With the above economic issues in mind, corruption constrains governance and has wider implications for development. Additionally, issues such as corruption and how the public perceive the state, tend to be wrapped up with how the citizenry views and relates to

key institutions of the public—departments, ministries, statutory bodies, and government agencies (Warren, 2004), and private sectors—inequalities and prejudice—tantamount to nepotism, cronyism, and unfair treatment of shareholders. Further, Olsen (1993 and 1996) maintains the importance of these institutions in building the trust, stability and consensus needed for the development of a thriving democracy. Clearly, these institutions are crucial in fostering cooperation among firms as well as among citizens and their rulers. It is almost impossible for successful development initiatives to be realised in an environment of mistrust between the intended beneficiaries (the citizenry) and the provider of such development (the state).

5.3.4 Incidents and Case Evidence of Corruption

5.3.4.1 Cases of Political and Corporate Corruption

In Jamaica, as well, as in many other countries, the popular perception is that corruption poses a major challenge to governance. During the 1980s and 1990s, political leaders and security personnel were dismissed, forced to resign or convicted on corruption related charges. In Jamaica and the wider Caribbean, Some of these examples include: 1.) in Jamaica in 1990, Minister of Labour JAG Smith, former water and housing minister, Dr. Karl Blythe, and many other of his colleagues in the former PNP administration, were forced out of office due to allegations of corruption at many public agencies; 2.) in Trinidad and Tobago in 1983, Commissioner of Police Rudolph Burrows; 3.) in the Bahamas as many as five members of the Pindling Cabinet; 4.) in Antigua, 1990, Vere Bird Jr. (Minister of Public Service; and 5.) a Deputy Prime Minister in St. Kitts & Nevis in 1994.

In many other countries in recent years, credible accusations have been made against prominent persons who have been punished for corrupt use of corporate power in the banking and financial sectors, and for the misuse of political office in awarding contracts, the disposal of public assets, the acceptance of bribes in the police and customs services, and in relation to political campaign financing. At least four Ministers from the former People's National Party (PNP) of Jamaica (in opposition at the time of writing) have resigned over shady deals with which they were associated in one way or another³⁷.

In terms of private sector (or corporate) corruption, the egregious behaviour is not limited to the Caribbean as several corrupt corporate executives in the United States, United

³⁷ They are Mr. Percival Patterson, M.P., resigned over the Shell Waiver Scandal while he was Minister of Finance, he returned to become the longest serving Prime Minister of sixteen unbroken years; Former Senator Colin Campbell, resigned over the Trafigura Beheer BV Scandal while he was Minister of Information and General Secretary of the PNP; Dr. Karl Blythe, M.P., resigned over the Operation Pride (2): NHDC Scandal while he was Minister of Water and Housing and Vice President of the PNP, and Mr. Ronald Thwaites, M.P., resigned over the Operation Pride (1)/NHDC Scandal.

Kingdom, Canada, and elsewhere, have been implicated for their acts. Jeffrey K. Skilling, former CEO, Enron, serving a 24-year and 4-month sentence for conspiracy, securities fraud, false statement, insider trading. Andrew Fastow, Enron's former Chief Financial Officer, served 6 years in prison for similar corporate crimes; Bernie Ebbers, former CEO, WorldCom/MCI, serving 25 years in jail for securities fraud. Dennis Koslowski, former CEO, Tyco, serving 25 years. Corporate corruption in the United States and the United Kingdom poses grave implications beyond their respective borders. The negative economic implications for global stock markets specifically, and the financial integrity of the global economy, generally, are no secret.

Long before the current wave of "Enronitis", the United States' and the United Kingdom's private sector executives have been implicated in bribery and other corporate corruption (Munroe, T., 2003: 375). For example, US corporations, despite operating in probably the most highly regulated business jurisdiction globally, have been regarded as amongst the most bribery-prone in foreign transactions. The 2002 Bribe Payers Index (BPI) — a construction of Transparency International and based on cross national surveys conducted amongst senior executives, international accounting firms, etc., found that American multinationals were more likely to pay or offer bribes than those from Germany, France, the UK, or Canada. This tendency indicated an increase over the results of the 1999 BPI and moved the Chairman of Transparency International in May 2002 to conclude that:

Large numbers of multi-national corporations from the richest nations are pursuing a criminal course to win contracts in the leading emerging market economies of the world...Politicians and public officials from the world's leading industrial countries are ignoring the rot in their own backyards and the criminal bribe-paying activities of the multinational corporations headquartered in their own countries, while increasingly focusing on the high level of corruption in developing countries (Statement by Peter Eigen, Chairman TI, on the launch of the TI BPI, 2002).

Further, at least two of the American multinational corporations with affiliates operating in Jamaica have been prosecuted and found guilty by the US Justice Department and the Securities and Exchange Commission for bribery (Good Year International, in 1989) and for violating books and records provisions of the FCPA (IBM, 2000). Moreover, the corrupt use of corporate power contributing to the meltdown of the financial sector in the mid-1990s in Jamaica and along with this, the associated multi-billion dollar increase in the national debt just over one trillion Jamaican dollars or US\$14 billion (at the time of writing). There can therefore be no doubt that enhanced measures to combat corruption and to reduce the threat to governance must place both the private and public sectors at the centre of attention.

5.3.4.2 Selected Public Sector Cases of Corruption in Jamaica

To demonstrate the enormity of the problem of failing CG structures and practices in Jamaica, such as weaknesses in institutional controls, gaps in regulations and absence of a mechanism to punish perpetrators of corruption, several case examples of corruption are summarised below. A few of these cases remain before the courts at the time of writing. These cases identified and briefly discussed corrupt practices (or perceived to be corruption) in government and the private sector and include various forms of corruption such as: the inappropriate award of contracts and instances of cronyism and fraud, ministerial negligence in the unauthorised purchasing of office furniture, overbilling of the public (customers) by a utility company, a salary scandal that later revealed that CEOs of State-Owned Enterprises were paying themselves excessive salaries, the misappropriation and use of government funding by a telecommunication start-up company, an incident of double billing by a contractor to the tune of nearly half billion Jamaican dollars, an incident of alleged bribery of a local politician by a foreign company in international oil trading; and criminal charges against a politician in the disappearances of several thousands of light bulb.

The cases as shown in Table 5.4 and their associated costs demonstrate that corruption has both social and economic implications, and indeed results in underdevelopment, unemployment, and tangible economic implications for individuals, organisations and countries.

Table 5.4: Public Sector Scandals and Their Estimated Cost to the Jamaican Public

Scandal	Date	Financial Cost to the Public (Jam\$) – known or estimated US \$Million)
1. The Rollins Land Deal Scandal	1989	Unknown
2. The Zinc Scandal	1989	5.6
3. The Shell Waiver Scandal	1991	0.33
4. The Furniture Scandal	1991	0.113
5. The Operation Pride (1)/ NHDC Scandal	1997	56.0
6. The JPSCo Overcharge Fisco	1998	1.0
7. The Financial Sector Meltdown and business failures	1990s	449.0
8. The Fat Cats Public Sector Salary Scandal	1999	0.67
10. The Netserv Scandal	2001	0.25
11. The Operation Pride (2): NHDC Scandal	2003	4.49
12. The National Solid Waste Scandal	2005	23.0
13. The Sandals Whitehouse/UDC Scandal	2006	0.33
14. The Trafigura Beheer BV Scandal	2007	0.34
15. The Cuban Light Bulb Scandal	2007	3.8
Total		US\$544.92

Source: Jamaicaobserver.com; Jamaica-gleaner.com; Auditor-General of Jamaica: www.auditorgeneral.gov.jm and in-house archive.

First, the *Operation Pride (1)/ National Housing Development Corporation (NHDC) Scandal*: Operation PRIDE, short for Programme for Resettlement and Integrated Development Enterprise, is an ongoing project managed by the NHDC. In 1997 the Auditor General tabled a report which stated that J\$57 million had been paid out for projects, without the appropriate arrangements for repayment. Further, Cabinet policies for awarding of contracts had not been adhered to in projects thus far. Easton Douglas, the then Minister of Environment and Housing, committed himself to implementing the recommendations of the Auditor-General.

Second, the *Furniture Scandal*: In 1991 Ministers of Government in Michael Manley's administration benefitted from a total of about 10 million Jamaican dollars spent on furnishings for their residences. For example, State Minister Ben Clare was fingered for having received US\$6,896.60 of furnishing for his town house (jamaica-gleaner online, 2008).

Third, *JPS Overcharge Fiasco*: In 1998 consumers were overcharged by the Jamaica Public Service Company Limited, by over US\$22.98 million. This fact was known to the Government but only became public when mentioned at a shareholder meeting. The company did not inform customers of the amount of the overcharge, but were enjoined by the Government to make repayments by January of the following year (jamaica-gleaner.com, 1998).

Fourth, the *Fat Cats Public Sector Salary Scandal*: In April 1999 the Opposition Spokesman on Finance revealed to the public that CEOs of some of Jamaica's public entities had received pay hikes and perks that were beyond those of their private sector equivalents, and beyond even similar positions in developed countries. A Government committee was formed to address these excesses and recommend measures to prevent their recurrence (jamaica-gleaner.com, 2000).

The Netserv Scandal: Netserv, a telemarketing and teleservices company was one of several such operations receiving loans from the Jamaican government to set up businesses in Jamaica. Over J\$90 million had been loaned before it was discovered that more than J\$130 million was lost and fund leakage had occurred. Loans were made without the proper due diligence, leaving the Government open to the risk of great loss (jamaicaobserver.com, 2003).

The Operation Pride (2)/ NHDC Scandal: Dr. Karl Blythe Minister of Water and Housing resigned in 2002, when massive cost overruns were revealed in the Operation PRIDE low income housing project. The four-member Angus Commission was created by P. J. Patterson, Prime Minister, to once again examine the management of the 100 plus Operation PRIDE construction sites (<http://www.jamaica-gleaner.com/pages/operationpride>).

The National Solid Waste Scandal: The National Solid Waste Management Authority (NSWMA), the government agency responsible for waste disposal, was found to have serious accounting weaknesses. Also the agency was found to be largely disregarding the procurement procedures required for hiring contractors to collect garbage in the capital. This was very embarrassing for then Local Government Minister Portia Simpson-Miller, with responsibility for this agency (jamaicaobserver.com, 2005).

The Sandals Whitehouse/Urban Development Corporation (UDC) Scandal: The building of the Sandals Whitehouse property was heralded as a great opportunity for development on the country's south coast. While the property was completed, this public/private sector partnership project was revealed to have incurred some US\$43 million in cost overruns. The report of findings in the investigation of the overruns was condemned by the opposition as not being straightforward in assigning blame or responsibility.

The Trafigura Beheer BV Scandal: Trafigura Beheer BV is a Dutch oil trader which was contracted by the Jamaican government to sell Nigerian oil on its behalf. In April 2006, then opposition leader, Bruce Golding revealed that Trafigura had given the governing party, the PNP, \$31 million dollars. The evidence he offered, a deposit slip, raised further controversy as the bank and the official responsible were slapped with a breach of confidentiality suit for the information leak (jamaicaobserver.com, 2008).

The Cuban Light Bulb Scandal: Kern Spencer, a PNP junior minister from 2007, along with others, was charged with fraud, corruption and money laundering, based on revelations from the Auditor General's department. It was revealed that of 4 million energy-saving light bulbs donated by the Cuban government, for free distribution in Jamaica, over 175,000 bulbs valuing 92 million dollars could not be located. Irregularities were also highlighted in the granting of contracts to bulb distribution support services (www.jamaicaobserver.com, 2008).

5.3.5 Regulatory Responses

What anticorruption measures have been employed in Jamaica, if any? Have these measures worked? In response to the forgoing failures in CG as demonstrated in the several examples of political and corporate private sector corruption, the Government of Jamaica embarked on the development and implementation of a swathe of legislation of which the more salient ones have been examined. These include the Public Bodies Management and Accountability Act, 2001, the Access to Information Act, 2002 and the Corruption Prevention, Act 2003.

5.3.5.1 The Corruption Prevention Act

The Corruption (Prevention) Act came into effect in 2003 and was intended to directly address the problem of reported widespread dishonesty in the public sector. The Act mandated the creation of the Commission for the Prevention of Corruption. This body serves as the main agency for the enactment of the terms of the Act. Under this edict, public sector employees who meet certain criteria, including those who earn over two million dollars, and other agents as outlined by the law, are required to submit statutory declarations of their assets and income to the Commission. They must do so upon entering or demitting their post, and at the discretion of the Commission. By recording and processing this information, the Commission is able to investigate those whose legitimate earnings are exceeded by their assets. The Commission also accepts and investigates reports of corruption. At its discretion, it looks into cases where it believes acts of corruption have taken place.

The Commission may call to a hearing anyone who has not responded to its inquiries in a satisfactory manner. Should a person deliberately fail to file his declarations or knowingly include inaccurate information in his declaration/response to the Commission, he can be charged in the Courts. The Act also attempts to define, in detail, an act of corruption. This includes the offer of a bribe to a public official by a Jamaican locally and even in a foreign locale. Benefiting from or soliciting such a bribe is also included. Court-issued fines for offences under the Act extend to as much as 10 million dollars and/or 10 years in prison. The Act also allows for the seizure, by the state, of property that cannot be accounted for as lawfully earned.

5.3.5.2 The Proposed Whistle Blower's Legislation

In March of 2009, The Jamaica Cabinet of Ministers issued drafting instructions for the proposed Whistleblower legislation, which seeks to facilitate the disclosure of information about wrong-doing to the relevant authorities, and provide for the protection of persons making those disclosures. Private Sector Organisations are also to be included so as to capture all forms of wrongdoing that can be reported within an organisation. It will also speak to gross mismanagement or misconduct that has occurred, or is about to occur. The green paper also indicates that disclosures can also be made if someone within an organisation has a legal obligation to act or carry out an activity and does not do so, or if there was a miscarriage of justice, or the likelihood of a miscarriage of justice.

According to the Minister of Justice and Attorney General of Jamaica³⁸, "there is a culture of snitching in our society. This is really giving protection to those persons who want to come forward and talk." Senator Lightbourne pointed out that the definition of employee under the legislation had been widened to cover independent contractors, and would also bring into the loop, voluntary, religious, and charitable organisations. Furthermore, the legislation will mandate organisations to designate a person to whom acts deemed as corrupt or mismanagement can be reported, and that such persons will be obliged to investigate and deal with the matter. It is recognised that the person to whom a disclosure is to be made can be implicated, and for this reason, provisions for another route to blow the whistle if the blower is not comfortable with the person to whom he/she should blow the whistle. The Senator further states: "the structure being put in place would enable whistle blowers to make disclosures to responsible persons such as a legal advisor, Minister, among several others."

Delicate and very sensitive information that pose threats to national security will also be considered. For instance, if a person is in possession of information on matters of national security, provision would be made that such information be provided to the Prime Minister (as head of Defense) as it is critical not to endanger National Security. Additionally, provisions will be made to ensure that persons, who need protection after giving information, have the backing of the witness protection programme (Ibid). What does this protection mean? This protection means that if a whistle blower suffers any form of victimisation he/she could take the matter to court. Where such persons do not have the money to go to court, it is proposed in the legislation that such persons be provided with legal aid. In terms of the possibility of mischief, this had been taken into consideration and hence, one of the requirements is that the person making the disclosure must do so in good faith, and they must have a reasonable belief in the truth of the disclosure, that the wrong-doing has taken place, or is about to take place.

Confidentiality of client/lawyer or doctor/patient breaches will not be protected under the proposed legislation and neither will it protect persons who have been proven to be guilty of an offence under the Official Secrets Act, or Corruption Prevention Act, by making such disclosures.

Sources: <http://www.jis.gov.jm>; Green Paper: "Proposed Whistle Blower Legislation—In Search of a Model for Jamaica". February 2008

³⁸ Senator Dorothy Lightbourne in an address to a post-Cabinet Press Conference on the proposed legislation. <http://www.mns.org.jm/LinkClick.aspx?fileticket=uZBA0u5aeEk%3D&tabid=36&mid=385>.

5.3.5.3 *Public Bodies Management and Accountability Act, 2001, (PBMA)*

This piece of legislation came about at the request of the then Opposition Spokesman on Finance, Mr. Audley Shaw (now Minister of Finance and the Public Service), who called for legislation to strengthen public sector governance and improve internal control. It was in direct response to the Fat Cats' Scandal of 1999.

The PBMA Act, 2001, was amended in 2003 to include all statutory bodies and specifies the duties of public sector Boards, management and auditors. This legislation outlines the contents and due dates of financial reports, the corporate plan, and the annual, half-yearly and quarterly reports. These documents are to be submitted to the responsible Minister, and the Audit Commission, who review them and address any issues raised. The Minister then tables the relevant documents in Parliament. The Act delineates the relationship between the responsible Minister and the Board. It requires the public body to gain approval from the Minister with respect to borrowing, the corporate plan, dismissal of auditors, and formation of new companies by the entity in question. It also calls on the Board to advise the Minister on any policy related to that particular entity.

The Act speaks to the creation of Audit Committees within Boards, outlining the duties of these bodies, and stipulating the conditions for the enactment of special (external) audits. The duties, guidelines for appointment, and right to information of the company auditor are also outlined. The Act gives conditions and expectations for the Directors as they carry out their duties, such as the process of determining remuneration for Directors, and their right to voice dissent to a Board decision taken in their absence. The Act has a special feature, in that it outlines the conditions under which the Courts may charge that a breach has taken place and allows for sanctions against the offending party (within certain bounds).

5.3.5.4 *Access to Information Act 2002*

The difficulty experienced by journalists and the general Jamaican citizenry in accessing Government information, has been a problem for many decades. In June 2002, Jamaica passed into law, *The Access to Information Act, 2002*, which came into full effect on July 5, 2005 after more than 10 years before Parliament. It aims at reinforcing fundamental democratic principles vital to achieving a more transparent and accountable Government, and increased public influence on, and participation in national decision making. This Act provides for free access to information contained in official government documents for the public in general. Individuals seeking such information are not obligated in any way to reveal

the motivations for their request. Rather, it is the Government which must present this information or else give a valid reason for not being able to supply it. One major reason for the unavailability of material is that it may be exempt from the requirements of the Act.

Exemption is conferred when the responsible Minister, or the Prime Minister, issues a certificate to that effect. This can be granted on the basis that public viewing of the material may be potentially detrimental to national security, public safety, and investigations being carried out by law enforcement agencies. Access to Cabinet documents is also restricted to information which is factual, scientific or technical. If there is the real risk of harm to the national economy or national historic sites, then such documents will be exempted from the force of the Act. This freedom of information Act simplifies the process and lowers the cost of gaining information from Government documents. By doing so, the process of democracy is enhanced and individual liberties strengthened.

While this new relationship between citizens and government may be signalling a groundbreaking departure from an age-old culture of secrecy, many questions remain to be answered. Why are some entities and documents excluded, or included? Is accessibility too cumbersome and expensive? Is the right of citizens to access information being met? These questions are beyond the scope of this discussion but remain relevant to the importance and rationale of this new piece of legislation.

Source: Access to Information Act 2002;
Cabinet Officer, Office of the Prime Minister

5.4 CHAPTER SUMMARY AND CONCLUSIONS

This chapter analyses regulation and corruption in the context of public policy in Jamaica. It draws heavily on local empirical research and case evidence combined with results from fieldwork using interviews and case studies. Jamaica has had a number of incidents of corruption and corporate misdeeds and at least one major financial collapse which brought the economy to a virtual halt in the 1990s. In response to these, public policy realities, several new laws were enacted to regulate mainly the financial sectors, with others addressing issues of public service, governance and behavior of professionals, both in the public and private sectors. Key regulations studied included the BOJ Act, FSC Act, PBMAA, the role of the JSE and the JDIC. These laws were analysed based on their relevance (actual outcome versus intended purpose) to this chapter and against the background of a more detailed gap analysis in chapter 8.

A most profound finding of this analysis was that in spite of the very complex web of legislations, or as many would argue, over-regulation, significant gaps exist which must be corrected to ensure soundness, security, and greater confidence in the existing regulatory framework. Findings on the relationship of regulation and public policy also indicate that it is critical that sound empirical evidence drive public policy, and in term, policies should be aimed at plugging holes in economic regulatory weaknesses.

On the issue of corruption, the analysis addresses its perception, causes, implications, incidence and case evidence from the Jamaica perspective. The issue is unquestionably, one of Jamaica's most pressing challenges to public policy and country reputation. In fact, from analysis of empirical evidence which point to the Jamaican public's negative views on this issue—corruption is most prevalent among the police, Parish Councils and Customs department, and corruption is increasing with the passing of time. It is difficult to detect, and perpetrators are not being caught and punished, and though anti-corruption laws are adequate in many regards, but government agencies are either too weak to enforce them, the anti-corruption rules are inadequate and are not effective. With these perceptions in mind, Jamaica needs to reconsider its anti-corruption strategy to ensure that the issues of and fight against corruption is dealt with once and for all. Strategies to curb corruption are key components of this study and are discussed in chapter 8.

The analysis of this chapter shows that CG often involves market failures, even amidst the presence of complex and functional regulatory frameworks, which can result in a less than optimal outcome for business and Government, principals and agents. It also shows that market failures can serve as a basis for regulatory innovation and strengthening. It is hardly possible to predict exact outcomes of business deals and uncertainties. Therefore, public policy responses must be such that the mitigating efforts are in place to prevent the likeliness of potential market disequilibrium and failures by ensuring that appropriate regulatory reform is achieved.

CHAPTER 6.0: FINDINGS AND DISCUSSIONS: OWNERSHIP AND CONTROL, STAKEHOLDER RELATIONS AND PERCEPTION AND ROLE OF INSTITUTIONAL INVESTERS

6.1 INTRODUCTION

This chapter integrates fieldwork findings obtained from the Interviewer's Administered Questionnaire Survey (IAQS) with case study and focus groups in analysing CG issues to determine what boards actually do versus perceptions of goes on behind closed boardroom doors.

The areas of focus of this chapter include: 6.2, ownership and control patterns; 6.3, role and nature of stakeholder relations (representation); and 6.4, perceptions and role of institutional investors. These areas are in response to research problems and questions of chapters 1 and 4, respectively. Theoretical and empirical comparisons of the research literature of chapter 3 are drawn. The more specific areas have been detailed under each major heading. Section 6.5 is the summary and conclusions.

6.2 OWNERSHIP AND CONTROL PATTERNS

6.2.1 Introduction

The nature of ownership and control of Jamaican firms is critical to successful CG reform. From the analysis of chapter three, reforms are more prevalent and accelerated at a greater pace in jurisdictions such as the USA and the UK where more disperse ownership of stock markets prevail. Governance reforms tend to progress at much slower rates in jurisdictions where ownership is more concentrated or closely held, such as Japan and Germany. The analysis of ownership and control in chapter three also points to two factors of critical importance in the ownership and control debate on CG. These are the identity of shareholders and the concentration of shareholdings. In this section, several questions are posed for which answers are sought in advancing the debate around ownership and control, or the separation of both.

6.2.2 Findings of this Research

In conducting this survey, great care was taken to sample a wide cross-section of industries through random stratified means, to provide the truest reality of the Jamaican context based on prevailing business sectors. In addressing the question of: *What is the dominant ownership structure of your Company?* (See Question #1, IAQS) the results in Table 6.1 reflect at least nine different ownership patterns which bear

similarities in the identity of their ownership, while others are quite distinct. However, no further care was taken to segment shareholders and so the results shown in Table 6.1 emerged naturally, and provide an eclectic perspective of the pattern of firm ownership in the Jamaican context. Additionally, listed corporations (publicly-listed, family-dominated management and foreign-owned subsidiaries) account for 27 of 49, or 55.2%, of the firms sampled.

<i>Table 6.1: Dominant Ownership Structure</i>		
<i>Ownership Structure</i>	<i>Frequency</i>	<i>Valid %</i>
Publicly-listed	19	38.9
Family dominated management-listed	5	10.2
Foreign-owned subsidiary-Listed	3	6.1
Foreign-owned subsidiary-Not listed	1	2.0
Private-Multi-partners	6	12.2
Private – Family-dominated management	3	6.1
Locally-owned subsidiary	5	10.2
Mutual	2	4.1
Other	5	10.2
Total	49	100.00

Source: Interviews (n=49; missing value=1)

However, this figure under-represents the number of respondent companies that are actually listed on the Jamaica Stock Market as the respondents have chosen to select the more dominant ownership position of the companies at the time of the interview.

Therefore, a closer analysis of the results in Table 6.1 showed that family-dominated management, private-multi-partners and private-family-dominated management account for 10.2%, 12.2%, and 6.1%, respectively. The aggregate effect of this is a 28.5% control of Jamaican businesses by family-owned and operated firms. These figures represent what was revealed during interviews and not necessarily the existing realities as even among some of the firms classified as publicly-listed (Table 6.1), they are significantly controlled and influenced on a day-to-day basis by founding families, their close relatives, and cronies (personal knowledge). Table 6.1, therefore, reflects the realities of the largest Jamaica firms, and to a partial extent, their true ownership and control patterns—with consideration to the author’s explanation about realities beneath the surface of actual practices versus what is reported in interviews.

The following examples further demonstrate the influence and significance of the pattern of concentrated ownership in Jamaica. Six of the largest groups of publicly-listed companies are owned and managed by the original families. Jamaica Broilers Group is owned and managed by the Levy family with a 80% controlling interest. The Johnston and Hall families are significant share owners in Jamaica Producers Group and dominate both Board membership and senior executive management. The Lascelles, de Mercardo and Carreras Groups are majority owned and managed (Lascelles) by the McConnell and Ashenheim families). The Jamaica Money Market Brokers is majority owned and controlled by the Duncan and Lyon Families. The NCB Group of Companies is 75% owned by Michael Lee-Chin who is Chairman, while key family members control the boards of other subsidiaries. These six companies accounted for twenty-six per cent (26%) of the value of domestic market capitalisation and just over one-third (33 1/3%) of the profits earned in 2008 among Jamaican stock market listed companies (JSE Annual Report, 2008).

It is noteworthy that of the sampled companies, 27, or 55.2%, are listed on the Jamaica Stock Market and actually represented 64.29% of all stock market listed firms at December 31, 2008. Of this number, 17 (or 34.6% of sampled companies) are closely held vis-à-vis (being) owned and managed by prominent Jamaican families. Therefore, from observing this data at surface levels, just over a third of Jamaican stock market companies are owned and controlled by family groupings.

In performing cross tabulation analyses of these results, data in Tables 6.2a and 6.2.b show that there is no relationship between the number of Directors on the Board and whether there is a highly dispersed or a closely held ownership structure of Jamaican companies. Where ownership is highly dispersed, the number of Directors on the board is 75% likely to be 10 members or less, while for boards where ownership is closely held, they have a 62.5% likelihood to be less than 11 compared to 37.5% likelihood of having more than 11 members. Based on this data, dispersed ownership appears to be more likely to have fewer board members than closely held.

Table 6.2c shows similar cross tabulation performed to determine whether or not there exists any relationship between highly dispersed dominant ownership and closely held dominant ownership structures among independent NEDs. While there was no statistical significance pointing to any relationship the highly-dispersed firms were twice as likely to have more than five members who were independent NEDs, 47% compared to 25% for closely-held firms.

Table 6.2a: Number of Directors on Board cross tabulated with Dominant Ownership Dispersed versus closely held Ownership Structure				
Board Size	Dominant Ownership			
	Highly Dispersed		Closely Held	
	N	%	N	%
less than 8	4	21	1	12.5
8 - 10	10	53	4	50
11 - 12	2	10	2	25
13 and over	3	16	1	12.5
Total	19	100	8	100
Chi Square χ^2	Asymp Sig.= 0.785			

Table 6.2b: Number of Non-Executive Directors (NED) Cross Tabulated with Dominant ownership dispersed versus closely held				
Number of NEDs on Board	Dominant ownership dispersed versus close ownership			
	Highly Dispersed		Closely Held	
	N	%	N	%
less than 8	2	10.53	1	12
8 - 10	6	31.59	3	37
11 - 12	8	42.10	3	37
13 and over	3	15.78	1	12
Total	19	100	8	100
Chi Square χ^2	Asymp Sig.= 0.985			

It is not surprising that highly dispersed firms are more likely to have a higher number of NEDs who are independent. These highly dispersed firms are largely stock market listed based on the data of this study and personal experience. They are more subjected to the requirements of the Jamaica Stock Exchange which prescribe that all members of the audit committee should be independent outsiders. In addition, about one-third of the dispersed firms were also financial institutions, both banking and credit unions. In fact, the BOJ Act requires that the Directors of their regulated entities, especially Chairmen, members of risk management and audit committees, all be independent NEDs. In the case of credit unions, approximately 100% of their NEDs (and they usually have almost 100% NEDs, except one employee representative based on their Constitution) are required to be independent. Thus, the preceding explains why these findings and interpretations required knowledge of the environment beyond just mere raw data. In spite all that has been said, when one probes even further, it would not be surprising if many of the purported NEDs turn out to be not

independent, given the propensity in Jamaica for cronyism, especially at the level of corporate boardrooms.

Table 6.2c: Independent Non-Executive Directors (NEDs) Cross Tabulated with Dominant ownership dispersed versus close held ownership				
Independent NEDs	Dominant ownership dispersed versus close ownership			
	Highly Dispersed		Closely Held	
	N	%	N	%
2 and less	4	21	3	37.5
3 – 5	6	32	3	37.5
More than 5	9	47	2	25
Total	19	100	8	100
Chi Square χ^2	Asymp Sig.= 0.512			

6.2.3 An Integration of Findings across Methodological Approaches

In fulfilling the need to grasp a closer view of what really happens in the boardroom, as well as to improve the weaknesses of the IASQ with the counter-balancing strengths of other methodological approaches, and vice versa, three in-depth case studies were conducted. As shown in **Table 6.3a**, case companies ownership characteristics (except the mutual), display close similarity to earlier results obtained in the survey in that ownership and control is characterised by dominant groups of shareholding individuals, institutional investors, Directors and officers, investment companies, and unit trusts, among others.

Table 6.3a: Level of Shareholding of different Category of Shareholders

Category of Shareholders →	Institutional Investors (%)	Individuals (%)	Directors and Officers (%)	Investment Companies /Unit Trust (%)	Others (%)	Total (%)
Conglomerate	51.96	29.76	4.05	5.28	9.48	100 = 329.30m units
Merchant Bank	64.9	19.04	14.1	1.46	0.5	100 927.59m
Mutual	Nil	Nil	Nil	Nil	Nil	Nil

Source: Data were extrapolated from GraceKennedy Limited Annual Report, 2007; Capital & Credit Merchant Bank Ltd. Annual Report, 2008; Jamaica National Director's Report & Financial Statements, 2008; www.gracekennedy.com; www.capital-credit.com; www.jnbs.com.

Based on the investment companies and unit trusts as identified in Table 6.3a, these are companies that buy stocks and shares on behalf of their clients and, therefore, do not own these units. The investors or owners of these shares could be individuals, corporations or trusts, and others. Also, an attempt was made to demonstrate to what extent, if any, a case may be managed (and controlled) by major shareholders. In the case of the mutual society, not

being a shareholding company, it will offer much less scope for a comparative analysis in instances where the discussion is specific to shareholding companies.

The conglomerate is governed by a 13-member Board of Directors comprising 8 NEDs and 5 Executive Directors or insiders. Two members of the Board are women and of the 8 NEDs, 4 can be considered independent in that they have no known or obvious contracts or significant material relationship with the company. This case company has enjoyed an illustrious history of successful corporate leaders over the last eighty (80) years. Its shareholding distribution is shown in Table 6.3a and represents 329.3 million of ordinary outstanding stock units. The ten (10) largest shareholders possess an aggregate of 119.76m shares or 36% of all outstanding shares as shown in Table 6.3b. This by all means is a significant block for the 10 largest shareholders and may be indicative of the influence and power these shareholders may have on this company.

An analysis of the Annual Report (2008) showed that the Chairman and CEO owns 5.77 million stock units or 1.75% compared to the Chairman and CEO of the merchant bank whose shareholdings are dispersed across several interconnected companies and cannot be easily determined without knowing his exact holding in each of the associated companies. These connected companies are mostly privately-held and therefore, unlike the financials of the flagship merchant bank, there is no obligation for their books to be made available for public scrutiny.

Table 6.3b: Level of Shareholding of Top Ten Shareholders

Case Companies	Stake of Top Ten shareholders
Conglomerate	36.0% (119.76/\$329.30 million Units)
Merchant Bank	83.8% (772.2/927.59 million units)
Mutual Society	Nil

Source: Data were extrapolated from GraceKennedy Limited Annual Report, 2007; Capital & Credit Merchant Bank Ltd. Annual Report, 2008; Jamaica National Director's Report & Financial Statements, 2008; www.gracekennedy.com; www.capital-credit.com; www.jnbs.com

In the case of the merchant bank, it is led by a Board of Directors drawn primarily from the financial sector and each in his/her own right is a distinguished leader with an average of 30 years professional experience. It re-invented itself in 2008 by successfully transitioning from being a privately-held entity to a publicly-owned company. On May 14 of that year, it listed approximately one billion ordinary shares on the Jamaica and Trinidad & Tobago Exchanges following a re-structuring exercise. Simultaneously, Capital and Credit Merchant

Bank (CCMB), the group flagship entity, de-listed its ordinary shares, which are now listed as preference shares on the two Stock Exchanges.

Also, in Table 6.3a, institutional investors (pension funds, insurance companies, trust companies, private companies, listed companies, and others) are the dominant group of shareholders of the bank company, accounting for more than twice (64.9%) the shareholdings of private individuals (19.04%), while investment companies and unit trusts own a mere 1.96% (1.46% + 0.5%). Unlike in the conglomerate company where Directors and officers own a meagre 4.05% of ordinary shares, the figure is a whopping 14.1% in the merchant company. Furthermore, a closer dissecting of the data shows that two employees (Group President & CEO and Group Deputy President & CEO) jointly own 35.7% of issues shares (or 21.9% and 13.8%, respectively). Their shareholdings represent 99.88% of the lot of all Directors and officers combined.

This closely held ownership arrangement typifies the trend and nature of ownership and control patterns in Jamaica where the dominant shareholder groups are either institutional investors representing corporations, family networks, or significant block holders of stocks and shares. Also, it is instructive to note that in the case of the merchant bank only 27% of the registered shares have been issued and fully listed. The trend, based on JSE information, is that an average of 25 % of the registered shares of companies are usually issued and with even fewer allocated to regular trading (JSE 2008 data).

The Board of Directors of the mutual society, eleven men and two women, brings a diversity of knowledge, skills and experience (consistent with the requirements of the Companies Act of Jamaica, 2004 and the Combined Code, 2006), indicative of their varied backgrounds spanning law, finance, accounting, medicine, engineering, commerce, and entrepreneurship. The mean age and tenure of service were 55 and 30 years, respectively.

In spite the contrasting position of not being a shareholding company, as in the cases of the conglomerate and merchant companies, ownership is vested in its depositors. A depositor is a member and a member is seen as an owner. The mutual offers services very similar (if not the same) to those of commercial banks and other international mutual financial institutions. In some markets, mutual societies offer very competitive interest rates and fee tariffs on savings and deposit accounts, mortgages, and loans. The members who save and borrow with the mutual ultimately own the business.

Focus Group Results Integrated: In an attempt to obtain more details on the merits or demerits of ownership and concentration, particularly high ownership concentration in Jamaica, focus group respondents were asked the question: *Is High Ownership Concentration a threat to CG development in Jamaica?* All participants agreed that high ownership concentration is a threat to accountability and good governance. In support of this position, it was noted that the traditional approach in Jamaica has tended to be that of limited accountability by owner/Directors. One General Manager/CEO noted, “While this pattern has been easily identifiable in small companies it has also become evident in medium and large size companies as some of the smaller companies, have grown....” Directors who are closely tied with the ownership, or who are owners themselves have limited incentives to improve their knowledge of emerging corporate CG issues. They may be inclined to sacrifice good governance for strategic value. Also, there is less need to maintain good relations with a larger group of shareholders.

How then, if at all, does ownership and control impact board composition and leadership? The pattern of ownership and control of Jamaican firms observed in this study (through interviews, case studies, and focus groups) finds concurrence with the work of the late Professor Carl Stone (1988), who opined that the corporate power of the ethnic minority extends their strategic location in sectors and dominates the Boards of Directors. This ownership pattern also influences who gets big loans and how enterprises are treated when they run into financial problems. Additionally, the minority ethnic class who already owns the majority of Jamaican big businesses controls the big distribution channels and determines which goods reach the mass market through their private networks. They operate as gatekeepers of the private sector and exercise enormous power over the fate of small business enterprises.

In response to yet another question: *To what extent, if at all, does ownership structure influence the adoption of modern CG Best Practices?* The findings relating to Jamaican ownership and control realities can explain the many challenges to CG in Jamaica. First, is the limited takeover market—non-existence of a market for corporate control as only a fraction of the issued shares are usually traded regularly (JSE information, 2008), and where large blocks of shares are traded, these are usually pre-arranged between family members and/or members of the “network”. Second, is a highly under-developed new issue market—for example, between 1994 and 2004, no company was listed on the JSE and since 2004 to the time of writing (2009), there were only four new listings of ordinary shares and four listings (NCB Capital Markets, Mayberry Investments, Pan-Caribbean Investments, and Capital & Credit

Merchant Bank) of preference shares. This lull has been one of the lowest rates of new listings among regional and international stock markets. Third is a high degree of insider board—comprised mainly of family members and persons close to the family network. Fourth, is poor quality and inadequate information disclosure. Fifth, is that incentives are usually aligned to dominant shareholders—with very low dividend payout ratios (less than 15% on average) on common shares, while preference shareholders (usually dominant family groupings) enjoy much higher returns. These five challenges, identified as associated with Jamaica’s ownership and control patterns, bear similarity to the features that have characterised jurisdictions (stock markets) with high concentrations of shareholdings and whose shares are held by a small minority of individuals or institutions, e.g., Germany and France. Most importantly, these jurisdictions are among the slowest to adapt emerging and modern CG reforms, e.g., Japan, France, and Germany.

In advancing the findings of Stone (1988), the problem of the high ownership and control of Jamaican firms continues to have influence on the political aspects of the economy. The ethnic minorities have for a long time been the main financiers of Jamaica’s political parties. They influence which personalities move from one political party to another, if and when they return, and under what conditions. They were the first, and often the only ones to be bailed-out when their businesses run into financial problems, and they are the first to find comfort in a quickly carved position in some other institution—usually financial, whether or not they are ideally suited for it (Stone 1988; supported by more recent political and business experience).

6.2.4 Pros and Cons of High Ownership Concentration

As one focus group respondent in an attempt to bring balance to the debate puts it: “there was the real possibility of good CG existing in closely held companies, given the checks and balances created by relations with such entities as banks, regulators, and customers.” He noted that there is a trend currently for improved training and accountability in the leadership of closely held companies. The case companies’ research has also demonstrated that owner-managed firms (or those in which owners retain a significant percent of capital base and maintain a presence) display excellent leadership and company performance. For example, the case companies under review represent three of Jamaica’s best managed and governed companies which have been publishing statements on their corporate governance activities for the past many years in their respective Annual Reports and web sites, and have gone through different stages of CG self-regulation including the establishment of board committees,

reduction of board size (conglomerate only), and the publication of Codes of Ethics and Business Conduct. Also, the Chairman of the holding company of the merchant bank (since its establishment), has been known for his conservative, but astute, results-oriented and successful business acumen. Since its inception, the merchant bank has been recognised with several outstanding awards including the Ernst and Young Caribbean Entrepreneur of the Year Award in 2000 and in 2004, the Jamaica Employers' Federation (JEF) Employer of Choice Award for medium-sized companies, and the Private Sector Organization of Jamaica's Job Creation Award in recognition of its contribution to creating job opportunities for the local economy. The bank was also honoured in 2004 by the former Bear Stearns for "10 years of excellence in the world of global banking and for setting a high standard within the Jamaican community." Additionally, the firm has weathered Jamaica's economic turmoil of the 1990s, natural disasters, and even civil unrest, to become, over 15 years, Jamaica's most successful merchant bank with shareholders' equity of US\$60 million (Dec. 31 2007) and just over US\$600 million (2007) of assets under management. In April 2006, the Chairman of the Group was named Business Leader of the Year 2005 by the Jamaica Observer, for his steadfastness in guiding the Capital & Credit Financial Group along a consistently profitable path, despite difficulties faced by the Jamaican financial sector (CCMB Annual Report, 2008).

Finally, a Credit Suisse study has shown that firms which retain a family stake of 10% or more of the capital base enjoy superior performance over their respective social peers. Since 1996, this superior performance amounts to 8% per year (www.credit-suisse.com/research/en). Another study by *Business Week* declared, "Look Beyond Six Sigma and the latest technology fad. One of the biggest strategic advantages a company can have is blood line." In this study, *Business Week* identifies five key ingredients that contribute to superior performance. While not all the qualities can be considered unique to firms with retained family interests, they go a far way in explaining why ownership and control, rather than separation, i.e., having someone from within at the helm, works, with beneficiaries gaining more than a pay check and the prospect of a hefty retirement package (www.businessweek.com/magazine/content).

6.3 THE ROLE OF STAKEHOLDER RELATIONS (REPRESENTATION)

6.3.1 Introduction

Many arguments have been postulated in the literature of Stakeholder Theory, though a key contrast has been drawn between the tenets of Stakeholder Theory and the conventional input-output model of the firm. The latter sees the firm as converting investor, supplier, and employee inputs into customer outputs (Donaldson and Preston, 1995). In contrast, Stakeholder Theory argues that every legitimate person or group taking part in the activities of

an organisation does so to obtain benefits and that the priority of the interests of all legitimate stakeholders is not self-evident.

The traditional view sees shareholders (owners of shares) as the only legitimate owners. This has been the accepted norm in most countries' business laws and therefore suggests that the firm has a fiduciary duty to see to shareholders first, in increasing value to them. In the conventional input-output models of a corporation, the inputs of financiers, employees, and suppliers are converted to marketable outputs that are purchased by customers and hence return capital (some benefit) to the firm. In this latter model, unfortunately, the firm tended only to the needs and other interests of the identifiable stakeholders above.

However, this thesis on stakeholders, adapts a more instrumental approach to the corporation by integrating both the resource-based view and the market-based view. Hence, these views are used to guide the analysis of the case companies under review and to define the specific stakeholders—the normative theory by Donaldson—stakeholder *identification (or identity)* as well as examining the conditions under which these parties should be treated as stakeholders (the descriptive theory of stakeholder *salience* or *salient* stakeholders). In the context of this study, the stakeholders involved are innumerable: governmental bodies, political groups, trade associations, trade unions, communities, associated corporations, prospective and current employees, prospective customers and current customers, and the public at large. This study also found competitors to be legitimate stakeholders and whose relationships with case companies are not always antagonistic as this thesis will later prove. See Donaldson and Preston, 1995; Mitchell, Agle and Wood, 1997; Freeman and Miles, 2002; and Phillips, 2003.

The remainder of this section on stakeholder relations (representation) is subdivided into 6.3.2, findings—this is further segmented into stakeholders' identity, and identity and legitimacy, and proposes a prototype model for better understanding the interaction, identity and behaviour of several stakeholders among the three case companies. The next subsection, 6.3.3, addresses trade union and employee representation and draws on interview surveys; 6.3.4 integrates methodological approaches and serves as the basis for section conclusions. The findings and discussion of this section are also based on Figure 6.1, dubbed: *Case Companies Stakeholder Relationship Cause and Effect Model*.

6.3.2 Findings of this Study

6.3.2.1 Stakeholder Identity

What are the identities of an organisation's stakeholders and what legitimises their claims? The question of what is stakeholder relations, who are stakeholders, and what attributes or relationship they should possess to claim legitimacy, have all been points of contention over many decades. Why are stakeholders important to CG and should rebel groups, environmentalists, media and competitors, be considered legitimate? According to Phillips (2004), at the very minimum, they should include groups and individuals from whom the organisation has voluntarily accepted benefits, and to whom the organisation has therefore incurred obligations of fairness. In other words, stakeholders should be contributing in as much as they are benefitting from the organisation—a kind of symbiotic relationship—and could include bankers, financiers, employees, customers, suppliers, and local communities at large.

This study has identified three distinct groups of stakeholders as having the most significant influence on the affairs of the case companies under review. Above all else, respondent interviews, extensive review of their activities formally—Annual Reports, Filings with the JSE, JSE Best Practice Competition data, media reports, financial analysts' reports, web sites, attendance and participation in at least four investor briefings, five AGMs—and informally through casual discussions with company officials, concluded that the *salient* stakeholders include: 1.) bank and employee stakeholders 2.), regulators, and 3.) watchdog groups. These have been categorised into groups based on their influences in providing legal and regulatory framework for compliance reporting and CG best practice monitoring, the services and products they provide, and their lobbying power. Bank and employee stakeholders are further divided into debt holders and creditors, institutional investors, minority shareholders and employees. In this next section, shareholders' identities and legitimacy are discussed, as well as, how organisations and stakeholders benefit each other in the symbiotic manner expressed earlier. See Figure 6.1.

6.3.2.2 *Identity and Legitimacy*

Regulators: In the context of the case companies, regulators provide supervision, monitoring for compliance with regulations, sanctions for non-compliance, set standards of practice under the respective industry subsectors—Bank of Jamaica regulates the banking sector, the Financial Services Commission regulates the securities industry while the JSE establishes guidelines for listed companies through its “JSE Rules and Requirements for listing”. At the corporate level, the employees of regulatory bodies and their families are themselves consumers of the services and products offered by these case companies, and as

such, are clients and customers, and hence a collective source of revenue providers—a resource-based model relationship.

The case companies in return react to regulatory requirements through a compliance regime involving several actions: they ensure that skilled and knowledgeable human capital is in place, establishing appropriate guidelines in writing and communicating these through staff training, filing different reports periodically and as needs be, reporting violations and other actions (disclosure regime, change in shareholding and directorships, and so on.). Also, the case companies pay licensing fees to regulators and filing fees to the Companies Office of Jamaica (promulgator of the Companies Act of Jamaica, 2004) and membership fees to the JSE. Case companies services and products are demanded and consumed by the regulators and thus they are suppliers of goods and services to these regulators.

Additionally, these regulators themselves (the regulatory institutions and their employees) are regulated by such entities as the Companies Office of Jamaica, Island Revenue, Financial Services Commission—also regulates the Stock Exchange as an entity dealing in securities. Therefore, there is a web of overlapping interactions within the regulatory sector and between individuals and this is extended to relationships between the regulators collectively (and individually) and case companies. See Figure 6.1 which depicts this theoretical relationship in a ‘Cause and Effect’ Prototype Model’.

Banks are quite a diversified group whose individual constituents require their own unique analysis given their importance to the stakeholder-relation analysis being ensued. Bank stakeholders include both debt-holders and creditors and some are themselves large institutional shareholders. Banks as a collective of salient stakeholders have been chosen for review in this section given their relationship with case companies as debt holders (deposit taking) and creditors (providing all forms of credit). Debt holders, creditors and employees have been written about in the international stakeholder literature more than any other groups. Ironically, there is the mutual society (case company) which is not a bank but possesses similar features of those associated with a modern bank—deposit taking, investment products, FX trading and many others, and the third case, the conglomerate itself has a wholly-owned subsidiary which is the fifth largest commercial bank in Jamaica.

Debt holders play a pivotal role in CG and in shaping business strategy and performance (Hart 1995, Chap. 6; Jensen, 1986; Myers, 2001). Debt may take the form of long or short-term loans from a variety of financial intermediaries who are more or less likely to intervene directly in the firm. It takes the form of loan contracts arranged ‘privately’ with banks or ‘publicly’ via bond issues in financial markets. Debt is a contractual obligation

against future cash flow and thus impinges on managerial decisions. For this reason, debt holders may force liquidation and restructuring when firms are in distress. In this way, debt is therefore seen as a critical control on managerial behavior in the literature of financial economics (Modigliani and Miller, 1958, Hart, 1995).

Credit ratings signal financial health of firms to investors and affect the cost of capital and thus serve as important mechanisms of control. It is not common in Jamaica and among the case companies for debt to be intertwined with equity ownership and where loan provisions often have board representation (Jackson 2003). However, these practices are more prevalent in non-Anglo-Saxon Germany, France, and Japan.

In the present arrangement where the case companies are both debt holders and creditors, some of the advantages and disadvantages have been observed. First, the bank stakeholders provide firms with needed capital for start-up, expansion, and working capital arrangements. For example, the mutual society is the largest provider of residential mortgages in Jamaica with a market share of forty-five per cent (45%). Of 1,767 loans approved with a value of J\$7.7 billion (US\$87 million), residential mortgages accounted for J\$5.3 billion (US\$60 million) or two-thirds of total loans disbursed at the end of financial year 2008 (Director's Report and Financial Statements, 2008). Second, these Mutual organisations also provide economics of scope (cross-selling opportunities) by the many other services they provide (deposit, currency exchange, advisory, and investment). Third, these banks have access to a wide spectrum of private information, have professionals capable of engaging in public scrutiny and therefore can obtain detailed insight into the firms' operational and financial standings, which in turn helps with monitoring, and can be reliable signals to those outside the firm, like investors looking on for investment possibilities.

Fourth, bank lending is said to have positively influenced markets where it sends positive messages and reduces the cost of capital. Theoretically, there is reported evidence that bank lending reduces the under-pricing of IPOs and has positive effect on share price of the firm (Filatochev et al, 2007 c.f. James 1987, Slovin and Young, 1990; Hishey et al, 1990). Finally, through insider information and monitoring, lenders can prevent borrowers from overextending themselves and making unwise investments (Boot and Thakor, 1997).

Disadvantages associated with bank stakeholders: There are many disadvantages associated with banks—debt holders and creditors as a whole. First, banks interest rates are never usually fixed and as such, fundamental changes in micro-economics (interest rates, inflation, and exchange rates) often result in clients paying back way above the initial agreed rate and even above market rate. For example, Jamaica experienced “hyperinflation” in 1991

whereby the currency was devalued sharply from J\$5.50 to J\$32.0, to the US\$1 dollar during which time market interest rate went to as high as 95%. These events have had severe ripple effects on the Jamaican economy including all three case companies under review. The mutual society saw a decline in loan demand and increased default on loans while it benefitted from increased margin spreads on loans on books. The Merchant Co. only came onto the scene in 1994—the tail end of the high interest rate regime of the 1990s, but at the beginning of what would have come to be known as the Jamaican Financial Sector Meltdown of the 1990s. The Financial meltdown has been discussed in chapters 1 and 5 in support of the Problem Statements and consistent with research questions of Chapter 4. The enormity of the Financial Meltdown was evidenced in the 150 institutions that had to be bailed out by the Government’s FINSAC. These companies included 15 banks (5 of which are commercial, others—merchant banks and building societies); 21 insurance companies (including all the major life companies with over 95% of premium income), 34 securities firms, and 15 hotels. See Appendix 1.

Second, banks may collude with managers to retain profits rather than distribute dividends. The practice of bankers sitting on boards and benefitting from large cash deposits from companies is not uncommon in Jamaica. In this study, in attempting to respond to the question as to: the nature of stakeholder relations in Jamaica, i.e., “Cause and Effect” outcomes, the relationship of the CEOs and members of the executive management of all three case companies have been traced to the boards of Enterprises on which they serve as members or Chairmen. It was found that in the case of the merchant bank, the Chairman and CEO was up-to the time of writing, the Chairman of the National Health Fund (NHF). In this situation, the merchant bank was the largest beneficiary of deposits from the NHF—a US\$45 million Fund. Also, its Deputy President is Chairman of the Board of Directors of the Students’ Loan’s Bureau (SLB), and the merchant bank receives a significant amount of investment funds from the SLB. As to the mutual society, its Managing Director is Deputy Chairman of the Tourist Board and since then, the mutual have established a strategic alliance with the Tourism Enhancement Fund and the Tourist Board, whereby the TEF provides tens of millions of dollars to the mutual society which is then un-lend to the small and cottage-type hoteliers.

Third and final, the Jamaican society is relatively small, consequently, large creditors have been alleged to have colluded with large shareholders to the disadvantage of minority shareholders. Banks also play similar roles in being large institutional investors themselves, in the US and UK, they take significant equity positions with the objective of influencing

investment and CG decisions in these investee companies. In Jamaica, these case companies, other banks and their pension funds, are among the largest block holders of listed equities. Hence, in many ways, sometimes informally, they tend to have significant influences on the governance and direction of companies—partially justifying the existence of significant levels of crossholdings and interlocking directorships.

Employees: Employees include persons directly employed to the case companies on a permanent basis whether through fixed term, renewable contracts, or tenured track. In some cases, these employees are usually shareholders themselves. While no data was solicited on employee shareholding among these case companies, Employee Share Ownership Plans (ESOP) were present in thirty-seven per cent (37%) of companies surveyed in an Interviewer's Administered Questionnaire conducted as a major component of this study. See Table 6.4. There is no legal requirement for board representation of employees in Jamaica and the other English-speaking Caribbean countries, unlike the situation in Germany. However, while the legislature does not make such provisions, the constitutions and by-laws for many organisations (including mutual societies and educational institutions), do ensure that their employees have a voice at the level of the Board of Directors, and hence in the governance of these institutions. In addition, employees can also influence governance decision as an individual and/or a collective voice. The literature on individual voice is limited while there is a larger body of literature on collective voice. Filatochev et al (2007) wrote that employee representation through trade unions seems to attract the largest following, in spite of a declining trend in union representation, membership, and coverage in recent years.

In two of the cases (conglomerate and mutual) in particular, there is the presence of trade union representation but unions play an insignificant role in monitoring management and influencing board decision-making. Instead, this study found that employees play a more important role through the collective voice of staff associations (based on feedback from two Presidents of the staff associations). In two of the three case companies, employees were represented at the level of Board of Directors (mutual) and on several subsidiaries and pension funds (conglomerate). In these roles, employees become more attentive to social responsibilities and play a more activist role in the organisation. In the case of trustees to the pension funds, they are required by law to act in the best interest of the schemes' members in a manner consistent with overall liabilities and returns. Consistent with these findings, Filatochev et al (2007), argue that trustees may lack appropriate knowledge for robust and beneficial involvement, thus these factors then place significant restrictions on the

management and investment activities of trustees. In concurring with the latter, trustees have reported in this study, that they are by far, more regulated than ordinary board members.

It was the collective view of informants of the conglomerate case, “that where there is trade union involvement in Jamaica, and where trustees have the information and motivation, they can have more effect on CG and in companies in which they invest”. There is restricted knowledge of the influence of institutional investors on the activities of case companies. Institutional shareholders are insignificant to the mutual society—it not being a shareholding company, and whose directorship has been carefully selected to reflect representation geographically and socio-economically, thus reinforcing its posture as a national institution serving all of Jamaica and Jamaicans, locally and in the Diaspora of the UK, USA, Canada and elsewhere.

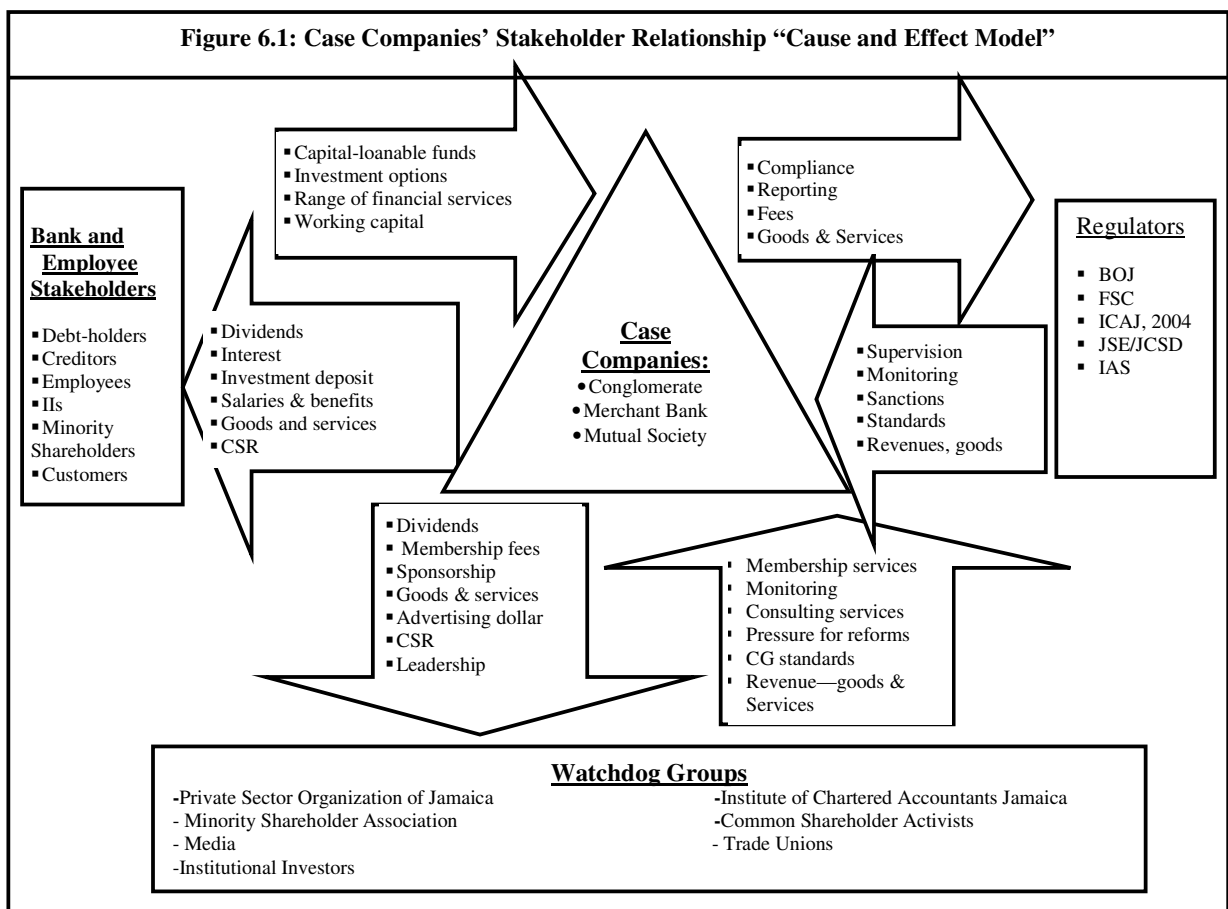
All case companies play a significant role in the PSOJ. Also, the PSOJ has very important influences which it has honed through years of lobbying, and sometimes activist movements, supported by its integrity, prominence and social and economic standing in society—akin to that of its members. For example, the PSOJ membership represents Jamaica’s 350 largest businesses and draws on both private sector and state-owned companies, especially tertiary educational institutions. The ICAJ membership is approximately 800 and these are representatives of the largest and most prominent accounting and management consulting firms in Jamaica with thousands of clients among them.

Although direct views were not sought from the media fraternity and trade unions, these two groups have consistently influenced CG development in Jamaica in their unique ways over the past several decades. The media, by exposing misfeasance in government and the private sector (corruption, fraud, abuse of power, misuse and abuse of government resources) through investigative journalism, has informed and kept the public aware. The public in turn has demanded and obtained reform in government policies. For the part of the trade unions, they have been at the forefront of championing the rights of employees while holding corporations accountable for their actions. In fact, trade unions have perhaps been the most vocal form of employee group in Jamaica, particularly through, influence exerted on the governance arrangement of the case companies, according to respondent feedback.

The four groups of stakeholders identified earlier (PSOJ, ICAJ, JMA, and Institutional Investors) provide membership services to the case companies in participation and voice by influencing public policy and creating a framework for constructive dialogue and engagement in private-public sector relationships. Additionally, through one or more of these watchdog groups, members obtain continual education (ICAJ) to remain relevant in their particular

professions, exposure to emerging local and international trends through dissemination of information via media; knowledge generation seminars; public announcement and press releases, field trips, face-to-face communications with government representatives; just to name a few.

Watchdog groups as shown in Figure 6.1 above, also serve as a substitute for formal mechanisms of monitoring corporate behaviour and performance through lobbying and the other pressures they bring to bear from time to time. Furthermore, they have been proactive in promulgating CG standards in board practices, international accounting standards, and internal control among their membership. Given that these watchdog groups are representatives of the public, they serve as a collective source of revenue for the case companies by accessing and consuming their services and products.



In return, the case companies provide dividend payments (listed companies), membership fees (See Figure 6.1), advertising dollars, participation in major corporate social responsibility (CSR) activities through collaboration with one of more of the watchdog groups (e.g., school feeding programmes), supporting community reading programmes, sponsoring scholarships,

corporate mentorship programmes for high schools and university students, services to indigent and various groups of terminally ill persons (Cancer Care, HIV AIDS), and many outreach activities. These mutually binding relationships go deeper than just the provision of cash—they involve intense formal and informal participation of case companies' management and staff personnel. The staff associations of all three case companies are actively involved in community reading (homework) programmes and service many projects on an on-going basis at various children's Homes (See Annual Reports, 2008, for all three companies or visit their web sites for more details).

In summary, the case companies depend on a wide range of stakeholders in as much as these stakeholders depend on them. Regulators provide monitoring and checks and balances to ensure that companies operate within the law, banks provide loanable funds, a wide range of investment options, a broad spectrum of financial services and working capital and services. Listed case companies in return, provide dividends, interest income to depositors (creditors), goods and services, salaries and benefits to employees and participation in various CSR initiatives with significant deployment of staff resources and financial support. Employees of both case companies and all major stakeholder groups keep these complex, highly interwoven networks or relationships alive. See Figure 6.1.

In the next section, the results of an Interviewer's Administrative Survey are examined. Questions specifically addressing the presence of trade unions among companies sampled, the level of union representatives on boards, presence of non-union representatives on boards, and Employee Share Ownership Plans (ESOP).

6.3.3 Trade Union and Employee Representation

The literature on *co-determination*—a structure of decision-making within an organisation in which employees and their representatives exert influence on top level decisions—shows that in Germany, employees occupy half the seats on supervisory boards in large firms. In Denmark and Norway, they represent one-third and in Sweden they have three members in large firms. In the Netherlands, employees have a worker council that must be consulted when important decisions are to be taken by the Board of Directors. In this study, an attempt is made to link, if and where possible, employee influence on board decision through trade union and non-trade union representation.

In addressing the question of the extent, if any, of trade union representation on corporate boards, results of Table 6.4 show that 42% (or 21/50) of companies are unionised. In terms of the question: *Is there a trade union representative on your Board?* (Question # 9 of

the IAQS), only two (or 13.33) of the fifteen (15) informants who actually responded to the question, had a trade union representative. This extremely low response rate would have severely affected the reliability, representativeness and interpretation of these results.

Follow up probes were made in the case of ten of the thirty-five those who did not chose to respond to the question, and a majority reported that the issue was too sensitive for their further comment. From this latter response, it can be concluded that trade union representation or presence in Jamaican companies can be an issue which evokes emotions of in some form or another. The representation of private sector employees who are members of trade unions is far contrasting to the realities in Britain, which has 20% of private sector workers who are members of trade unions (Filatotchev et al, 2007). This is also of interest considering that Britain is a former occupier and one whose planters were strongly opposed to the trade union development in Jamaica (Stone, 1986).

Table 6.4: Trade Union and Employee Representation Issues

	Yes		No		Abstention
	Freq.	Val. %	Freq.	Val. %	
Is your company unionised?	21	42	29	58	0
Is there a Trade Union Representative on your Board?	2	13.33	13	86.67	35
Is there a non-unionised employee representative on your board?	6	12	44	88	0
Is there an Employee Share Ownership Plan in your Company?	11	22.92	37	77.08	2

Source: Interviews (n1=50; n2=15; n3=50 and n4=48)

To understand this high number of companies which are unionised versus the low union representation on boards, one has to understand the historical, sociological, industrial and political contexts of Jamaica. There were the 1938 labour disturbances, among other things, that marked the birth of the modern trade union movement as members of the working classes organised formally to improve their economic and social positions (Panton, 2000 cf. Eaton, 1990). The development and growth of unions in Jamaica unlike other nations represented “a political response against repression” (Manley, M., 1975) and manifested itself in trade union terms. The rise of trade unions and increasing political agitation paved the way for the island’s first election under universal adult suffrage in 1944 in which newly-formed local political parties competed for leadership. These parties were either offshoots or affiliates of unions—Bustamante Industrial Trade Union established 1933 gave birth to the Jamaica Labour Party

and National Workers Union, established in 1952 as an affiliate organisation of the Peoples National Party. By 1962, Britain peacefully gave way to Independence for Jamaica.

In another question: *Is there non-unionised employee representation on Jamaican boards?* The responses to this question is shown in Table 6.4, that 12% (6) of firms had non-unionized employee representation at the board level. In spite this, 22.92% (or 11) of firms had some form of an Employee Share Ownership Plan. There are at least three reasons to explain the Jamaican realities. Firstly, unlike in Germany and some other European countries, there is no legal right to board representation in Jamaica for any particular group of stakeholders, except among some Public Bodies and non-profit organisations. Secondly, while there are, legal rights to voice via various joint consultation arrangements such as works councils in continental European countries, there are no such arrangements in Jamaica. Thirdly, the literature on employee voice through trade unions is extensive, particularly on unions as an effective bargaining tool for securing resources and opportunities for workers (Freeman and Medoff, 1984).

Following on the preceding explanation for the low trade union representation as shown in Table 6.4 on corporate boards, the Jamaican employee (approximately 90% come from the working class) is still under-represented (only 12%) on corporate boards. Furthermore, any move to provide trade unions and employees the right to board seats would be to provide them (as separate groups) with a ‘collective voice’ which would strengthen their power of negotiation with management. From all indications, legislation is the only feasible means of providing workers, through trade unions, and employees, through staff associations, a greater voice in the Jamaican corporate boardrooms, in the years ahead.

This study is limited to the extent that it seeks answers on the presence of trade unions in companies and trade union and non-trade union board representation. However, further research is needed to determine the percentage of employee in unionised firms that are members of trade unions, as well as the percentage shares owned by unionised and non-unionized employees. Indeed, these studies could make even more interesting findings.

6.3.4 An Integration of Methodological Findings on Stakeholder Representation

The extremely low representation of trade unions in the majority of Jamaican boardrooms can be linked to the nature of ownership and control of these corporations by the minority elite classes who are the descendants of former plantation owners, against whom the majority class fought for their independence using trade unionism as a critical ‘weapon’. Hence, with trade unions being historically seen as ‘anti-corporate’ and a vehicle for

suppression of controls by the owner class over the working class, it should not be surprising that the doors to Jamaican corporate boardrooms still remain closed to trade union representation.

Notwithstanding the low trade union representation (12% of corporate boards), steps towards legislating trade unions and employee' rights to corporate board seats would provide them (as separate groups) with a 'collective voice' which could strengthen their power of negotiation with management. However, with the nature of the high ownership concentration (family groupings and institutional investors), it is doubtful whether or not trade union and employee representation on boards will be achieved without political/legal intervention—creation of the necessary laws.

Among the three case companies, the mutual society was the only one having a staff representative amongst its Directors. Employee representation on boards is entrenched in non-Anglo-Saxon countries, particularly Germany with a two-tier board structure. In the Anglo-Saxon countries, there is increased interest in this regard. So far, only unionised organisations (some) and those with Employee Share Ownership Plan (ESOP) (sometimes) have moved to ensure that employees are represented on one-tier boards. As with the conglomerate, many of the Directors and officers of the mutual society, have served and are serving in many important roles in the public and private spheres of the Jamaican society.

The theoretical model of Figure 6.1, is by no means complete, but it articulates a theoretical and empirical framework of the realities of the Jamaican stakeholder representation, participation and voice from which many inferences can be drawn and serve as a spring-board for further academic studies into stakeholder representation in Jamaica. A major weakness to the discussion is that it lacks more in-depth probe into and understanding of the role of the media and trade unions in influencing corporate behaviour and governance in the case companies and the wider Jamaican society. In this regard, such investigation offers the potential for future academic study.

6.4 PERCEPTION AND ROLE OF INSTITUTIONAL INVESTORS (IIs) IN CORPORATE GOVERNANCE DEVELOPMENT

6.4.1. Introduction

Institutional Investors can be seen as collective investment schemes, which have gained increased power in influencing CG in companies, particularly stock market listed (Clark, 2000 citing Theurillat, 2007). They have gained significant prominence in recent years through their ability to organise themselves and to take significant positions in the

shareholdings of corporations which provide them with lobbying voice, and sometimes rights to board representation.

In this study, the role of IIs have been examined through face-to-face interviews with eight of Jamaica's largest (based on size funds under management) institutional investors. The informant companies invested in a rather narrow range of instruments which they reported to be mainly stocks and shares and Government of Jamaica securities. In one case, for example, the Chairman suggested:

We invest in a range of companies. The portfolio is roughly 65% bonds, debt instruments (G-papers, T-bills, LRSs, and so on), another 10% in equities, and about 20% in real estate and hospitality. We also have ownership in one of the largest local merchant banks and in two very important hospitality properties and are involved with large real estate developments. So we get involved with a variety of organisations across the spectrum of the economy and our investments, by virtue of size of funds, is the largest pension fund in the island, which is about US\$0.5 billion (at time of interview). (Professor Gordon Shirley, Chairman of the National Insurance Fund at time of interview).

6.4.2 Findings of this Research

6.4.2.1 Respondent Companies' Investment Criteria

While eighty per cent (80%) of the respondents report that they were guided by a set of investment criteria, they have reported that these include: the security of their funds, the highest likelihood for short-term profits, risk-free nature of the instrument (government papers), a zero tolerance for any other instrument but stocks, capital base ratio to investment, gapping, tenor of instrument, cash flow and interest rate, asset mix, dividend payment policy, specified yield expected, customer-orientation, analyst reports, and the client profile established.

6.4.2.2 Corporate Governance Guidelines used by Informant and Investee Companies

In answer to this question of whether or not there existed a set of CG guidelines that was used to determine potential investee companies, Table 6.5 indicated that 62.5% of respondents said yes, 12.5% answered no, and 25% abstained. Those who responded in the affirmative provided such criteria as: profit and loss and balance sheet statements, a company's capital structure, management and profitability, and history of client profile. Those who did not have a set of established guidelines believed the market had already been too thin, and hence such guidelines could only serve to bring on undue competitive pressures, thus making clients less attractive.

In terms of requesting investee companies to provide their corporate governance guidelines, Table 6.5 indicates that 50.0% of informants reported yes while the numbers that reported no, and those who abstained were equal at twenty-five per cent (25%) each. The respondents, claiming to have requested corporate governance guidelines of their investee companies, stated that they needed to know what business investees were in, details of performance over several years, the composition of their boards and how organisations were managed, before making their investments. For those answering no, they were only interested in the investee companies' bottom lines—perceived returns on investment. Twelve and one-half per cent (12½%) of the institutional investors interviewed asked their investee companies for annual reports as the sole request (information) from which they expect to learn about investees past performance and future prospects.

Table 6.5: CG Guidelines used by IIs and Provided by Investee Companies

	Yes	No	Abstention
Guidelines for Investee Companies	62.5%	12.5%	25%
Provision of CG Guidelines by Investees	50%	25%	25%

Source: Interviews (n=8)

In a probing question to the Chairman of the NIF, I asked, *why is it important to know who comprises their boards?* He responded:

Well, because we think it provides information on the quality of management and oversight that exists. As a public entity, we are careful about our own participation on boards, because it could be misconstrued as a Government-controlled Fund. However, it is not unusual for us to have 5 to 10 per cent ownership of a company. If the Government then sits on the Board it could be viewed as the government interfering in the management of the company. So what we need to have then is, and I am not saying that we won't do that in certain cases, but we are careful in how we decide on when we participate at the board level. In the absence of that, we need information on a very timely basis, on an ongoing basis, on the firm's performance, the sets of decisions that are being made about the company moving forward...because again noting the size of our holdings in these companies and the nature of the Stock Exchange, it would be impossible for us to trade many of these blocks across the floor in any normal day-to-day operation.

The 25% of respondents who stated emphatically that they did not wish to ask investee companies for guidelines, said they would rather give investee firms the autonomy and independence to manage their own affairs. These informants stated that their investments would have already represented enough risk in any one company and they believed the nature of ownership and control among Jamaican firms would render any effort to reform or influence CG in investee companies, fruitless.

6.4.2.3 Perception of Institutional Investors about Jamaica's Corporate Governance

As to this question of whether or not the level of CG practiced by Jamaica's institutional investors, is satisfactory, this was met with mixed views among informants. Fifty per cent (50%) said they believed CG as currently practiced by institutional investors, was unsatisfactory and suggested that there was a lack of good governance, improvement was needed (unspecified, even among those whom were satisfied) and they did not know enough to provide recommendations. The twenty per cent (20%) who were happy with the state of CG indicated that there was a greater level of understanding and awareness being generated on the subject, by the release of International Accounting Standards (IAS) and an obvious thrust towards a greater level of transparency in the society. In a more in-depth interview with a leading informant, he was asked to give his perception on effective CG in Jamaica. According to this informant:

I would say a couple of things in relation to that...one, is that many companies in Jamaica had a shareholder structure, which to a large extent was dominated by individuals or family groupings for quite a while. As pension funds have grown, a pension legislation has been implemented and the institutional investors have begun to become more important in the ownership of the shareholder base of these companies. For the listed companies, I think they are predisposed to the importance of providing information to those investors. For those companies not listed, there is still a tendency to exclude persons who are external to the company or family grouping. Also, very often reporting practices are very loose and poor and there is strong reliance on secrecy in decision-making in order to implement strategies for the company. I think to the extent that some want to become listed, this will have to be changed. I also think the country is going through a process of change (Personal interview with Professor Gordon Shirley, Former Chairman of the National Insurance Fund).

Institutional investors have an important role in strengthening CG due to the influence of their voting rights which is derived from their large share ownership in many listed companies. Due to their size, influence, and organisation, institutional investors can challenge managerial excesses, demand corporate disclosure and implement corporate guidelines. As seen in the case of Jamaica in comparison to the US, the influence of Jamaican institutional investors is far from as pragmatic and evident as in the US. Therefore, if critical changes in reforming CG in Jamaica are to be realised, institutional investors will need to carry their share of responsibilities commensurate with their ownership in these corporations.

6.5 CHAPTER SUMMARY AND CONCLUSIONS

This chapter builds on the analysis of chapter 5 and examines ownership and control patterns in Jamaica, the role of stakeholder relations (representation), and the perception and role of institutional investors in Jamaica. It draws its sources of primary data and information from interviews, case studies, and focus groups.

The concept of ownership and control has its early roots in the work of Adolphus Berle and Gardiner Means seminal thesis, *Private Property and Modern Corporation* (1932). Berle and Means found that as a corporation's shares become more dispersed it led to a new group of managerial elites called the princes of corporations. With original owners no longer in control, this has given rise to the 'separation of ownership from control' in American corporations but as this study has shown, not so in the Jamaican context.

The findings in this study revealed that Jamaican firms are largely owner managed. In other words, ownership and control are vested in closely connected family groupings. Closer analysis of the findings also revealed that this pattern of managerial arrangement impacts negatively on employee and stakeholder relations. For example, employees and trade unions are grossly under-represented on Jamaican corporate boards. In spite of the fact that there is a historical context that resides in decades of adversarial relationship between owner and wage labour, trade union and non-union employee representation have had a substantial impact in the Jamaican workplace, and unions, in particular, represented a threat to exclusive ownership prerogative (Stone, 1986). Many employers reacted negatively to trade union growth after 1938, opposed unions bitterly, withheld recognition, and victimised union leaders and supporters. Such confrontational work culture and unwillingness to compromise of the part of owners, on collective bargaining issues, has given way to worker militancy, which has proven to be an effective weapon in bringing management to the bargaining table (Ibid). The compromise for board seats for employee and trade union representatives may never be an issue for bargaining in years to come.

The next issue relates to the perception and role of institutional investors given their international prominence in CG over the last decade, particularly in the USA where they have been very vociferous. In Jamaica, there is much to be desired regarding the role of IIs in CG. While IIs admit that CG is an important element in business and they are aware of its growing relevance, they say they are not interested in imposing any CG requirements on their investees as this may backfire, making them (investors) less competitive. IIs are seemingly more interested in the investment premium their investees have to offer. With these views in mind,

there is an even more urgent need for a fundamental rethink in the way CG reform is considered for Jamaica. Clearly, much work is needed to bring to the forefront such important stakeholders as these large Jamaican fund managers who have significant influence, through their money, on market dynamics.

CHAPTER 7.0: FINDINGS AND DISCUSSIONS: BOARD CHARACTERISTICS & PROCESSES, BOARD'S ROLE IN STRATEGIC DECISION-MAKING AND CORPORATE DISCLOSURE

7.1 INTRODUCTION

This chapter uses the results from the fieldwork obtained across methodological approaches (interviews, case studies, and focus groups) to analyse 7.2) CG practices (board characteristics and processes: board sizes, Chairman/CEO duality or separation, Non-Executives and Executive Directors and selection of Directors, board committees and their composition; Director tenure, gender and inequality issues, frequency of board meetings, timing of distribution of board papers and proxy forms, and board performance evaluation and director training); 7.3) board's role in strategic decision-making; and 7.4) corporate disclosure. These areas are consistent with the research problems under review (chapter 1) and research questions of chapter 4, and builds on the findings of chapters 5 and 6. The specific areas have been detailed under the respective headings.

7.2 FINDINGS ON BOARD CHARACTERISTICS & PROCESSES (CG PRACTICES)

7.2.1 Board Sizes

Table 7.1a indicates the sizes of Jamaican boards. As can be seen, the mean size of these boards is 9.1 Directors and median board size 8-10 members. While the mean board size of 9.1 falls within the median range of 8-10, approximately 54% of the boards sampled had less than ten members; 16% had ten members and 30% of the sample had average membership of eleven and greater, with the largest board having 15 members and 6 boards having 13 members each. When compared to mean board sizes from Anglo-Saxon (10.8), Non-Anglo-Saxon (14.43) countries, and Japan (13.0), this figure for Jamaica, can be considered small. Board size is important from both practical and theoretical perspectives. The Higgs Review (2003) suggested that an effective board should not be so large as to become unwieldy. It should be of sufficient size that the balance of skills and experience is appropriate for the requirement of the business and that changes in the board's composition can be managed without undue disruption.

The Chairman and CEO of Jamaica's largest conglomerate reported that they reduced board size from 24 to 12 for various reasons, but particularly, his board believed that a smaller board would be more nimble in their ability to make decisions and more and more boards were relying on external Directors for checks and balances. He commented that the old board

structure had a majority of insiders. In addition, the conglomerate Chairman noted that the new board structure would provide greater access to detailed information on subsidiaries, with a new policy of inviting younger managers to present their cases to the main board as part of the new thrust in succession planning (Interview with a Chairman/CEO). Empirical work on board size, which is still limited, could benefit from a longitudinal study of this company over many years, looking at the impact of board size on Directors' performance, behaviour, and organisation. This could probably shed light on the importance of small boards in comparison to large boards.

Table 7.1a Board Sizes		
<i>Directors</i>	<i>Frequency</i>	<i>Valid %</i>
7 and less	14	28.0
8-10	21	42.0
11-12	7	14.0
13 and over	8	16.0
Total	50	100.0
Mean	9.1	
Median	Between 8-10 members	

Source: Interviews (n=50)

Table 7.1b below shows the result of cross tabulation performed on board size in listed versus unlisted companies. There was no statistically significant relationship between the number of Directors on a board and whether the firm is listed or unlisted. However, 82% of listed firms had more than 8 Directors compared to 50% of unlisted. This slighter tendency of listed firms to have larger boards could be indicative of the fact that listed companies must meet certain minimum requirements of the Jamaica Stock Exchange rules for specific committees (e.g., audit and risk management) and the appointment of a minimum number of independent external Directors. Hence, usually, most IPOs in Jamaica tend to look for qualified outsiders to increase board size to meet both the external independent Director criteria and to facilitate sufficient members available for new and required committees (JSE Rule Book, 2008; personal experience). In spite of these realities, the more substantial conclusion is that there is no significant relationship between the number of Directors on the board of a listed versus unlisted Jamaican firm.

From a practical standpoint, in Jamaica, minimum and maximum board sizes are prescribed by Statutes of Public Bodies (State-owned Enterprises), and to a lesser extent, Companies Law. For example, since the release of the Companies Act of Jamaica 2004, limited liability companies may appoint a single Director. However, publicly-listed companies may not have less than three Directors (JSE Rule), at least two of whom should not be

employees of the company or its affiliates. Where there is one Director appointed to a limited liability entity, such a Director may not serve as its corporate secretary. Therefore, a Corporate Secretary other than the Director must be nominated and registered with the Companies Office of Jamaica.

Table 7.1b: Board Size Cross Tabulated with Listed versus Unlisted Companies				
Board Size	Listed versus Unlisted Companies			
	Listed		Unlisted	
	N	%	N	%
less than 8	5	18.5	11	50
8 - 10	14	51.9	6	27
11 - 12	4	14.8	2	9
13 and over	4	14.8	3	14
Total	27	100	22	100
Chi Square χ^2	Asymp Sig.= 0.121			

7.2.2 Chairman/CEO Duality vis-a-vis Separation

What is your view on one person holding the positions of Chairman and CEO? The results in Table 7.2a indicate that 30% of respondents have the position of Chairman and CEO vested in the same person. In other words, the positions of Chairman and CEO are separated in 70% of Jamaican companies. However, this assertion could be more accurately articulated by emphasising that it is limited to the nearly 50 stock market companies and another 50 of Jamaica's leading companies based on annual turnovers. Beyond Jamaica's top 100 companies (based on annual turnover), one gets into hard core family-owned and run businesses in which the majority has no visible organisational structure and management is usually lateral with an Executive Chairman sitting atop the invisible structure (personal experience).

Table 7.2a: Presence of Executive Chairman, Deputy Executive Chairman and Appointed Lead Directors		
	<i>Frequency</i>	<i>Valid %</i>
Executive Chairman	15	30
Deputy Executive Chairman	6	40
Appointed Senior Independent Director	12	24

Source: Interviews (n1=50, n2=15 and n3=50, respectively).

The 70% rate of separation of the positions of Chairman and CEO compares favourably with existing trends around the world. Empirical data from around the world reveal the following percentages: the USA (24.0), UK (96.2), Canada (79.7), Australia (97.3), Germany (97.7), Netherlands (95.0), Switzerland (77.0), France (52.0), Italy (88.1), Spain (58.3), Belgium (84.6), and Japan (50.8) (EIRIS Data, 2005). In the case of the USA, there

has been marginal improvement over the last decade from 12% separation in the late 1980s to recent data of 24.9% (2008). For various reasons discussed in the literature review, the Americans tend to prefer duality over separation. Based on German laws, the dominant two-tier board structure makes separation automatic. In the case of Japan, the Japanese system of internalism does not provide for much flexibility in recruiting a Non-Executive Chairman easily and as such the figures show a relatively low level of separation of the dual roles of Chairman and CEO.

Table 7.2b: Executive Chairman Cross Tabulated with Dominant ownership dispersed versus closely held				
Executive Chairman	Dominant ownership dispersed versus closely held			
	Highly Dispersed		Closely Held	
	N	%	N	%
Yes	8	42	2	25
No	11	58	6	75
Total	19	100	8	100
Chi Square χ^2	Asymp Sig.= 0.401			

The results of cross tabulation performed and shown in Table 7.2b indicates that there is no statistically significant relationship between CEO/Chairman Duality and the dominant ownership structure of a firm. As evident in the data, approximately 42% of Executive Chairmen are from firms with dominant-owned, highly dispersed arrangement compared with 25% from firms with closely held ownership. This suggests that highly dispersed firms are more likely to have CEO/Chairman Duality. While this is not the norm internationally, it is not surprising in the Jamaican context. When one probes deeply into the Jamaican realities of how firms are owned and control, the scenario of highly dispersed firms having a slightly greater likelihood of Chairman/CEO duality than closely held firms could be explained firstly from the background of two pieces of facts: 1.) these firms (having Chair/CEO duality) are not financial institutions as they are barred (both listed and un-listed) from having Chairman/CEO duality 2.) there could be a deliberate effort on the part of original family and dominant shareholders to ensure that power and control reside with them and not transferred to new owners and especially outsiders. Secondly, highly-dispersed firms in the Jamaican context really means that as much as 50% of ordinary shares are owned by individual shareholders and persons outside the family groupings. Hence, with this situation, it is not surprising that Chairman/CEO duality is more prevalent even among the highly dispersed firms in non-financial companies. The issue of the small sample sizes in the values used in the cross-

tabulation may also explain the very weak link between whether or not a firm with a highly-dispersed or closely-held ownership has the presence or of an Executive Chairman.

Table 7.2c: Executive Chairman Cross Tabulated Listed versus Unlisted Companies				
Executive Chairman	Listed versus Unlisted Companies			
	Listed		Unlisted	
	N	%	N	%
Yes	10	37	5	23
No	17	63	17	77
Total	27	100	22	100
Chi Square χ^2	Asymp Sig.= 0.280			

Table 7.2c also indicate that there is no statistical significant relationship between Chairman/CEO duality and whether the firm is listed or unlisted. This finding is supported by data in Table 7.2a (third above) which shows that six respondents or twelve per cent (12%) of the sampled population have reported having the position of Deputy Executive Chairman. As to the presence of a Senior Independent Director, while the frequency response rate was a 23% presence among the sampled population, the position has not showed up in any literature regarding public bodies, and only very scantily found in the literature of international corporate governance codes and national laws concerning privately-held or publicly-listed limited liability companies. Therefore, while the large number of “non responses” could have distorted the findings, in this case, the low level presence of named Deputy Executive Chairman or Vice Chairman, used interchangeably, represented the reality in the Jamaican context. The issue of the small sample sizes in the values used in the cross-tabulation may also explain the very weak link between listed or unlisted firms and the presence (prevalence) or of an Executive Chairman.

Are there problems with the current duality in companies in Jamaica? What is your view on one person holding the positions of Chairman and CEO?

Members of the response group agreed that there should be a separation between the positions of Chairman of the Board and Chief Executive Officer. The Members believed that the dual role might be a hindrance to efficient operations. Separating them would allow for the CEO to focus more effectively on his duties. Also, the CEO serving as chairman could all too easily influence the board to an excessive degree, instead of himself being guided by their objective authority. The collective view of the group has suggested that balanced reasoning,

objectivity, and thorough discourse of issues at the Board level becomes subjected to the personality of the Chairman/CEO.

At least half of the respondents believed that an individual with a dual role could in some cases function effectively in his role. It might be expedient in the case of say, a central bank or a smaller firm, for the duality to exist. In the former case a separation would be a 'hindrance to operational efficiency,' and in the latter it would simply exist because limited funding to remunerate two such individuals. Whatever the case, such a person would need to be committed to fairness and democracy.

The issue of whether or not the position of Chairman and CEO should be vested in one person is a most controversial one. Based on the theoretical and empirical literature, in some jurisdictions, the dual role is often delegated to one person, i.e., USA and France. In other countries, banking laws (Jamaica), Companies Laws (Germany), or public policy regulation provide for the separation of positions. Another issue relates to the very unpopular existence of an executive Deputy Chairman, both in the literature and in practice. The issue was also examined in this study to determine its existence and role in order to fill empirical void. A third concern relates to the presence of an appointed Senior Independent Director. This question was first influenced by a recommendation of the Cadbury Report (1991) for the appointment of a Lead Non-executive Director (or Senior Non-executive Director or Lead Director). Most recently, the Higgs Report (2003) endorses the appointment of a Senior Independent Director. Sir Derek Higgs recommends that such person should meet the test of independence set out in his report. Unless it is anticipated that they will become chairmen, and provided they meet the test of independence, he suggested that the role be assumed by the Deputy Chairman, if there is one. According to Sir Derek, "I see the role of the Senior Independent Director as important in the relationship between major shareholders and the board." (Higgs Report, Sections 7.5, 15.15, and 15.16).

Sir Derek goes further by suggesting that the Senior Independent Director should be available to shareholders if they have reason for concern, e.g., contact through the normal channels of Chairman or chief executive officer has failed to resolve an issue (suggested Code provision A.3.6). The senior independent Director should also chair meetings between non-executive Directors where the chairman does not attend (suggested Code provision A.1.5).

7.2.3 Non-Executive vis-a-vis Executive Directors, and Director Selection

Tables 7.3 shows a mean of 2.6 and median of less than 4 Executive Directors, compared to Table 7.4a findings of a mean of 6.8 and median of 7-10 NEDs for the companies

surveyed in this study. These findings demonstrate that Jamaican boards have a ratio of 2.6 NEDs: 1 Executive Director. This finding is remarkable in an environment of high ownership concentration and where the salient shareholders are highly-connected networks of family members and business associates. While the empirical findings are unquestionable, and it would be easy to conclude that Jamaica enjoys a high level of board independence based on the data in Tables 7.3 and 7.4a, one has to go beyond the surface, to understand the hard realities from a practical perspective.

Table 7.3: Number of Executive Directors on Boards		
<i>Executive Directors</i>	<i>Frequency</i>	<i>Valid %</i>
less than 4	40	80.0
4-5	5	10.0
6-8	4	8.0
9-10	1	2.0
Total	50	100
Mean	2.6	
Median	Less than 4 members	

Source: Interviews (n=50).

The Cadbury Code states: “[T]he board should include NEDs in sufficient calibre and number for their views to carry significant weight in the board’s decisions.” Critical to the presence of NEDs is their independence. Independent NEDs are those who purportedly have no material ties or service contract with the company that may impair their exercising objectivity and fairness, and no connection whatsoever that may be conflicting with any decision to be taken on behalf of the board. In soliciting the views of a number of independent Directors found among the NEDs core, care and patience were exercised in explaining the difference between NEDs or outside Directors and those who are considered to be truly independent. In analysing the results of Table 7.4a, it was revealed that amongst a mean of 6.8 NEDs and median of 7-10, there was a mean of 5.6 independent NEDs with median of more than 5 (See Table 7.5a).

A more detailed examination of the data in Table 7.4b utilising cross tabulation showed that with a significance level of 0.552, there is no relationship between the number of NEDs on a board and whether or not the firm is listed. While the survey results may not reveal much in terms of association, a working knowledge of the Jamaican environment, would suggest that though these Directors may appear on the surface unconnected and unrelated, the reality is that their networks go wide and deep. Usually through a distant relative, a business partner, or

supplier, or even a neighbour, whose children call each the parents “uncles” and “aunties”—an extension of non-biological relationships in certain communities and among the more affluent socio-economic groups.

Table 7.4a: Number of Non-Executive Directors on Boards		
<i>Non- Executive Directors</i>	<i>Frequency</i>	<i>Valid %</i>
3 and less	7	14.0
4-6	21	42.0
7-10	16	32.0
11 and over	6	12.0
Total	50	100.0
Mean	6.8	
Median	Between 7-10 members	

Source: Interviews (n=50).

Table 7.4b: Non-Executive Directors Cross Tabulated with Listed versus Unlisted Companies				
Number of Non-Executive Directors on Board	Listed versus Unlisted Companies			
	Listed		Unlisted	
	N	%	N	%
less than 8	3	11	4	18
8 - 10	9	33	10	45
11 - 12	11	41	5	23
13 and over	4	15	3	14
Total	27	100	22	100
Chi Square χ^2	Asymp Sig.= 0.552			

Table 7.5a Number of Independent Non-Executive Directors		
<i>Independent Non- Executive Directors</i>	<i>Frequency</i>	<i>(%)</i>
2 and less	18	36
3-5	16	32
6 and over	16	32
Total	50	100
Mean	5.6	
Median	More than 5 members	

Source: Interviews (n=50).

While the empirical findings are indisputable, knowledge of Jamaica’s contextual realities regarding business networks and their workings would contradict these results. Cross tabulation on the data was performed by looking for relationship, if any, between listed and unlisted companies with regards to independent NEDs. Table 7.5b shows that there is no such relationship based on a level of significance of 0.196. Therefore, the number of NEDs and

independent NEDs, on Jamaican boards bear no significance on whether the firm is a member of the stock market or not. This is rather surprising in that all listed firms are required to appoint a minimum number of outsiders (NEDs), some of whom are expected to be independent to meet such conventions as Audit Committee—which requires all members to be NEDs and preferably independent. Yet still, there seems to be no difference in the number of these NEDs on listed versus unlisted. The latest finding demonstrates the level of contradictions in the Jamaican context surrounding board directorship and composition.

A closer analysis of the data revealed that highly dispersed firms were almost twice as likely to have more than five members who were independent NEDs, 47% compared to 25% for closely held firms. This tendency of the more dispersed firms having a greater level of independence can be explained by the earlier stated fact that these listed firms are bounded by a degree of independence among their directorship in fulfilling requirements of the Stock Exchange and Audit Committee conventions. These audit conventions require audit committee members to be independent NEDs. It is, however, rather difficult to compare these results with other empirical findings from elsewhere, particularly among unlisted companies, as hardly any research exists in this group as most of the research on NEDs and independent Directors, tend to focus on listed companies.

Table 7.5b: Independent Non-Executive Directors Cross Tabulated with Listed versus Unlisted Companies				
Independent Non-Executive Directors	Listed versus Unlisted Companies			
	Listed		Unlisted	
	N	%	N	%
less than 3	7	26	11	50
3 - 5	9	33	6	27
More than 5	11	41	5	23
Total	27	100	22	100
Chi Square χ^2	Asymp Sig.= 0.196			

As can be seen from Table 7.6, of the 46 respondents or 92% of sampled population, 52.17% revealed that director selection was most significantly influenced by CEOs and/or Chairmen and 15.22% claimed that selection was done by one or more shareholders. Probing follow-up questions revealed that these were either majority or large holders of shares, and of particular interest, only 13.05% of Directors were selected by shareholders at AGMs.

The AGM is one of the most legally binding and democratic structures of the modern corporation. The very tenets and essence of its invention in 1844 and written in the British

Companies Act of that year, was meant to provide an environment of corporate democracy to the smallest of shareholders—hence the “one share one vote principle” that has long been inherent of Anglo-Saxon corporate boardrooms.

Table 7.6: Who most significantly influences director selection/approval		
<i>Criteria</i>	<i>Frequency</i>	<i>Valid %</i>
CEO/Chairman/Appointed by Board	24	52.17
Nominated by one or more Shareholders	7	15.22
Shareholders at AGM	6	13.05
Other	5	10.86
Nomination Committee	4	8.70
Total	46	100

Source: Interviews (n=46)

These findings while quite revealing are not surprising as according to Sir Derek, Chairman of the Higgs Report (2003), almost half of NEDs surveyed for the Review were recruited through personal contacts of friendships; only 4% had had a formal interview and only 1% obtained their job through answering an advertisement. Furthermore, Pfeffer (1972), p. 220) writes:

The selection procedure by which board members are chosen guarantees that, in most cases, board members are handpicked by management. In many practical respects, management is, therefore, in control of the board.

These findings while find contrast with the prescription in regulated guidelines for director selection, are consistent with the above stated findings by the Higgs Review, and also make mockery of the director selection process in the Jamaican corporation. This author therefore concurs with the recommendation of the Higgs Report (2003), that Best Practices for nominating and appointing Directors should be universally adopted, save and except in circumstances where legal, regulatory, cultural and other factors will give way to differences in the step-by-step approaches.

Since NEDs are outside Directors who are expected to protect shareholders’ interest, check the power of executives, and bring outside experience and objectivity to bear in deliberating issues at the main board and its committees, it is important that the process of selection should seek to identify individuals of suitable background which is essential for high performing boards. See Higgs Report (2003: sections 10.3 through to 10.34).

7.2.4 An Integration of Research Findings

In using focus group findings to support those of survey interview above to address the question of whether or not a balance between Non-Executive and Executive Directors is

important in board composition, participants unanimously acknowledged the importance of the presence of independent NEDs on the Board. These individuals would bring a more objective voice, providing greater checks and balances and bringing to the insiders a fresh perspective on the planning process. According to a lead Central Bank economist, “Non Executive Directors might feel less obligated to the CEO and, hence, exercise their independent judgement more freely.” Other respondents agreed with the Economist and collectively argued that the NEDs would offer a wide array of needed skills, bringing with them creativity, and experience that would be a valuable addition to those already present. The executives would bring the company perspective, including an intimate knowledge of its inner workings, and an understanding of the industry in which it is a player. An outlier position held that the balance of Non-Executives ought to depend on the degree to which this is mandated, along with the public relations expediency and the extent to which insider knowledge is needed for the effective functioning of the board.

On the matter of the selection of board members, in spite of some scepticism of having good knowledge about the prevalence of NEDs being obligated to rubber stamp Chairman and executive decisions, the more important lesson for Jamaica is that firms need to be aware of the growing global trends towards a majority board of NEDs. Additionally, there should be an equally significant presence of independent NEDs to serve such committees as audit, nomination, compensation, and CG.

Practitioners’ literature (Cadbury, Report 1992; Combined Code, 2003; Higgs Report, 2003) has given an inordinate amount of time and attention to prescribing and describing the role of NEDs and the importance of them forming a significant majority of corporate boards and their key committees such as audit, risk management, compensation, and CG. Theoretically, the agency theory supports the idea that boards should be dominated by NEDs to increase board independence from management. In a contrasting view, the Stewardship Theory suggests that control should accrue to the firm’s managers rather than the outsiders, since there is no need to monitor management who are regarded as able and trustworthy.

In terms of Executive Directors, there is hardly any sound academic literature on the role of Executive Directors and where it exists, it is usually limited to mainly two considerations: 1.) Executive Directors should not dominate board composition in their numbers, but rather create an enabling environment for fostering greater objectivity and independence by supporting the notion of a majority board of outsiders; 2.) Executive Directors must be trustworthy and understand their roles quite clearly as that of providing NEDs with timely, accurate, and relevant information.

7.2.5 Board Committees and Composition

Given the limited academic studies on board committees, more so, their growing importance to policymakers and practitioners as critical elements in ensuring greater board effectiveness and organisational performance, respondents were asked to indicate the board committees found in their organizations. Table 7.7 shows the five most prevalent committees and their mean sizes among Jamaican boards. These are Audit (66.67%, size 3.7), Remuneration or Compensation (48%, size=3.8), Risk Management (31% size 4.25), Corporate Governance (25% size 4.3), and Finance (23% size 4.6). The sizes of these committees are generally within the mean of similar committees based on Spencer Stuart Board Index, 2008 (USA), which features board sizes among America's largest listed corporations. These sizes reflect only members of the Board of Directors and so at each sitting, committee membership is usually greater, when one takes into consideration the representation of management officers who attend as board invitees to provide technical information and inform the deliberations (personal experience).

It is also pivotal to note that other committees were identified by respondents such as Nomination or Selection, Succession Planning, Research and Development, and Corporate and Regulatory Affairs. However, their prevalence among the companies sampled was insignificant. Nomination committee is, however, ranked as one of the most written about and established structures of modern boards as far as good governance practices dictate. For example, almost all FTSE 100 companies have a nomination committee, compared to only thirty per cent (30%) of companies outside the FTSE 350. However, interviews conducted for the Higgs Report (2003) (British), suggested that where the nomination committee exists, it is the least developed of board committees, usually meeting irregularly and often without a clear understanding of the extent of its role in the appointment process. In some cases, board members who are not committee members are present at committee discussions, effectively making the committee indistinct from the board as a whole. Jamaican corporate players are yet to come to grips with the importance of the nomination committee, and the CG implications of its absence among Jamaican corporate boards.

Similarly to the role of NEDs at the level of the board, Non-Executive independent Directors are also important to the committees of the board as discussed in the preceding section. Of no lesser worth, is the size of these committees. Even though committees are usually smaller in number than the main board, they must be of an appropriate size and to be able to assemble a quorum, usually of at least two Directors excluding management officers, and more so, must be able to entertain a fulsome and robust discussion. Considering that the

average size of committees shown in Table 7.7 reflects only Directors, and does not include management officers who serve as ex-officio members, these figures are in line with international trends.

Table 7.7: Board committees and their composition			
Board Committee	Frequency	(%)	Average size
1. Audit	32	66.67	3.7
2. Remuneration or Compensation	23	48	3.8
3. Risk Management	15	31	4.25
4. Corporate Governance	12	25	4.3
5. Finance	11	23	4.6

Source: Interviews (n=48). Multiple responses allowed and hence the corresponding sum total of valid percentage to frequency would exceed 100%.

Critical to the findings of Table 7.7 is the growing interest in the establishment of such committees as Corporate Governance and risk management by Jamaican firms. Traditionally, banks and other financial institutions are required to report on risk management (regulated risks—market, credit liquidity, foreign currency, and transaction) but more and more, non-bank companies have been establishing these committees and are now more focused on risk and CG across the entire organisation. In further support to this growing practice, JSE Best Practice Awards data for 2008 showed a 60% increase in listed companies now reporting on CG and risk management activities through established committees, compared to 2005 when the competition began. Therefore, Jamaican firms are responding more positively to both structural and functional changes in CG consistent with international trends, which would suggest that CG awareness is growing among businesses and individuals.

Theoretical evidence on the relationship and impact of the type of board committees and their composition on financial performance are still inconclusive. The literature review of chapter 3 on the composition and selection of nomination committee, albeit sparse, concluded that CEO involvement in the nomination committee would lead to a reduction of the presence of independent Directors overtime. Furthermore, it would appear that many of the critical processes and decisions of boards of Directors are not derived from the board-at-large, but rather in its committees and that greater proportions of affiliated Directors on the Audit committee can influence the structure and length of bankruptcy procedures.

Probing questions posed to respondents have revealed that board committees have been evolving over time to reduce the workload of the main board and to allow it to deal with more strategic and general issues while the committees explore strategies in a more detailed and

probing manner. Therefore, board committees are an extension of the responsibility of the full board and make recommendations to the board, which retains ultimate and collective responsibility for decision making. Additionally, respondents assert that both the type of committee and its composition (not only of independent Directors), regarding depth and breadth of skills of its members, are critical in determining the beneficial outcome of board processes. Finally, committees allow their members to utilise their knowledge of the organisation and generally become more actively engaged and be fully-utilised during board interaction and deliberations.

7.2.6 Tenure of Directors

Director tenure is another area of CG which has been at best, scantily studied and written about in the academic literature. Tenure may be defined as the continuing appointment that may be granted, and is made effective by nomination by the Chairman and board, and subsequently elected at the AGM.

Why is this, if at all, an actual, or, potential problem in Jamaica? Firstly, respondents were asked to provide average years of service for both Executive and Non-executive Directors so that a closer analysis could be done. In analysing the findings of Table 7.8, the mean tenure was 10.6 and median of 10-14 years for Executive Directors, just slightly higher than the 9.5 years mean and 5-9 years median years for NEDs. Based on the theoretical and empirical literature presented earlier, there are four questions to ponder: Are Jamaican NEDs overspending their time? Are they being given too long tenure? If so, what are the possible reasons? Why is director tenure important, if at all, in the context of this study?

In addressing these questions, one would need to understand many of the factors that determine director tenure in Jamaica, a task that is beyond the scope of this research. However, the literature identifies several factors which influence director tenure in one or more ways. Tenure is not influenced by mandatory term limits and organisational objectives but rather by personal goals whereby Directors tend to leave to pursue more profitable, meaningful and beneficial opportunities, including board appointments in other companies. The Executive Director Experience and Tenure Survey (2000) also revealed that tenure was dependent on compensation salary, board support, belief in mission, desire to retire, a feeling of 'burn out', and whether directors felt that they were contributing meaningfully to the organisation.

Based on the findings in Table 7.8, executives spend a longer time in the average firm than NEDs, which is a good indicator of loyalty, succession planning, and may be indicative that these executives are satisfied with their jobs (Monks and Minow, 2008). On the other

hand, the question as to whether or not NEDs are overspending their time on Jamaican boards is clearly not easily explained given the scope of this study. A mean tenure of 9.5 and a median of 5-9 years could be as a result of several factors. First, because there is hardly any board performance evaluation mechanism in place, Directors are automatically re-nominated for service renewal which may run several terms in the case of many of these companies. Second, the pervasive nature of cronyism that characterises the Jamaican business class and more so board appointments may well be reflecting itself in the long tenure enjoyed by Jamaican NEDs (personal experience). On the advantageous side however, and this is also in answer to why does director tenure matter, NEDs with longer tenure can offer more in terms of a knowledge continuum—in-depth knowledge of the history of projects, extensive social networks which can bring significant long-term value to the business. Also, these longer serving NEDs would know more about likely candidates in executive succession planning and ensure continual renewal of the organisation.

According to New York Census (2007), women make up only 14.7% of the total Board of Directors and senior executive officer positions in the top 100 largest public companies in New York. A more recent study by Spencer Stuart Board Index (SSBI) 2008 revealed that women sit on nearly 89% of S&P 500 boards, representing just a slight drop from 2007 but an increase from 85% in 2003. At the same time, the proportion of women among all independent Directors remains at 15.7%, up from 13.1% in 2003. As to the distribution of women Directors on corporate boards, SSBI 2008 indicates that 11% of US top 500 companies have an average of less than 1 female Director on their boards, 33% have 1 Director, 40% have 2 or more, 10% have 3 or more, and 6% have 4 or more female Directors.

Table 7.8: Years of Service given by Executive Directors and NEDs

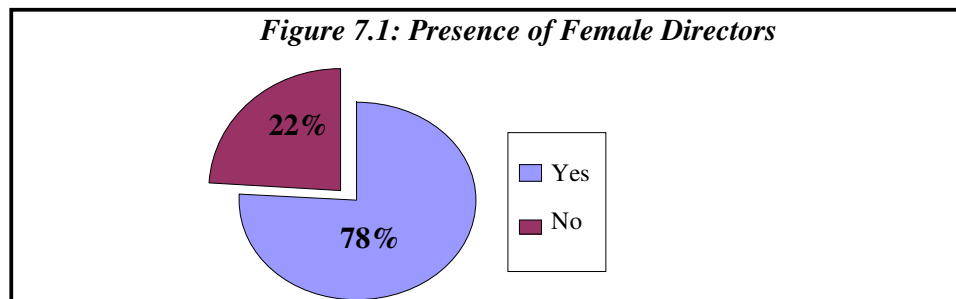
	Executive Directors	Valid (%)	Non-Executive Directors	Valid (%)
	(Frequency)		(Frequency)	
4 and less	14	32.56	7	17.5
5-9	9	20.93	13	32.5
10-14	9	20.93	10	25.0
15-20	7	16.3	6	15.0
21 and over	4	9.3	4	10.0
Total	43	100.00	40.0	100.00
Mean	10.6		9.5	
Median	10-14 years		5-9 years	

Source: Interviews [n=43; EDs; missing values=7]; [n= 40; NEDs; missing values= 10].

According to the Executive Director and Tenure Survey (2000), the mean length of tenure of a Director was 6.1 years. In another source, the mean length of service was 4.2 years for Non-Executive Directors as well as Chairmen (Spencer Stuart Board Index, 2008). In the said Spencer Stuart study, the length of terms for Directors was reduced from an average of 3 years to 1 year in two thirds of America’s S&P 500 companies between 2003 and 2008. However, what constitutes an appropriate length of tenure is debatable as some academics argue that tenure should be limited to two terms to ensure the infusion of younger, more risk-loving and energized knowledge and skills (Director Compensation Report, 2008). Opponents to term limits argue that while turnover and corporate renewal is good and inevitable, on a case by case basis, continuity and experience is just as important. The literature has pointed to balancing acts where some companies have opted to retain Directors with valuable experience by permitting service beyond previously mandated age limits and beyond term limits.

7.2.7 Gender and Inequality Issues

Drawing on data from the European continent, The Netherlands Board Index (2006) indicates that women now occupy 5.1% of a total of 327 executive and 547 non-executive board positions (compared with 3.6 per cent in 2005 and 3.1 per cent in 2000). The report also revealed that the number of women occupying executive positions remains low, with 1.8 per cent of all 327 executive positions among the 100 companies in the overwhelming male dominant executive and non-executive board positions. Female non-executives occupy 4.5 per cent (39 positions) of the total number of executive and non-executive board positions (874) in the Board Index (3% in 2005 and 3.1% in 2000). Female Executive Directors occupy 0.7 per cent (6 positions) of the total number of executive and non-executive board positions in the Board Index (0.58% in 2005 and 0.32% in 2001).



Source: Interviews (n=50).

Turning to the results of this research, Figure 7.1 shows that 78% of 50 of Jamaica’s largest corporations have at least one woman on their boards and as many as 6 in only one of the 50 sampled companies. The average presence of female Directors on boards in this study

was 1.8, and an average of 1.6 who were independent. Of the sample, 38% had 1 woman each, 24% had 2 women, only 10% have 3 women, and even more revealing, only 3 or 6% of the companies had 4 or more women Directors. One board had as many as 6 women. The organisation with six female Directors is a Cooperative Credit Union (non-bank financial or thrifts–generic term for them in the USA), whose Directors were nominated and voted for at AGMs. In this case, both nomination and selection is held at the AGM, hence, very minimal scope for its Chairman or influential others to have nominated and installed their cronies.

Tables 7.9a and 7.9b below show the results of the two sets of cross tabulation analyses. These tables analyse whether or not there were associations in relationship between the number of female Directors who sit on stock market companies, which have dominant-owned dispersed versus closely held ownership arrangements and the number of female Directors who sit on boards of listed companies versus unlisted companies. While there was no statistical significance in either of the results of the Tables, the data show that females were a bit more likely to be Directors in closely held firms, as evident by the 87% versus 79% for dominant-owned dispersed firms.

Table 7.9a: Female Directors * Highly dispersed versus close held ownership				
Female Director	Highly dispersed versus close held ownership			
	Highly Dispersed		Closely Held	
	N	%	N	%
Yes	15	79%	7	87%
No	4	21%	1	12%
Total	19		8	
Chi Square χ^2	Asymp Sig.= 0.601			

Table 7.9b Female Directors * Listed versus Unlisted Companies				
Female Director	Listed versus Unlisted Companies			
	Listed		Unlisted	
	N	%	N	%
Yes	22	82%	15	68%
No	5	18%	7	32.%
Total	27		22	
Chi Square χ^2	Asymp Sig.= 0.282			

Consistent with the reality that the majority of Jamaican companies are closely held, and their boards are likewise composed of closely related individuals (families, friends, business associates), most females who are Directors on the boards are likewise a part of these

oligarchic groups. Hence it is most natural that women would be more likely to be represented on the board of closely held firms, in spite the fact that highly dispersed dominantly-owned firms in Jamaica are hardly any different regarding their composition as the “networks” of connected persons are ever present.

Comparatively, very few women are appointed to Board of Directors and at least one author is attributing this to the presence of a “glass ceiling” which gives rise to women getting less powerful corporate titles, occupying disproportionately more staff functions, being less likely to be top earners of the corporation and earning considerably less than men (Zelechowski, 2004).

7.2.8 An Integration of Findings across Methodological Approaches

Would you advocate for a woman to be nominated among the Board of Directors of every company in Jamaica? Focus group respondents (the majority males save one) felt that the presence of a woman Director ought not to be mandated. It was generally acknowledged that women could make equally valuable contributions to the board. They possessed the requisite talents, skills and training. However, appointments of women, some participants thought, should be made based on competency, and not so much on gender. Others seemed to acknowledge a more unique role that women could play on the Board in terms of their perspective as females.

The sole female participant was the single voice unequivocally calling for mandatory inclusion of females on each board. This concern came in response to the perceived entrenchment of an ‘old boys’ club’ that would not readily self-regulate in this regard. On the dissenting side, another individual was concerned that a regulation requiring female Directors would open a Pandora’s Box of other groups and causes that would demand mandatory inclusion on Boards. As one respondent sums it up, “*women should not be restricted or promoted just because of gender.*”

In spite the rather grim realities based on the empirical data presented, there is still a growing trend for greater inclusion of women into corporate boards which is argued to be attributed to the changing outlook of younger men, the precedence set by women forerunners, their proven competence in management and executive positions, and the increasing experienced and knowledgeable pool of women to draw from in composing a more diverse board. There is also a body of literature pointing to better financial performance, greater competitive advantage, improved strategic planning, and better understanding of customers in

organisations with women forming the majority of the Boards of Directors (Daily et al, 1999; Catalyst, 2008).

In the final analysis, the minority representation of females in the boardrooms of Jamaica, like in many other countries, will continue for a long time given the nature of ownership and control exposed earlier. Otherwise, to improve their status in the boardroom, women will have to create more successful businesses and enlist these businesses on the Stock Markets. Furthermore, the larger companies are family-dominated and usually pass the reins of management and control down from one generation to another. During this process of management and ownership succession, males are usually the main inheritors of majority of the business and thus management control. Females tend to marry into similarly wealthy families and hence either move out to work with their husbands or remain in the business with a lesser role. The males tend to recruit other males of the family, as well as close relatives and good friends of similar stations-business knowledge, social networks, and position power.

7.2.9 Frequency of Board Meetings, Timing of Distribution of Board Papers and Proxy Forms

The issues hereunder are critical to board processes and though timing of meetings and the distribution of board papers may vary from one jurisdiction to another, when board meetings are conducted at sufficient enough frequencies, this could significantly influence board effectiveness, dynamics, and organisational outcomes (personal experience—15 years accumulated board experience).

Table 7.9c: Board Processes—Frequency of Meetings, Timing of Board Papers and Proxy Forms		
<i>Factors of Board Effectiveness</i>	<i>Average</i>	<i>Period of Reference</i>
Average number of board meetings in the last three years	8.5	Per Year
Distribution of board papers Prior to meetings	1.5	Weeks
Distribution of Proxy Forms Prior to AGMs	2.7	Weeks

Source: Interviews (N=50)

Table 7.9c highlights important issues for the general conduct of board and how and why board processes impact on empirical patterns of strategy and performance. The frequency of board meetings is an indicator of the regularity and seriousness of attending to the business of an organisation. Apart from the fact that most Companies Laws (in the Caribbean) prescribe a minimum number of meetings per year, usually four for limited liability companies, there is still no punitive burden in law to prevent or penalise companies for convening fewer than the

legally stipulated minimum. Academic studies on the frequency of meetings hardly exist. However, at least one survey conducted and published annually by Spencer Stuart Board Index (2008), reported that the average meeting held among S&P 500 was 8.7 times per year, up from 7.8 in 2003 and 7.0 in 1998. This figure is hardly off the 8.5 meetings (three year average) held by Jamaican Companies (Table 7.9c). Normally, the majority of boards meet monthly and may take a recess either in August or December (Caribbean) relative to where in the world they are located.

On closer examination of the data, it showed that 44% of the sampled population held a mean of less than 8 meetings over the three year review period. Furthermore, 24% of these companies convened 5 or less meetings on average over the same period (Appendix 9). In fact, while 40% of SSBI companies meet more than 6-8 times per year and 15% meet 12 times or more, 50% of the companies in this study reported convening 10 meetings or more on average per . On a global basis, the more popular frequency is 11 meetings per year consistent with the one-month recess as stated. On this basis, Jamaican boards could be meeting just fewer than the global practice.

Most CG codes have shied away from prescribing a minimum or maximum number of meetings and instead suggest that the board should meet as often as is necessary to carry out the affairs of the organisation effectively, and in the best interest of shareholders and stakeholders at large. Clearly, the less often a board meets, is the less opportunity it will have to discuss critical issues of the organisation and to stay current with issues. While there is no empirical data to support the claim that inactive boards (not meeting regularly) are more likely to be ineffectual boards, personal experience of this author, validates this sentiment. Likewise, there is no data to support the claim that active boards (meet regularly) add more value to the organisation. This author would be inclined to support this position based on his personal experience.

As it relates to the issues of timeliness of distribution of board papers and proxy forms, prior to board meetings and AGMs, respectively, a time (minimum or maximum) has hardly ever been legislated regarding board papers. Generally speaking, the normal convention is for it to be prescribed in company bylaws, Articles of Association or Incorporations and Board Charters, as well as some CG codes, but not in law (personal comm., Philip Armstrong³⁹, July 2009). The suggested periods vary significantly and are not without controversy in CG terms. In spite of the existence of non-legal prescriptions, they are hardly specific and instead

³⁹ Philip Armstrong is a globally renowned CG expert and Head of the Global Corporate Governance Forum of the World Bank, located in Washington D.C., USA. His views were sought on this matter, July 9, 2009.

recommend that Directors receive their meeting papers and board information in a timely manner, sufficient to allow them time to make decisions in a proper and informed way.

According to Philip Armstrong:

[U]nlike the lack of legal prescription for the timely distribution of board papers, proxy forms are usually covered in laws, e.g. English Companies Act and other similar “Commonwealth” legislation such as Canada, South Africa and Australia. Most European countries also deal with this issue, albeit in ways that are controversial in corporate governance terms in some cases. In the US, it is governed by SEC regulations. However, this is often supplemented by additional specifications in the bylaws or articles, such as the content and format of the proxy statement.

What is certain is that shareholders need to obtain proxy forms in a timely manner sufficient to review and decide on the positions to vote for or against, especially in situations where they have to appoint a proxy to act on their behalf.

7.2.10 Board Performance Evaluation and Training and Development of Directors

The practices of evaluating board performance and training and development of Directors are at earlier stages in the empirical literature. Hardly any in-depth study of sound empirical base can be found, particularly regarding the beneficial impact of training on board effectiveness and organisational outcomes. In practice, however, it has been a part of the modus operandi in most advanced economies for decades, and only recently been seen as a critical element in good governance in less developed countries. The primary objective of evaluating the performance of Directors is not simply to improve performance, effectiveness and the contribution of each Director, but also to improve the effectiveness of the board in the fulfilment of its role.

Table 7.10: Board Performance Evaluation and Training of Directors

<i>Factors of Board Conduct and Representation</i>	<i>Yes (Frequency %)</i>	<i>No (Frequency %)</i>
1. Is there a formal system in place for evaluating board performance?	20	80
2. Is there a formal system in place to train newly appointed Directors?	20	80

Source: Interviews (n1=48; missing values =2; n2=47; missing values =3)

Table 7.10 presents descriptive statistics on two factors influencing board conduct based on interview surveys of this study. First, is the question as to whether or not there is a formal system in place for evaluating board performance. Informants have overwhelmingly (80%) indicated that there is no such programme in place while 20% say they are practising

this exercise. Performance measurement improves the effectiveness of Directors and further reduces risks to the organisation.

In an attempt to probe this issue more deeply and inquire into the merits (or demerits) of evaluating boards, focus group informants were asked: *Do you see any merits in evaluating the performance of corporate boards?* The majority of focus group participants believe there are merits in corporate board evaluations. Where there were reservations, these were rooted in a lack of knowledge or exposure to the process—how it would be conducted and the outcomes. Others had a clear picture of the procedure—it would examine how decisions were taken, the timeliness of these decisions, and whether they proved correct or effective. Another participant suggested that the board itself would set goals for its performance and would evaluate via peer review and other means. This process, or an approximation of it, would benefit the shareholders and the Board itself, by giving an objective, independent perspective on their functioning, in the case of an outside evaluation. Feedback of any sort, internal or not, would be helpful to identify weaknesses, and areas needing improvement. It would also serve as a process to weed out incompetent Directors—those who operate as if their job is merely an opportunity to gain remuneration without bring much value to boardroom deliberation.

One participant, whose comment was unanimously supported, found that assessing board performance would be difficult to separate from that of management when looking at performance indicators. Also, the performance of the board would be easily affected by the functioning of the market in which the business is placed, as a monopoly would always have good returns, while a slump in the market would not be overcome simply by a good board.

On the question of training Directors and whether or not this should be made mandatory, focus groups participants unanimously agreed that there were merits in training Directors in good CG. Some went as far as noting that it should be mandatory, with one person singling out boards that did not have a mechanism for evaluation. It was generally agreed that this would benefit board members by teaching the specific requirements of the role and thus aiding in the improvement of their performance. This would result in improved accountability and transparency, along with increased internal controls. It was suggested that Directors exercising good CG would benefit the company, the community, and eventually the wider society.

One respondent thought some Directors might not think they need training. Another testified to the positive response and change in those boards which had received such training. Whatever the case, a board was sure to benefit, as would any individual, from further training

in how to effectively exercise their responsibility. As another respondent puts it, “The training of Directors is critical, especially when performance is not reviewed”.

7.3.0 Findings on Board’s Role in Firms’ Strategic Decision-Making

7.3.1 Introduction

Research on boards is still an evolving phenomenon and as such, there was a deliberate attempt of not placing priority attention on gathering data and measuring empirical outcomes but instead, to employ a mix of semi-structured and structured questions to obtain basic statistics while giving the Director (and corporate executives) opportunities to explain the realities of their organisational contexts on a range of board activities. The questionnaire schedule (Appendix 2) was drawn from an analysis of existing literature. In addition, the focus group method was used to strengthen the findings of these interviews.

This section addresses issues of company vision and mission and who is responsible for creating them, level of board involvement in strategic decision-making and the boards perceived versus actual role in firm’s strategic decision-making. The theoretical and empirical background to this section has been earlier addressed in the literature review of Chapter 3. Therefore, the ensuing discussion is restricted to defining and explaining critical concepts and terminologies for a better understanding of the discussion to follow. First: strategy—this is the formal process of planning, an analytic process that establishes long-term objectives, and a process usually initiated and implemented by top management and undertaken at various levels by other members of the organisation (Stiles citing Anoff, 1995; Chandler, 1962). Second is the term Vision. From a strategic planning standpoint, vision is what an organisation wants to be or where the organisation (or an individual) wants to go. According to one respondent (a CEO):

“When I think vision, I think the long term, I consider a number of issues as to what will be the driving forces to get there. Is it going to be a greater devotion to our customers’ needs? Or, is it going to be sticking to our fundamental philosophical outlook that we should not attempt to serve everyone, but remain committed to serving a niche group at the very best they can experience service and product quality. An alternative is, do we remain and want to be seen as customer-centric but highly differentiated. Vision is the big picture of where we want to go as a company. It is therefore all encompassing of what has to be done, with the mission, goals...strategies and so on.

A vision is a broader perspective than the mission which is used to achieve the vision by its very definition. A mission is who the organization represents or what purpose it

serves—the essence for its existence. Therefore, a well-crafted mission has in it, what the organisation represents, who it serves, how it does business and why it exists. Third is *control*—word commonly used to imply being in charge of, or, to steer. Therefore, from being in control the board derives certain power or authority that allows it to determine what and how much rewards or sanctions are to be allocated. Particularly, this power comes in the forms of relations such as abilities, personal prestige or status, and quality of contracts (Finkelstein, 1992; Pettigrew and McNulty, 1995).

Fourth is the concept of strategic direction. Though many companies lack an established corporate strategy process in the sense of having no formal strategic planning process, no structure as a strategic planning committee or an appointed corporate planner, it would be rather rare for any firm to have no form of strategic direction. The activities forming part of any strategic decision making could therefore include: determining organisation architecture, performance management, information systems, monitoring the organisation's health and ensure corporate renewal, development of corporate vision, guiding strategic planning process, and acting as ambassadors in establishing critical contacts and securing resources, just to name a few. These activities involve intense day-to-day planning and executing and can be grouped as the Service Roles of the board.

Fama and Jensen (1983) recognise both Service and Control Roles of the Board in a four step model of decision-making. These four steps are: 1.) initiation—the generating of proposals, resource utilisation and the structuring of contracts, and 2.) ratification—the selected choice from among several strategic options. After careful assessments, a choice is decided on for approval by the board: 3.) implementation of strategic initiatives—this is the execution of the approved strategy, and 4.) monitoring—his is the evaluation of performance agents (senior executives) against their performance objectives to determine their level of value added to the organisation within a specific period of strategic implementation. Fama and Jensen (1993) concluded that initiation and implementation form the service role of the board and are mainly carried out by management, hence decision management while ratification and monitoring form the control role of the board, and hence decision-control. In combining both decision- management and decision-control, one gets the strategic role of the board.

7.3.2 Findings of this Study

Critical to deciding on the vision and mission statements, developing goals and objectives and the eventual assessment of many strategic options, an organisation must embrace a common set of approaches or model supported by adequate structural mechanisms

to effectively craft and implement strategies. Therefore, as to the question: *Is there a Statement on your Company's Vision and Mission?* Respondents reported that 96% of firms have well-articulated Vision and Mission Statements (Table 7.11), while less than one-half (44%) had an established and functional strategic planning committee (7.13). The strategic planning committee serves as the main group of individuals in an organisation who lead strategic initiatives, ensures buy-ins and coach team members on various aspects of the process. Where a committee is not present, usually the firm appoints a team member to be the internal point-person while they ask outside consultants to facilitate annual planning retreats and review their strategic planning process.

7.3.2.1 Findings on Who Create Vision and Mission Statements

Forty per cent (40%) of respondents reported that creating the vision and mission was done mostly by management while only 15% agree that it was mostly and exclusively done by the board (Table 7.12). Also, 42% believe it was a process evenly performed by both board and management. Key to the effectiveness of any decision-making process of the board is its level of involvement in strategy—the future state and success of any organisation. Though a very difficult concept to define, Judge and Zeithaml (1992), posit a distinction between two phases: 1.) a formulation phase, and 2.) an evaluation phase. In the formulation phase, the board's involvement has been described as critical to a range of activities, from working with management on strategy development to mainly ratifying management proposals. As to the evaluation phase, boards have been ranked based on their ability to probe into management's utilisation of allocated resources and on how they rate management's achievement of agreed objectives.

7.3.2.2 Findings on the Positioning Mode of Board Involvement in Strategic Decision

How would you position the board's involvement in strategy? The mode of strategic involvement of the board was compared equally with management by 53.1% of respondents, 36.7% believe the board is mostly involved in strategy initiatives, and 10.2% attributed the board exclusively. In other words, the board's mode of involvement is less than satisfactory in the mere 10.2% attributable to its exclusive responsibility. When considering the equal positioning of board and management at 53.1%, this makes the picture look more favourable to the board but still less than satisfactory. The researcher's next question focuses on gleanings from respondents their thoughts on the level (extent) of board involvement. See Table 7.15.

7.3.2.3 Findings on Ranking of the Board Involvement in Strategic Decision-Making

What do you think should be the level of involvement of your board in the strategic direction of the organisation? Seventy-one per cent (71%), or an overwhelming majority, believed the board should be very involved while the remainder sees the board as becoming marginally (27.0%) to modestly (2.0%) involved (Figure 7.2). These latest data are indicating that there is a clear disconnect between what respondents believe should be the status quo of director involvement versus how they see current realities. Following a pattern of probing, cross checking, and clarifying as the researcher attempts to unravel the board's role and involvement, the next concern was a ranking of the board's mode of involvement in strategy after a careful application of the finger-grained analysis.

How would you rank the mode of involvement of the board in strategic decision-making? Table 7.14 indicates the overwhelming ranking of fairly strong and very strong levels of involvement of the board on the following roles: ratifying strategy (88.5%), approving strategy (85.5%), assessing strategy (63.2%), decision-making (65.2%), and monitoring strategic planning (57.15%). These findings are consistent with the control roles of the board (ratification of strategy and monitoring strategy) as well as the views that boards' primary purposes are gate-keeping, rubber stamping, and legitimising CEOs proposals and general decision-making (Ferlie et al., 1994; Lorsch and McLver, 1989).

In terms of guiding the strategic planning process, helping to formulate strategy and defining strategy parameters, management (executives and staff) was seen to be more involved in these strategic roles. In fact, the board's average rank on these latter roles was only 34.2% (Table 7.14). It has always been that in one-tier boards where there is a mix of executives and NEDs, and where the service roles and control roles merge with each other, the board would be very involved in helping to craft objectives and formulate strategies. However, as the data in Table 7.14 shows, the strategic decision-making process in these Jamaican companies is executed mainly from a purely top-down manner, with executives taking the lead. This study finds concurrence with the findings of Judge and Zeithaml (1992; Minzberg, 1983; Mace, 1971).

On the other hand, the findings on the level of involvement on such issues as ratification of strategy, approving strategy and discussing strategy, as well as participation in wider decision-making processes are consistent with the writings of various strategy authors (Tricker, 1984; Demb and Neubauer, 1992; Ferlie et al, 1994; Henke, 1996). These findings only present what respondents believe are the primary roles of the board and are by no means exhaustive. A board's primary roles will depend on the nature of the organisation, its legal arrangement and strategic mandate and the quality of Directors it has.

For the questions that follow, answers were sought for actual time the board spent deliberating strategy and what respondents believed were the ‘real’ or actual roles of the board in strategic decision-making.

When each respondent was asked what they perceived to be a good estimate of board time their company spent on strategy issues, the majority (72%) indicated that the board spends a range of between of between ten-fifty (10-50%) per cent of board time on a wide range of issues concerning the future direction of the company. According to the findings of this study, the median time spent discussing strategy by Jamaican boards was 28%. This was slightly better than result of 25% obtained from the Conference Board (1993) Survey of 495 US Corporate Secretaries.

7.3.2.4 Findings on Board’s Actual Role in Strategic Decision-Making

What role does the board actually play in strategic decision-making, if any? In table 7.16, the analysis is restricted to those strategic roles (derived initially through finger-grained analysis of pilot surveys) that obtained at least 50% approval from respondents. The primary roles of boards as identified by these results include the ratification of strategy—this has been consistently ranked and perceived as the primary role of the board (Tables 7.15 and 7.16), and also throughout the literature, monitoring the organisation’s health, acting as ambassadors, hiring and firing the CEO, ensuring corporate renewal, the development of corporate vision, and reviewing and monitoring corporate social responsibility. Of particular interest in these findings, are such roles as ensuring corporate renewal, the board acting as ambassadors, responsible for ethical framework, and reviewing and monitoring corporate social responsibility.

7.3.3 An Integration of Methodological Findings

In an attempt to probe deeper into the actual role of the board in strategic decision-making, the focus group session moderator made the following statement: *“Traditionally, the Board monitors the CEO and ratifies strategic decisions, while management initiate and implements strategy”*. Respondents were then asked the question: *How do you perceive the role of the Board in the strategic direction of the company?*

The majority of respondents agreed that the board should be involved in the development of company strategy. They went further to note that this should be a major role of the Board of Directors. Rather than passively ratifying the ideas of the CEO, the board was seen as a major and most valuable contributor to the process of strategic development. Indeed,

the board is seen as bringing an important external perspective on the development of company strategy. The members bring expertise and experience from their respective settings and combine this to lend a broader viewpoint to the possible direction of the company. Let alone, the CEO is seen as having too narrow a scope, being only one man, submerged in the world of the company.

The board's role is generally agreed upon but one participant noted that management often takes over the board's functioning in strategising, and the board in turn settles into the role of monitor, instead of joining the process. Instead of this position, the board ought to be actively requiring information from management. This data should then be used to help them make informed decisions and come up with their own contributions to the strategic development process. One respondent suggests that management should be the primary strategy developer, but the majority of respondents stressed the importance of a board that carefully lends a wider perspective to the strategic plans they receive from the CEO.

It was also acknowledged that the board's additional function was to monitor and ensure the implementation of the strategy, whoever developed it. This could be done through periodic review of progress reports. It was of note that a positive relationship with the CEO/management was crucial to the process. Such a relationship would certainly help to promote staff buy-in for the strategy that is presented.

These roles in the context of the maturity of the empirical landscape of studies focusing on strategic roles of the board could easily be deemed 'emerging'. Corporate renewal addresses the involvement of the board in succession planning. While this study did not seek to determine the prevalence of the policy or practice of succession planning in Jamaica, practical experiences gained from working in various spheres in the local environment suggests that it is a developing phenomenon.

Table 7.11: Presence of Vision and Mission Statements

	<i>Frequency (%)</i>
Yes	96
No	4

Source: Interviews (n=48; missing values=2)

Table 7.12: Who is responsible for creating Vision and Mission Statement?

	<i>Frequency (%)</i>
Board/Management	42.2
Management Mostly	40.0
Board Mostly	11.1
Board Exclusively	4.4
Other	2.2

Source: Interviews (n=49; missing values=2)

Table 7.13: Presence of Strategic Planning Committee

	<i>Frequency (%)</i>
yes	44
no	56

Source: Interviews (n=46; missing values =4)

7.14: Ranking of the involvement of the board in strategy

<i>Strategic Involvement in:</i>	<i>Rate of Involvement (%)</i>				
	<i>No Involvement</i>	<i>Marginal</i>	<i>Average</i>	<i>Fairly Strong</i>	<i>Very Strong</i>
Discussing Strategy	-	10.2	26.5	36.7	26.5
Approving Strategy	2.1	2.1	10.4	31.3	54.2
Ratifying Strategy	2.1	2.1	8.5	29.8	57.4
Decision-Making	-	12.5	22.9	37.5	27.7
Monitoring Strategic Planning	4.1	8.2	30.6	34.7	22.4
Guiding Strategic Planning Process	6.3	29.2	33.3	20.8	10.4
Helping to Formulate Strategy	4.1	24.5	32.7	18.4	20.4
Defining Strategic Framework	6.2	16.3	44.9	16.3	16.3

Source: Interviews (n=48; missing values=2). Multiple responses allowed.

Table 7.15: Position of the Board's Involvement in Strategy Development

	<i>Frequency (%)</i>
Board and Management	53.1
Mostly Management	36.7
Mostly Board	10.2
Missing Values =1	

(n=49)

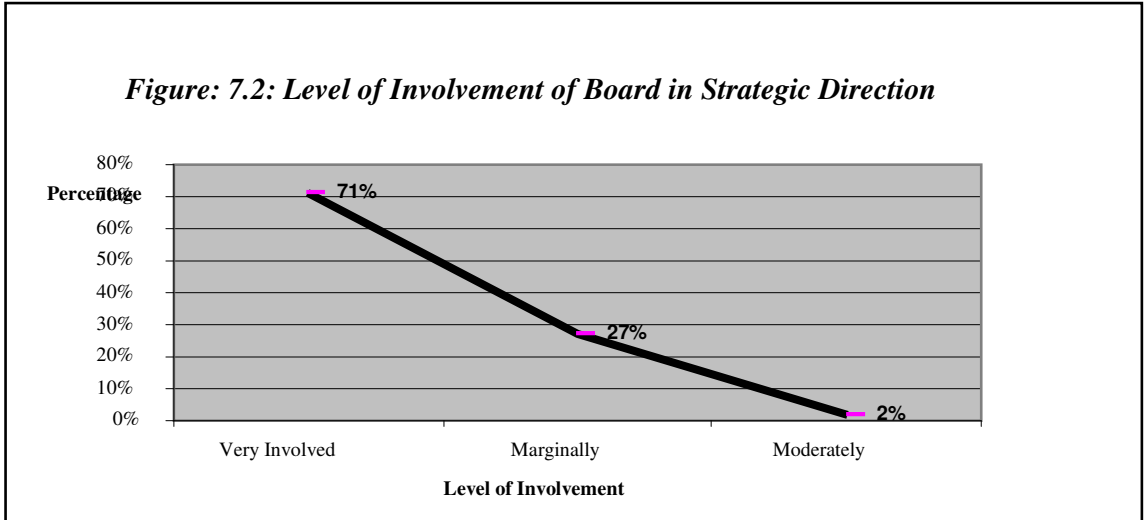
What role does the board actually play in strategy?

Table 7.16: Roles played by the boards in strategy

<i>Roles</i>	<i>Yes%</i>	<i>No%</i>
▪ Ratification Of Strategy	96	4
▪ Ensuring Corporate Survival	94	6
▪ Monitoring The Organization's Health	92	8
▪ Acting As Ambassadors	85	15
▪ Hiring, Appraising And Firing The CEO	83	17
▪ Responsible For Ethical Framework	81	19
▪ Ensuring Corporate Renewal	76	24
▪ Development Of A Corporate Vision	73	27
▪ Reviewing And Monitoring Corporate Social Responsibility	68	32
▪ Undertaking Corporate Communication	66	34
▪ Boundary Spanning	61	39
▪ Guiding The Strategic Planning Process	54	46
▪ Leading Strategic Change	50	50
▪ Interpreting And Advising Management Of Forthcoming Legislation	50	50

Source: Interviews (n=50)

Figure: 7.2: Level of Involvement of Board in Strategic Direction



In the above sections, ownership and control patterns, chairman/CEO duality or non-duality, NEDs vs. EDs, board committees and composition, tenure of Directors, gender and inequality issues, frequency of meetings, timing of distribution of board papers and proxy forms, board performance evaluation and training, nature of corporate disclosures, and board' role in strategic decision-making, have been explored.

In the next section, the nature and role of corporate disclosure is discussed and analysed.

7.4 THE NATURE AND ROLE OF CORPORATE DISCLOSURE: A CASE STUDY APPROACH

7.4.1 Introduction

This section on *corporate disclosure* focuses on information disclosure with regards to that which is practiced by the case companies under review. The objective and purpose, content of and details, as well as timeliness and accuracy, all important features of any good disclosure regime based on the theoretical literature, vary significantly from one jurisdiction to another. In the foregoing analysis, similar patterns have been observed with minor differences based on ones case regulatory disclosure regime versus another. While the importance of information disclosure in CG is indisputable and gained support from a number of authors, information disclosure can reduce uncertainty and lower capital cost, and greater disclosure has been accredited to investors to monitor management better and more effectively to exercise their rights (Healy and Palepu, 2001; Core, 2001). Also, disclosure mitigates information asymmetry between the IPO firm and investors and has been argued to have

significant negative effect on under-pricing and leads to higher levels of institutional ownership which is positively associated with stock market volatility (Sias, 1996).

The review of the literature in Chapter 3 which spans economics, accounting, law, corporate finance and sociology, suggest that information disclosure is a significant driver of good CG. The literature also identifies four important features of information disclosure: 1.) broad and deep public information and private information, 2.) mandatory disclosure, 3.) voluntary disclosure and, 4.) timeliness, quality and quantity of information disclosure. It focuses extensively on the flow of information to shareholders and the regulatory community to which companies have mandatory reporting obligations. It argues that information can either be held and not made available or released at the advantage of one group and the disadvantage of another group, depending on the custodian of the information and those seeking the information—the stock and flow.

Furthermore, it has been noted that a significant proportion of the information (albeit financial is always a part thereof) disclosed is done via voluntary disclosure channels, and which can be more voluminous, targets the wider stakeholder (investor) community, and focuses on informing, educating, and eventually wooing their targeted audiences.

This section draws its empirical breadth from three case companies and focus group respondents. The broad areas examined include: public and private information, the Bank of Jamaica disclosure regime for case companies, the JSE disclosure regime, the AGM, the annual report, corporate web site, and factors against information disclosure. A summary and conclusions forms the penultimate section.

7.4.2 Findings of this Study

7.4.2.1 Public and Private Information Disclosure

What is the nature of corporate disclosure practices in Jamaica?

The case companies by way of being financial institutions (merchant bank and mutual) and Publicly Listed Corporations (PLCs) —conglomerate and merchant bank are exposed to extensive mandatory public information disclosure regime from selected regulatory bodies. These companies must also meet critical requirements of quality (specified details) and timeliness (must be reported within specified time) through pre-determined formats and methodology. From in-depth study of company publications (annual reports, news releases, investor relation briefing notes, special media reports) and unpublished archival information, informal chats, and unstructured formal telephone, and face-to-face interviews with case study

respondents, 12 different *Channels*⁴⁰ of information disclosure (both mandatory and voluntary) have been identified. These channels form the broad theoretical spectrum of both the public and private information environments of these case companies. See *Table 7.17*. Within these channels, the breadth and depth of public and private information disclosure have been revealed.

Two of the case companies are financial institutions and are, therefore, obligated to meeting mandatory information disclosure requirements through mainly four (4) of the twelve channels: 1.) Reports—annual, monthly and quarterly reports, 2.) AGM, 3.) the mass media—printed and electronic and 4.), corporate websites. The other eight (8) channels, by and large, are also met by all three case companies as indicated in *Table 7.17* and are construed to constitute voluntary corporate disclosure. These voluntary disclosure channels include investor briefings, newsletters, analysts’ reports, target seminars, JSE Best Practice Awards Competition (as participation by members is optional), Electronic Mails, mobile telephone text messaging, and corporate speeches.

The conglomerate, while not being an outright financial entity, is a member of the Jamaica Stock Exchange and as such is required under stock exchange rules to make similar mandatory disclosures in the four areas listed. Also, it operates several types of financial subsidiaries and, therefore, indirectly has a double burden of utilising these channels of disclosure. As stated earlier, the Bank of Jamaica (BOJ) is the primary regulator of all deposit-taking financial institutions (merchant bank, mutual society, and others). The FSC regulates the securities brokerage, pension fund, mutual fund, and insurance arms of all three case companies. In addition to the BOJ and FSC, the conglomerate and merchant bank companies being JSE listed are required to meet the stock exchange requirements for disclosure separately.

While the information disclosure requirements of the BOJ, FSC and JSE form the fulcrum around which this analysis is focused, the case companies are also obliged to meeting other mandatory disclosure requirements from such entities as the Companies Office of Jamaica (filing of annual returns), Income Tax Office, Financial Investigations Division of the Ministry of Finance and the Public Service—for suspicious financial transactions, just to name a few.

⁴⁰ A channel of disclosure, as used in this study, is a method by which a Company (as in my case companies) disseminates public or private information through mandatory and voluntary means to shareholders, regulators, investors, customers, the media, and others, as part of its corporate communications policy rather than on a one-off or ad hoc basis. There is no limit to the timing, quantity, or quality of the information that may be disclosed via a channel—it is simply the avenue through which the information flows to the recipient.

Table 7.17: Case Companies Channels of Information Flow

	Annual Reports	Website	Investor Briefings	AGM	Analysts' Reports	News-letter	Mass Media	Target Seminars	JSE Best Practice Competiti	E-mails	Mobile Phones	Corporate Speeches
Conglomerate	√	√	√	√	√	√	√	√	√	√	x	√
Merchant Bank Company	√	√	√	√	√	√	√	√	√	x	x	√
Mutual Society	√	√	x	√	√	x	√	√	x	x	x	√

Keys: √- Either a mandatory, voluntary or both forms of information disclosure; x-not a customary practice by the case company.

7.4.2.2 The BOJ Disclosure Requirements

Through an instrument called “*FIA Licensees Comprehensive Financial Return (CFR)*”—an entire package of prudential returns are required by financial institutions to be submitted to the BOJ pursuant to the provisions of Section 16 of The Financial Institutions Act, 1992. The case companies must first be guided by the numerous rigid instructions, amongst them: a hardcopy must be submitted whether or not an electronic version is furnished, and the accuracy and completeness of all Returns submitted should be signed by at least two signatories on the specific line provided as indicated, and name of contact persons just in case the Supervisor of Banks and Financial Institutions should have any queries, duplicate of the Cover Page to enable the BOJ to acknowledge receipt on said duplicate copy. Additionally, each institution is given a unique identification code. The explanatory notes of the FIA stipulates that, “For the proper completion of the CFR, all reporting institutions should insert, at the top of the Return Sections, the name of the institution, assigned identification code, and the period covered by the report in the appropriate spaces provided.”

The preceding paragraph is just the “tip of the iceberg” as it concerns breadth and depth of mandatory reporting. Timeliness and the quality of mandatory reporting form two other important features of information disclosure which redound to good CG. According to the CFR and as required by the FID, monthly reports should be submitted no later than 7 working days following the end of the month. Quarterly reports are due no later than 12 calendar days after the end of the quarter. Annual reports become due at the end of the financial year and no later than 60 calendar days after the end of the year.

The broad areas of mandatory financial disclosure as required by all BOJ regulated entities include (excluding instructional requirements in earlier paragraphs), but not limited to: Balance Sheet and Supplementary Information (FIM1), Domestic Currency Cash Reserve and Liquid Assets (FIM2), Foreign Currency Cash Reserves and Liquid Assets Held Against

Foreign Currency Accounts (FIM3), Profile of Credit and Depositors by Customer Group (FIM4), Advances and Discounts (FIM5), Sectoral Return of Customers' Liabilities in Respect of Foreign Currency Loans, Advances and Discounts (FIM6), Foreign Currency Assets and Liabilities (FIM7), Distribution of Deposits by Class and Maturity (FIM8), Interest Rate Paid on Deposits and Loans (FIM9), Interest Rates Paid on Foreign Currency Deposits (FIM10), Instalment Credit (FIM11), Analysis of Foreign Currency Deposit Flows (FIM12), Claims on and Deposits of Selected and other Public Entities (FIM13), Foreign Currency Claims on Deposits of Selected and other Public Entities (FIM14), Update on Credits Exceeding Section 13 Limits (FIM16), Renegotiated Facilities (FIM17), Earnings and Expenditure (FIQ2), Connected Persons Exposure (FIQ3), Quarterly Financing for Fix Capital Investment (FIQ4), Details of Past Due Loans (FIQ5), Maturity Profile (FIQ6), Earnings and Expenditure (FIA1), See Notes on Return Section (FIQ2), Acquired in Course of Satisfaction of Debts (FIA2), Unclaimed Balances (FIA3), and Branch Information (FIA4). The details which are indicative of 'broad and deep' public information disclosure can be found in '*FIA Licensees' Comprehensive Financial Return*' (BOJ, June 1996).

7.4.2.3 The Jamaica Stock Exchange Disclosure Requirements

The JSE disclosure requirements are by far less onerous where they concern financial information but much broader in the number of areas covered. The disclosure requirements for *JSE Best Practice Corporate Disclosure* and *Investors Relations Award* mirror very closely the JSE general disclosure requirements for its members (listed companies) but exceed it in areas of voluntary public information. A closer examination of the information provided in Table 7.18 shows the JSE 9-point disclosure regime for members are mandatory in some areas and voluntary in others. To encourage greater level of compliance with international best practices, and to promote voluntary compliance in particular, JSE competition participants are required to report (disclose) on their CG practices, corporate social responsibilities, and risk management framework via a combination of instruments (questionnaires) and disclosure channels (a statement in annual report). These latter three areas have been attracting much attention among practitioners and academicians alike in recent years.

As can be seen in Table 7.18, the case companies utilise several other channels of voluntary disclosure of private and public information so as to reinforce and improve CG. These voluntary disclosures also form an integral aspect of the companies' marketing strategies:

investor briefing sessions are usually used to announce corporate performance for the period

under review (quarterly, bi-annual, or annual) and other significant corporate development. At these briefings, the entire media fraternity would be invited, financial analysts, ratings agency analysts, investors, shareholders, Directors, creditors, and others. The analyst reports would highlight company results and paint future direction and predict or provide forecasts. Case companies' executives in turn would hope that whatever is written by these analysts would provide key and positive information to the investing public thus driving investor confidences and share price.

Timely and accurate information requirements by the JSE and as practiced by the case companies⁴¹ (see items 1, 2, 3, and 6 of Table 7.18), find concurrence with the literature on disclosure in Chapter 3. Both timeliness and accurate information disclosure have attracted attention in most disclosure regimes and hence reinforce their importance in good CG. Newsletters and target seminars are chiefly used to provide not only financial information, operational issues, and company direction, but oftentimes are for reinforcement of the benefits of the company's offerings, as well as to keep both shareholders and the general public abreast with company affairs.

E-mails and Mobile telephone text messaging are mainly used to relay short but very important announcements, like a reminder of the AGM or an extra-ordinary meeting of the Board of Directors. Additionally, text messaging and emails are used to announce new products and services or a change in the institution's fee structures or interest rates regime. Another issue relates to corporate speeches. Company executives tend to use these platforms to criticise or endorse government policies, indirectly introduce company products, or signal new Directions or re-direction such as restructuring and so on.

The conglomerate utilises all 12 channels except text messaging via mobile telephones. None of the other two case companies utilise text messaging to inform stakeholders. However, text messaging is a growing international trend amongst many other businesses in Jamaica in announcing the timeliness of AGM and company developments to shareholders, investors, and customers. The utilization of E-mail as a channel of disclosure was the only other method not utilised by the merchant bank Co. while the mutual society did not utilise as many as five channels, namely: investor briefing, newsletter, emails, text messaging (mobile phone), and the JSE Competition—being not a member of the latter, would not be qualify them however.

⁴¹ The conglomerate case company received the JSE 1st Runner Up Awards for Corporate Disclosure Investor Relations (CD & IR) and Website in 2004, was a joint winner of Best Annual Report Award in 2005, and received Special Commendation (SC) for CD & IR in 2006 and 2007. The Merchant Company received SC for both CD & IR and website in 2004.

Table 7.18: Criteria for Best Practice Corporate Disclosure and Investor Relations Award

1. Submission of timely and accurate quarterly and audited annual reports to the JSE and the shareholders. – 20%
Audited Reports received over 90 days - 0 points
2. Timely and accurate information in respect to corporate actions as required by the JSE “Listing agreements” and “Policy on Timely Disclosure”. – 10%
This criterion would be graded as follows:
 - Notice of Board Meeting to consider Dividend – 2 points
 - Notice of Dividend declaration or Non-Declaration after Board meeting – 2 points
 - Notice of board movements such as appointments and resignations – 2 points
 - Notice of Share Transactions by Senior Executives and/or Directors – 2 points
 - Timeliness in the disclosure of material information – 4 points
The committee agreed that timeliness would play a very important role and companies that did not conform to this rule would not get any points.
3. AGM timeliness and provision of opportunity to participate effectively - 10%
 - AGM's that were held less than 90 days after the companies yearend would get - 10 points
 - AGM's held between 90 - 120 days - 7 points
 - AGM's held between 120 - 179 days - 5 points
 - AGM's held over 180 days - no points
4. Investor briefings and media relations – 10 %
5. Dividend policy and payment/Non-Payment – 10%
6. Timeliness in effecting transfers of shares – 10 %
 - Information from the JCSD - 5%
 - Information from the questionnaire – 5%
7. Disclosure of Corporate Governance practices – 10%
8. Disclosure of Corporate social responsibilities – 10%
9. Disclosure of Risk Management Framework/Policy – 10%

Source: JSE 2009 Best Practice Awards Competition Guidelines.

7.4.2.4 *The Annual General Meeting (AGM)*

Another form of public mandatory disclosure includes the hosting of an Annual General Meeting (AGM). Annual General Meetings have been around for nearly 300 years, since the establishment of the Joint Stock Company and the “One share, one vote” principle, introduced in 1844. See Appendix 14—AGM of the mutual society and an accompanied copy of the Minutes of the 133rd meeting held. This case is chosen for illustration as it is by far the most liberal and transparent in its disclosure practices. The fact that the mutual society was able to provide a copy of its Minutes of the deliberations held behind closed doors in an environment where Minutes are usually private and confidential, and not to be accessed by persons other than Directors, is a testament to the nature of public information practices of the mutual society.

The AGM was invented to provide an opportunity for shareholder and stakeholders, members or depositors—in the case of the mutual society, to exercise corporate democracy by voting on issues such as dividends, appointment of Directors and questioning of Directors and corporate executives about business strategies. Company law and financial regulatory

requirements mandate licensees such as the case companies, to make public via printed media, their quarterly and annual financial results. Recent actions by both the FSC and BOJ require that financial institutions post their annual financial performance on their websites. However, web site posting of information has become very popular in Jamaica for many reasons. Since JSE Best Practice Awards Competition in 2005, for all listed companies and brokerage/securities firms, all 44 actively traded companies now have well established websites, as well as, the 22 brokerages/securities' houses.

7.4.2.5 The Annual Report

All three case companies produce and publish annual reports as part of their mandatory public information disclosure requirements under Jamaican company law, FIA, the Banking Act, and the JSE requirements for its members. Over time, these annual reports serve many more important purposes than just meeting legal and regulatory requirements. They are important marketing tools to these companies as stated by most company respondents interviewed. Respondents also stated that maybe once upon a time, the company would just provide the very basics in these reports, just enough to meet minimal requirements. However, with the growing need for improved CG, particularly, timely, accurate and detailed information, on which investors rely to make informed decisions, and for which corporate fiduciaries can now be brought before the courts, tried and imprisoned for false, misleading information or non-disclosure of material information, great care and efforts are now being placed on ensuring that only accurate and factual information is published.

Notwithstanding the preceding, it is not so much what is put in an annual report, but more so the quality (details) of the information. In most jurisdictions, while general themes have been suggested as to what the outline of an Annual Report should constitute, not enough proposals have been put forward regarding the details of each section. So far, the Hong Kong Society for Accountants publication, "*Corporate Governance Disclosures in Annual Reports: A Guide to Current Requirements and Recommendations for Enhancement (March 2001)*," is probably most comprehensive and relevant in this regard. The publication addresses both mandatory and voluntary governance disclosures issues. See www.hkicpa.org.hk/publications/corporategovernanceguides/p1-54.pdf.

The JSE in its Annual Report Criteria for its Best Practice Annual Report Competition includes both public and private information similar to guidelines published by the Hong Kong Society of Accountants. The JSE criteria for Annual Reports include four sections which are further broken down into subsections: 1.) General Management Information (45 points), strategic directions (10 points), vision and philosophy (5 points), CG practices (10 points),

corporate social responsibilities (5 points), risk management practices (5 points), profile of Directors and executives (5 points), and industry and business segment discussion (45 points); 2.) Financial Information (25 points)—analysis of trend (10 points), ten-year historical data or number of years listed (key ratios) (5 points), transparency and consistency in treatment of items (including recurring types) (5 points), disclosure and discussion on earnings from ongoing operations (5 points); 3.) Layout & Design (15 points)—aesthetic appeal (5 points), readability (10 points); and 4.) Timeliness and Availability of Publication (15 points)—Timeliness: companies submitting their Annual Reports within 120 days to JSE. The point is indicative of the importance the JSE places on the respective areas whereby the more important they perceive an area is the higher the number of points allotted.

Since the advent of the JSE Best Annual Report Awards, there has been significant improvement in the nature and quality of information disclosed by participating companies—including the conglomerate and merchant bank. The JSE merely suggests a listing of content and encourages participants to exercise even greater level of voluntary disclosure. In this regard, the case companies (conglomerate, merchant bank company, and mutual society—though not a member of JSE), have all surpassed the JSE competition requirements. A review of all three case companies most recent annual reports showed that they have been reporting (disclosing) information on an aggregate of 95 categories (headings)—59 (mutual society), 19 (conglomerate) and 17 (merchant bank). The mutual company is by far the most liberal and transparent as demonstrated by the information posted on its website (www.jnbs.com) and in its annual reports.

7.4.2.6 Corporate Web Sites

Websites are used as sources of CG information to investors, potential and current customers, journalists, researchers, and the general public about various aspects of a company. By providing a wide spectrum of information, a company depicts itself as more caring, transparent, and accountable to its stakeholders. A descriptive framework of CG content and web site design features is discussed, borrowing extensively from the JSE Best Practice Awards Competition Criteria for websites, and for which this researcher is a contributing inventor. Three case companies have been discussed using this framework.

The approach taken in assessing the information disclosure content and style of presentation via websites by the review cases is one of comparative analysis. By this, similarities and differences in the broad and more narrowly defined aspects, and how these either satisfied, exceed or fall below the JSE Best Practice Criteria for websites, are analysed.

The objective of the JSE website competition is to encourage listed companies and stock brokerages to provide quality and timely information via their websites. Furthermore, these criteria were developed based on extensive consultation with several different CG actors—representatives of listed companies, brokerages, investors, regulators, and the carefully selected panel of judges of the JSE competitions who include experts from the regulatory, academic, private and public sector communities.

The criteria used to evaluate the case companies' websites included five broad elements which are further divided into a total of 29 indicators (or sub-criteria). The five broad areas on which the evaluation is based are: 1.) Content, 2) Usability, 3.) Interactivity and Innovativeness, 4.) Presentation style and, 5.) Functionality. Amongst these five criteria are a total of 29 sub-criteria which constitute the basis for the analysis. Account was taken in consideration to the fact that the mutual society is not a listed company and so there were issues such as shareholdings, dividend, and earnings per share which not applicable to them.

While one cannot use the broad content themes at face value to determine the depth and quality (relevance) of the information disclosed by each case company, a cursory glance at Table 7.19 provides the general themes of disclosures posted on the websites of the case companies (May 29, 2009 information).

From observing and interpreting the themes as featured at the review cases websites and presented in Table 7.19, there is an irregular pattern of presentation and what appears to be the haphazard manner in which the icons are organised. It is also obvious that these sites are content laden. This could be a good thing but one cannot predicate an assumption solely on the basis of the identity of the icons without delving into contents of each. A closer observation and inference (still at face value) would also suggest that in as much as these web sites are intended on providing timely and quality CG information disclosure, there is some measure of focus on marketing the companies products and services, and more so in the cases of the merchant bank and mutual society.

With the exception of the conglomerate, where for example, of 20 icons displayed on its website (Table 7.19), only 2 (Grace Investments and Grace Foods) may be construed to provide obvious product/services information with the remaining 18 dedicated to the investor and general stakeholder information disclosure. Contrary to the above, 12/17 of the merchant bank icons feature information more appropriately related to marketing its products and services. These are items 1, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, and 16 (Table 7.19). As is the situation with the mutual society, 15/35 of icons can be interpreted to be providing information on products and services which are not necessarily in keeping with explicit investor-

shareholder related information disclosures. These are items 1, 2, 4, 8, 9, 10, 11, 12, 13, 14, 15, 18, 22, 26, and 28).

All three review cases provide extensive information on corporate social responsibility which was used interchangeably with corporate citizenship (conglomerate), Corporate Outreach (merchant bank) and CSR (mutual society). Corporate outreach is the less commonly used terminology and is a measure of CSR in the Jamaican context in that it goes beyond making monetary donation and gift giving to forging long term and sustainable relationships with communities, individuals, and organisations to which such partnerships/benefits are targeted. The mutual also had additional icons for JN Scholarships and Member Care, which is suggesting that these are additional CSR initiatives. In applying the JSE Best Practice Criteria for website (Appendix 14), the mutual society has consistently outperformed the other two cases in all five broad categories as stated earlier. The mutual society was excluded from being assessed with the criterion of ‘timeliness’. This criterion is more specific to JSE listed and broker-related companies.

Table 7.19: Web Site Information Disclosure- Broad Themes of the Case Companies

Conglomerate	Merchant Bank Co.	Mutual Society	
1. Code of Ethics	1. About Us	1. About us	22. JN Money Transfer
2. Directors	2. Contact Us	2. Money Transfer Agent locator	23. JN Member Benefits
3. Senior Management	3. History	3. Blog	24. JN Private Treaty Listing
4. Investor Relations	4. Financials	4. JN-News Letters	25. JN Scholarships
5. Financial Info	5. Banking Services	5. Contact Us	26. JN Real Estate
6. Corporate Citizenship	6. Invest. Services & Securities	6. Customer Service	27. Member Care Centre
7. Vision	8. International Broker	7. JN Media Centre	28. Mortgage Calculators
8. History	9. Dealer Services	8. Home	29. The Source
9. News	10. Unit Trusts	9. Savings	30. Related Links
10. Orane Report	11. Remittance Services	10. Mortgage Benefits	31. International Banking
11. Feedback	12. News & Subsidiaries	11. JN Rewards	32. Foreign Exchange Rate Board
12. Financial Update	13. Shareholder relations	12. Subsidiaries	33. Weather
13. Grace Stock Update	14. Corp. governance	13. Money Shops	34. Newsletter Subscription Form
14. GK Investments	15. FAQs (Frequently Asked Questions)	14. Remittance	35. Multimedia Archive
15. GK Foods	16. Financial Calendar	15. Bill Payment	
16. Foundations	17. Partners/Advisors	16. Branch Admin Councils	
17. Birthright Programme	18. Financial Report	17. Branch Offices	
18. Foreign Exchange	19. Corporate	18. Community Banking	
19. Daily Rate	20. Outreach	19. CSR	
20. Rapid True Value		20. Dormant Account	
21. Paint Calculator		21. FAQ	
22. Video and Clips			

Source: www.gracekennedy.com; www.jnbs.com; www.capital-credit.com (May 29, 2009).

In the area of content which is weighted 36% of total of 100% given its importance and under which there are 9/29 sub-criteria or indicators, the mutual society and conglomerate obtained perfect scores in the areas of CG disclosure, CSR disclosure and event scheduling—the merchant bank also obtained perfect scores in CSR disclosure. There was just one

anomaly in this category which was with the events scheduling where the merchant bank did not obtain a point as its website did not have an icon for or information on 'Announcements'.

Another important area is Interactions/Innovativeness. This was given 14% of total weighting on the JSE Best Practice Awards Criteria for Web Site category. In this, the Mutual scored perfectly in all sub-criteria. The mutual society's ability to receive feedback was accommodated by several icons such as 'FAQ', 'customer service', 'JN News' and 'Member Care Service'. The 'use of web cast/media' was made easy with an icon called 'multimedia archive while 'allowance for subscription of investor updates' was made possible through a 'Newsletter Subscription Form'. In the area of "Company Announcements", browsers were accommodated through two icons: "JN Newsletter" and "Multimedia Archive". The merchant bank did not score on the 'Use of Webcast Media' but obtained higher scores in its "Ability to Receive Feedback' and "Allow for Subscription of Investors Updates' than the conglomerate, which has been awarded perfect score for 'Company Announcements'.

In turning to the area of Presentation Style, this has been assigned 25% of total weight or the second level of significance under the JSE Best Practice Awards Criteria for Websites. The mutual society and the Conglomerate both received scores of 21.5/25 based on their show of equal or complementary strengths in the sub-criteria. Of interest however, the Conglomerate obtained perfect scores in 'Clarity of Presentation', 'User friendliness' and 'Font Size', while the mutual society received its only perfect score in the area of User Friendliness. Turning to the mutual society, it scored higher than the conglomerate in three sub-areas: Aesthetic Appeal, Use of Colour and Layout and Spacing. The merchant bank on the other hand outperformed the Conglomerate in the 'Layout and Spacing' and the mutual society in 'Clarity of Presentation'. What the preceding section indicates is that all three performed credibly in this general area of Presentation and Style. It is also very important that the Websites are constructed in an attractive manner and that the information disclosure is presented in a palatable way. To achieve these, companies must continuously monitor and learn about the trends, lifestyle, and preferences of users so that the content can remain relevant at all times.

Finally, but by no means least, is Functionality. This was given 10% of total weightings on the JSE Best Practice Awards Criteria for websites. It features five sub-criteria which are 'Loading Time', 'Error Message', 'Cross Browser Compatibility', and 'Use of Common Technology.' All three case companies obtained perfect score for 'Use of Common Technology', while the conglomerate and the mutual society earned perfect scores for 'Cross

Browser Compatibility' and the merchant bank along with the Mutual scored perfectly on 'Loading Time'.

The mutual topped the 'Functionality' criterion like it has done for all other areas and hence, has demonstrated a higher level of corporate disclosure via website than the other cases in higher quality content, more user friendly, most attractively presented, and exhibits the highest degree of functionality.

7.4.2.7 Some Factors against Information Disclosure

What are the downsides to corporate disclosure?

First, extensive review of the different modes of information disclosure practices of case companies and supported by views from focus group participants, revealed that it is a very tedious, onerous and laborious process which features significant overlapping and sometimes threatens organisational effectiveness. Second, many companies might find it excusable to explain their non-compliance given the international acceptable position of 'comply or explain' which was first originated with Cadbury Report (1992). In essence, the concept of 'comply or explain' denotes that companies that fail to report on certain of its (Cadbury) recommendations in their annual reports should explain the reasons for their non-compliance. Of course, there are no mechanisms to punish these companies as the Cadbury still remains a voluntary Code except in few sections that have been adopted by the London Stock Exchange, as listing rules.

Third, most focus group respondents expressed dissatisfaction with the level of disclosure currently taking place among Jamaican companies. They acknowledged, in one way or another, that there was a lack of motivation or knowledge about the need for such disclosures. This was characterised as a 'tradition of secrecy', hiding of 'in-company' items and a simple lack of general corporate governance principles. The ignorance would be remedied by training of Directors to increase their awareness. Such information would increase their readiness to reveal such matters (as desired by one respondent) as conflicts of interest and attendance at board meetings.

Some respondents were not impressed by the existence of some of the regulations that prescribed no punitive position for breaches. They argued that companies tended to avoid these regulations by simply not going public. This stubborn resistance to having to disclose the inner workings of the company leads firms to take out expensive loans which allowed for continued privacy. This tendency, informants claimed, hampered the development of the capital market, restricted Jamaican ownership of businesses, increased interest rates and

effectively contributed to the stagnation in the economy. One dissenter expressed general satisfaction with the disclosure offered at AGMs, where information about financials, plans and direction, customer/client, and staff matters, among others, is shared. His one reservation is that annual reports were not sent out in time for perusal and analysis in advance of a meeting.

Fourth and final, there are real costs associated with information disclosure and many argue as to whether or not the benefits outweigh the costs: 1.) the fixed costs of generating, processing and organising the information; 2.) the proprietary cost or risks when managers, employees, competitors, customers, and others use the information to the firm's disadvantage; and 3.) the legal and reputation costs which may be incurred when firms get their information practices wrong.

7.5 CHAPTER SUMMARY AND CONCLUSIONS

This chapter has just examined the issues of board characteristics and composition, board's role in strategic decision-making, and the nature and role of corporate disclosure, as critical CG practices. The chapter further integrates findings from fieldwork and builds on those discussed in chapters 5 and 6.

In terms of board characteristics and composition, this includes: board size was found to be an average of 9.1 Directors in Jamaica, which is just less than what is obtained in Britain and at the lower end of the international spectrum. Chairman and CEO duality—a most controversial issue in the academia literature, has only a 30% presence among Jamaican boards. This means that an average of 70% of Jamaican firms had the roles separated. A majority of NEDs on boards is one of most important issues in CG at this time given its treatment in the literature. The general consensus is that it fosters a culture of objectivity in decision-making and NEDs with no connection to the CEO will bring to bear independent judgement and a more balanced perspective to boardroom deliberations. In addition, research findings suggest that NEDs bring a variety of market knowledge and external networking skills that are critical for advancing the resource dependency aspects of the organisation. Board committee studies are inconclusive, but there is universal acceptance that the audit committee strikes a critical balance between performance and accountability and serves as the most important structural mechanism of the board in providing checks and balances to organisational integrity and performance. The issues of director tenure, gender and inequality, board performance, training, timing of distribution of board papers, and shareholder

communication are emerging issues in the literature which are still highly underdeveloped and are in need of further research.

On board's role in strategy, apart from overwhelming evidence that support findings of the research that the primary roles of the board include ratification of strategy, approving strategic decisions, monitoring organisational health, and ensuring corporate renewal, another most interesting revelation is the ambassadorial role of the board. This role of 'acting as ambassador' is also used interchangeably with 'boundary spanning' in the literature. A significant majority of respondents across methodological approaches suggest that boards need to play much greater role in utilising its critical networks in bringing resources and social contacts to the organisation.

In addition to a complex framework of regulated corporate disclosure regime being met by case companies, all three displayed a high level of awareness of the importance of timely and quality voluntary disclosure of both public and private information. The websites and annual reports were all rich in information on CG, CSR, customer and investor relations. The more detailed private information disclosure concerns profile of Directors and managers, subsidiaries and their offerings, and detailed financial reports. It is not surprising that these case companies were able to twin quality information disclosure with their demonstratively astute web marketing strategies, in the ways they have projected their product and service offerings. It is without a doubt that investors, shareholders, and the general browser community would have been edified by and benefitted from the various methods of information disclosure applied by these companies.

The next section of this thesis, features part four (4) and includes chapters 8 and 9. Chapter 9 presents the conclusions of the study, its limitations and suggestions for future research.

PART FOUR: GAP ANALYSIS, THESIS CONCLUSIONS AND IMPLICATIONS
FOR PUBLIC POLICY

CHAPTER 8: GAP ANALYSIS AND IMPLICATIONS FOR PUBLIC POLICY

8.1 INTRODUCTION

The focus of this chapter is to proffer potential strategies for public policy reform by analysing gaps in social science literature on CG presented in chapter 3, gaps emerging from the analysis of the results of the fieldwork in chapters 5, 6, and 7 and relating to regulatory and other public policy initiatives in Jamaica. Each section of this chapter addresses specific issues. Section 8.2 addresses theoretical and empirical gaps of the study. The approach to the analysis and discussions of this chapter also draws on the findings of focus group study number one (Appendix #5). Section 8.3 critically analyses key local CG regulations and identified and discussed critical gaps based on the key elements (research questions) of this study, and from these gaps, proposes and number of recommendations. Section 8.4 relied on and utilised fieldwork data form focus group #2. It explores such issues as pressures for and against CG reform in Jamaica and key initiatives for governance improvement as suggested by respondents. Section 8.5 concludes this chapter.

8.2 THEORETICAL AND EMPIRICAL GAPS

8.2.1 Theoretical Gaps Related to the Social Science Literature

One of the most limiting factors of the theoretical and empirical aspects of this study concerns the preponderance and dominance of Anglo-Saxon USA and UK CG structures and practices that most often apply the shareholder perspective to the study of CG. More so, these studies do not take a holistic approach to the study of CG, i.e., from different contextual perspectives: continental, regional, national; studies that treat with the same sets of variables under the same and different sectoral perspectives, and longitudinal studies to tract a set of phenomena over time. Most studies have been conducted using quantitative methods and tend to speculate on what boards do rather than being focused on going inside the boardroom to see, hear and record what Directors actually do.

Some of the other theoretical gaps that the review in this study, have yielded include the following:

- (1.) the literature is fragmented, stemming from different subject matter backgrounds, i.e., lawyers, sociologists, financial economists, organisational theorists, accountants, and strategic management scholars. These experts do not read or cite the ideas of other experts, and the literature is fragmented within each discipline (Maassen, 2000);

- (2.) different terminologies and operationalisations that are used for similar constructs evidence this fragmentation. Researchers have failed dismally to operationalise board variables in a consistent manner;
- (3.) most empirical studies focused on structural dimensions of the board, and, therefore most authors only speculate on actual board behavior. The nature of board processes overtime has not been studied, and as such, evidences on what boards actually do are not well documented (Dalton et al, 1998);
- (4.) the absence of research on the effectiveness of self-regulation that aims to set forth new international corporate governance standards. Too much emphasis is placed on the Cadbury Reports (1992; 1998; 2003), and much less is known about the way Directors voluntarily comply with codes of best practices in non-continental European countries and elsewhere;
- (5.) conflicting evidences exist on the extent and effects of board involvement in strategic decision-making (Zahra and Pearce, 1989);
- (6.) there is conflicting evidences as to whether or not board characteristics (board committees, director age and tenure) positively influence company performance;
- (7.) there has been a tendency among researchers to prescribe desirable reforms without sufficient description of board attributes. As Pettigrew (1992:178) observes, “The task is perhaps a simpler one to...redress the overwhelming prescriptive bias in this literature, and...begin to provide some basic descriptive findings about boards and Directors”.

8.2.2 Empirical Gaps Related to the Issues and Findings of this Study

In presenting and analysing empirical gaps, some of the most relevant CG elements have been highlighted based on their treatment in the wider social science literature, generally, and specifically, their direct relevance to the findings of this study.

8.2.2.1 Ownership and Control

The findings from this study have shown that Jamaican firms are very closely-held and more so, employees are highly under-represented on boards. Gaps exist in understanding the managerial attitudes and propensity to reward employees based on meritocracy in these owner-managed companies. Future research could be directed at a comparative assessment of managerial behavior and attitudes in these owner-managed closely-held firms with more highly-dispersed shareholdings, among managers. Such work could probably yield interesting findings.

8.2.2.2 *Employee Representation and Participation*

Employee Participation in Collective Decision-making and Financial Performance:

The review of the academic literature pointed to employee involvement being very important in CG internationally. Evidence on employee representation is generally less developed, and much of the research on collective forms of employee voice, such as trade unions and work councils, have emerged from other countries (UK, Germany, and other European) with very different institutions, than Jamaica. Therefore, although definitive conclusions are more difficult to be drawn, the review in chapter 3 shows that employee involvement is critical in CG. Focus group respondents also believe employee involvement is an important factor for good CG. While there was some ambivalence among respondents, there was a majority agreement that employees needed to have greater voice in the boardroom of Jamaican firms. To justify this for public policy action, research is needed (in jurisdictions where employees have strong voice—Germany, UK to a lesser extent) to determine their contribution to organisational outcomes, bottom-line, investor confidence, and corporate reputation building.

8.2.2.3 *Relationship between Shareholder and Board*

The relationship between board and shareholders needs to be examined more closely. The area of firm–shareholder communications has been taken for granted and has been reduced to the issues surrounding AGMs—the main forum for board and shareholder interface and has been so over many centuries. Improvement is needed in assisting firms to establish better communication links with institutional investors and various ‘gatekeepers’ (e.g., voting and rating agencies, and other watchdog groups) concerning CG arrangements that deviate from regulatory and voluntary prescriptions. Empirical work is needed to determine how the board and all types of shareholders could better understand each other in the interest of improved shareholders relations and confidence in their corporations.

Given that shareholders (including institutional investors) involvement is still underdeveloped in Jamaica and while much research (other than Jamaica) has looked at how ownership structure (e.g. concentration or dispersion) affects CG, more research is needed on the processes underlying shareholder engagement. That is, in what ways can shareholders get involved in CG to influence organisational changes, and what are the determinants of shareholder involvement? For example, no previous research prior to this thesis has explored the perceptions and role of institutional investors in Jamaica and the Caribbean. It is still not clear as to what extent, engagement has been integrated into investment decision-making and

asset management process, as well as the resources and people committed to it and the level of reporting provided by fund managers to their ultimate clients (Filatotchev et al, 2007). Bearing in mind that shareholder activism has substantial cost implications, future research should identify the extent of direct and indirect costs associated with shareholder engagement mechanisms.

8.2.2.4 Non-Executive Directors (NED) and Their Independence

The role of independent Non-Executive Directors is at the centre of debates in international CG. The quality of many other key elements depends on the independence and quality of NEDs. The role and composition of Audit Committees, the quality of executive compensation schemes, evaluating performance of the CEO, the composition the CG Committee, just to name a few. However, the evidence needs to be advanced as to whether NEDs have the necessary information, time, training, and independence to perform these roles. Future research is needed to better understand how boards operate and the issue of how independent Directors are fulfilling their roles. This should also evaluate potential costs of implementation for different groups of companies, in particular, for smaller firms.

8.3 REGULATORY AND GENERAL PUBLIC POLICY GAPS

8.3.1 Potential Regulatory Gaps: An Analysis of Selected Regulations

It is critical that public policy in the area of CG is well grounded in social science evidence spanning multiple disciplines. Too few studies have addressed CG from a holistic perspective by assessing contingencies and the cost of CG reform without examining the advantages of employing a multi-disciplinary approach. In this study, an attempt is made to balance key CG elements with their importance to public policy with cognisance of those factors that may be beyond the control of the public policy enforcers as well as those that might legitimately affect the entrepreneurial flexibility of market players. These market players are the intended beneficiaries of public policy initiatives.

The remainder of this section builds on earlier analysis of seven regulations and laws: 1.) Companies Act of Jamaica, 2004; 2.) Financial Services Commission Act, 2004; 3.) Bank of Jamaica swathe of regulations; 4.) Public Bodies Management and Accountability Act; 5.) Corruption Prevention Act; and 6.) Access to Information Act; and 7.) the proposed Whistle-Blower's Act. In addition, there is one quasi-regulatory institution (JSE) and Jamaica's sole CG voluntary code (PSOJ). All these regulations have been comprehensively examined in chapter 5. As such, a more specific assessment of these laws and only code, have been

undertaken, specifically addressing potential gaps and their adequacy in addressing the soundness, integrity and effectiveness of public policy. The proposed Whistle-Blower's legislation is still undergoing public consultation, and as such, will not be dealt with to the same degree of details as the others.

Jamaica has been successful relative to other Caribbean islands in the last decade in implementing several new regulations, laws and at least one voluntary code (PSOJ code), or by strengthening others, relating to various aspects of CG issues covered in this study. In spite of this success at the levels of Central Government within the private sector and among public bodies, there are still many gaps that remain. There are gaps in content and implementation spanning a wide spectrum of key CG elements as identified in Table 8.1: selection of Directors, information disclosure, stakeholder representation, corruption, board composition, and internal control and auditing, just to list a few.

Key CG elements have been ranked based on three criteria: high, medium, and low to denote the extent of coverage or effectiveness of each in Table 8.1. Where a key CG element does not appear in a particular regulation, law or code, it is assigned the label absent.

In this assessment, content gap covers areas in regulation, laws and codes where key CG elements are not sufficiently covered. Gaps in the regulatory framework are assumed to be areas where government and business may wish to consider for improvement. This study (analysis) also considers gaps identified by public and private bodies, vis-à-vis statements and research by the major actors as to areas, which they perceive to be in need of improvement. Content gap denotes the extent of coverage and quantity while effectiveness gap connotes quality of information or shortcomings between the objective and eventual outcome of regulatory initiatives. Effectiveness gaps may include implementation problems associated with a particular element of the regulation, lack of provisions for various organisational variables, and their associated costs.

The aim of the analysis of gaps is to foster simplification and provide easier understanding of each CG key element. Therefore, Table 8.1 should be studied along with the narrative provided in order to grasp a more holistic view of the issues under review. It must not be assumed that a ranking of high for any of the key elements under a particular regulation or code means that that key element is adequately covered or effectively implemented, or there is a case of over-regulation. Likewise, a rank of low or the label absent should not in every instance be assumed to mean that a particular regulation needs to reflect a greater coverage or implementation of a key CG element, or grossly inadequate regulation.

Additionally, many of the key elements labeled absent, were never intended for inclusion in some of the regulations. Therefore, conclusions about the ranking to be assigned must be based on sound practical and empirical evidences relating to the particular key element. This is best obtained from a closer review of the analysis presented in the ensuing discussion of this chapter and which is derived from taking into account several other issues (complementarities, costs, and contingencies) concerning the key CG elements. To illustrate the latter, the Ministry of Finance and Public Service (MFPS) in promulgating the PBMA Act, which requires all public bodies in Jamaica to develop and made public a strategic plan every year. However, there are several contingencies that render a very low implementation rate (e.g., the lack of trained strategic planners)—the Act did not mandate training for such persons and the public bodies themselves can't obtain the adequate financial resource from the MFPS to implement these strategic plans—they have been mandated to develop.

In terms of content gaps, (i.e., coverage and quantity), the main areas in which content is less than adequately covered include information disclosure, employees, stakeholders, board independence, Board of Directors, and board committees.

Information Disclosure is extensively covered (result chapters 5 and 7) in relation to financial disclosure in all the regulations of Table 8.1, except PBMAA. In fact, the enactment into law of the Access to Information Act (ATIA), made Jamaica becoming the third country in the Caribbean, after Trinidad & Tobago and Belize, from a list of about 50 with such legislation. However, significant gaps exist in relation to emerging and more forward-looking and strategic issues for reporting on corporate governance issues that have not been disclosed by Jamaican companies and public bodies. These include executive and Directors pay—although one of the most written about issues in the international CG literature. In the USA, executive and Directors full compensation package is mandated to be disclosed annually under Securities Exchange Commission law. Board composition and make up of committees (the ratio of NEDs versus executives, the types of committees and qualifications of members), voting and proxy issues, and personal interests and multiple directorships, are some of the more important strategic areas not adequately covered under the Jamaica regulatory framework.

Employees are grossly under-represented in the current regulatory framework of Jamaica but have been addressed under the Civil Service Code for Government employees and the Labour Relations and Industrial Disputes Act. In the latter, collective bargaining rights of representation to the extent of their working conditions and wages, and in the former, rights

covering terms of employment and unemployment issues (sick leave, vacation leave, maternity leave). There is still no paternity law and a gamut of other issues. There are gaps as it relates to the representational rights of employees on corporate boards and employee management relations.

Stakeholders are mentioned in the Companies Act of Jamaica, 2004 in relations to Directors duties, but there is still a huge void regarding establishing a framework for stakeholder participation. The Board of Directors has received insufficient coverage in the PBMA Act, the Companies Act, FSC Act, BOJ regulations and the JSE Rule Book (Listing rules). However, very few of these address issues such as board size, committee types, ratio of NEDs versus executives, and the role of committees.

The board is extensively covered in terms of its role and issues of conflict of interest in the PBMAA, Companies Act 2004, FSC Act, BOJ regulations, the JSE listing rules, and the PSOJ Code. However, very few or none of these regulation and voluntary codes cover issues such as a Code of Conduct, evaluation of directors' performance, training and development, tenure, retirement age, role in strategic decision-making, and involvement in the day-to-day operation. In terms of the Code of Conduct for Directors, the Government of Jamaica has announced for the first time in the history of the Public Service, two Requests for Proposals, one seeks 'To Strengthen the Governance Framework of Role of Public Bodies' and the other aims at 'Clarifying the Governance Role for Public Bodies'. The former seeks to establish a Code of Conduct for Directors and the latter a Code of Audit Practices. See <http://www.cabinet.gov.jm/files/RFP2009-P008.pdf> (accessed August 11, 2009).

Strategic Planning includes board's role in strategic decision-making although very broadly covered in the PBMAA. Gaps exist as it relates to codifying qualifications and continuous development for strategic planners in as much as it is done for auditors and financial officers. Strategic planning is now a core requirement of public bodies but the requirement has not been backed by contingencies such as training qualifications and continuous development of these professionals.

With regards to the effectiveness of implementation of key CG elements, the main areas where gaps exist include internal control and auditing, board independence, corruption, and conflict of interest. Very detailed guidelines have been issued by the PBMA Act, FSC, BOJ and the JSE for implementation and operationalisation of a sound internal control and independent audit mechanisms, as well as audit committees of Boards. However, only

approximately 60% of Public Bodies (at December 2008, MFPS data), have implemented these requirements. In the private sector, internal control and audit committees are, to a large extent, not independent of executives and significant shareholders who serve on the board. Even though the regulations require the internal auditor to report directly to the audit committee of the board, it seldom happens, and the more common practice is that such positions have been reporting to the CEO. More gaps exist with regard to mandatory rotation of auditors and appointment of external auditors, placing restrictions on the quality of “non-audit” tasks involving, and appropriate legal liabilities for auditors.

Table 8.1: A Mapping of Regulatory Gaps vis-à-vis Key CG Elements in Jamaica

Key Elements	Com. Act 2004	PBMAA	CP Act	ATIA	FSC Act	BOJ	PSOJ Code	JSE Listing Rules
Corruption	Low	Low	High	Low	Medium	Medium	Low	Medium
Conflict of Interest Provisions	High	Medium	Medium	Low	High	High	Low	High
Shareholder	High	Low	Absent	Low	Medium	Medium	Medium	High
Stakeholder	Medium	Low		High		Low	Low	Low
Board Independence	Medium	Low	Absent	Absent	High	High	Medium	Medium
Director training & Performance	Absent	Low	Absent	Low	Low	Low	Medium	Low
Board Size	Medium	Low	Absent	Absent	Low	Low	Low	Absent
Code of Conduct for Directors	Low	Low	Low	Absent	Low	Low	Low	Low
Board Committee	Low	Medium	Absent	Absent	High	High	High	High
Board Papers	Low	Low	Absent	Absent	Low	Absent	Low	Low
Board Meetings	Low	Low	Absent	Low	Low	Low	Low	Low
Information Disclosure	Medium	Medium	Medium	High	High	High	Medium	High
Strategic Planning	Absent	High	Absent	Absent	Low	Low	Low	Low
ERM	Absent	Low	Absent	Absent	Medium	Medium	Low	Low
Internal Control & Audit	Medium	High	Low	Low	High	High	Low	High

Keys: C Act 2004—Companies Act of Jamaica, 2004; PBMAA –Public Bodies Management and Accountability Act, 2001; C P Act-Corruption Prevention Act; ATIA-Access to Information Act, 2002; FSC Act—Financial Service Commission Act; BOJ Regulations—Bank of Jamaica Regulations; PSOJ—Private Sector Organisation of Jamaica; JSE—Jamaica Stock Exchange.

Board independence is addressed by several regulations and the PSOJ Code, but in reality, the practice in Jamaica makes mockery of good CG. An audit committee ought to be chaired by an independent non-executive Director and should comprise of all independent outsiders. Sadly, the nature of ownership and control in Jamaica makes these requirements almost impossible to achieve. Potential implementation gaps exist in the Government’s failure, including stiff penalties on companies who violate such requirements.

Corruption and the treatment of corruption are extensively covered in the Corruption Prevention Act of 2003. However, the perception and incidence of corruption in Jamaica

continues unabatedly. Potential gap exists in the enforcement of a complementary legislation, the Whistle-Blower Act, which is undergoing Parliamentary review, and so, is not yet a law, much less enforcement. In support of the need for more stringent enforcement, respondents in a recently conducted survey in Jamaica say corruption regulations are in adequate (44%) and institutions are too weak to enforce such laws (33%) (CaPRI, 2007).

Conflict of interest is extensively covered in most of the regulations, laws, and the sole voluntary code in Table 8.1. However, there are several grey areas in the regulations as to what actions constitute or qualify as a conflict of interest. There is a need to define and explain the difference between confluence of interest versus conflict of interest in clear and unambiguous legal terms in current legislation where it exists, and for the benefit of users.

In conclusion, there is no doubt that many of the regulations and laws are content-loaded but what is more relevant to the success of any programme of policy reform must be the effectiveness of enforcement or implementation. Effective implementation means that more persons would have been brought to books, an end game of being caught, fined and punished or it may signal a decrease in the number of breaches detected.

8.3.2 Balancing Uncontrollable Demands in CG Reform

As demonstrated earlier, in spite of significant coverage in some legislation of key CG elements, there are variables which are sometimes beyond the control of the enforcers that render ineffective and inadequate implementation. As such, CG structures and practices are influenced by a number of contingencies and cost factors. These may include but not limited to (contingencies): 1.) ‘over-regulation’ and the need for market flexibility on the one hand, and compliance on the other hand, and 2.) cost considerations.

*Over-regulation*⁴²: Over-regulation has been argued to weaken businesses and expose such sensitive sectors as the financial industry to undue constraints. Appropriate regulation and the rule of law can strengthen financial markets and the domestic economy by attracting inflows of foreign capital. However, over-regulation (or excessive) has the opposite effect when it imposes costs that cause capital and companies to flee a jurisdiction (Rahn, 2006).

Like all jurisdictions, the Cayman Islands authorities are crying foul from pressures to over-regulate, and claims to have suffered from attempts of large and less financially attractive

⁴² Over-regulation has been used in the banking, financial, and business circles to denote (anecdotally) an inundation of compliance requirements enforced by the authorities (usually governments). In some respects, the word is used in protest against the onerous, laborious and costly nature of meeting these regulations—which are often seen as unnecessary as well (www.jamaica-gleaner.com/gleaner/20100127/business/business5.html; www.regulationtaskforce.gov.au/__data/assets/pdf_file/0011/69734/sub001.pdf; www.freedomworks.org/publications/the-danger-of-over-regulation)

jurisdictions and international institutions to impose unjustified costs on the Cayman. Speaking at a board meeting at Cayman Island Monetary Authority, Legal Counsel, Langston Sibblies, has argued that there is an unfair imbalance between the number of financial regulatory reviews for offshore jurisdictions. On August 20, 2006, in a talk before the Eighth Annual Caribbean Commercial Workshop, he said, “The fact is that the Cayman Islands, like many other offshore jurisdictions, have undergone more reviews of our financial regulatory regime in the last eight or so years than most onshore jurisdictions.” However, a rather interesting dissenting position was proffered by Tim Ridley, Chairman of Cayman Island Monetary Authority (CIMA), who was recently quoted as saying: “The private sector wants as little regulation as possible. But if there was some sort of crisis, that same private sector would ask what we had been doing ourselves. There is no question that regulation is needed, but we must strike a balance to remain competitive.” The CIMA Board of Directors is very much aware that too little regulation can lead to major problems, and too much, like the U.S., will constraint market development.

Balancing Market Flexibility with the Need for Compliance: There are still many gaps that exist and are associated with regulatory trade-offs. Many of the key CG elements in Table 8.1 are extensively covered by voluntary codes or quasi-regulations. On the one hand, there is a need to achieve a greater level of effectiveness in implementation as shown above. More so, the laws are more effective at ensuring minimum standards for all. Additionally, mandatory regulation can help to overcome market failures and weak diffusion of governance practices, but may be inflexible in addressing the governance needs of different types of firms and different contextual situations. On the other hand, codes provide coverage of key CG elements and greater flexibility which could elicit more commitment from companies, but may be less effective in terms of the quality of coverage (minimum standards) and enforcement.

Balancing Associated Costs: There is no doubt that many costs are associated with any initiative intended to deliver benefits in public sector reform. Like most other organisational efforts (hiring staff, training, restructuring, implementation of new soft ware, etc), CG initiatives do come with associated costs of varying forms and degrees. Some might be direct costs for routine compliance, investment in new software to improve internal control and ERM, training of the Board on CG best practices and procurement practices, consultant fees for assessment of CG status and to produce board operating manual and code of conduct. There are opportunity costs associated with Directors time in providing counsel and guidance on an going basis whether or not they are in attendance of board meetings, and cost of litigation for non-compliance of neglect of duties on the part of Directors. In the final analysis,

the cost for CG initiatives is impossible to be accurately predicted. However, a cost benefit analysis will be very necessary at times, even to convince a very discerning Board of Directors that the initiative makes sense.

In spite of the fact that the above gaps would challenge any CG agenda, especially one which is designed to explore a contextual setting, such as Jamaica, this study was designed to fill several of these gaps. First, the dominance of Anglo Saxon literature by placing emphasis on researching one developing country and its emerging CG issues, specifically and a review of developments in alternative corporate governance systems generally. Second, board processes—going into the boardroom to observe and make deductions on Directors’ behaviour and the need to understand more about board structures and board processes that contribute to the involvement of Directors in decision-making. Third, are the nature, role, and extent of corporate disclosures in Jamaica. Fourth, the role and contribution of Jamaican institutional investors by bringing refresh perspective from a developing country to the debate given that the only evidence on institutional activism (or passivism) was to be found in literature originated in the US (CalPERS) and the UK (Hermes). Finally, there is a dearth of knowledge about the impact and adoption of self-regulation (volunteered governance) other than the Cadbury, specifically Jamaican and the Caribbean. In the next section, several recommendations are suggested for a CG reform agenda for Jamaica.

8.4 IMPLICATIONS AND RECOMMENDATIONS FOR PUBLIC POLICY REFORM

8.4.1 Introduction

Public policy in an area such as CG needs to be well grounded on a credible framework of scientific evidence. This section is therefore guided by the review of social science literature conducted in chapter 3, the analytical results of the fieldwork presented in chapters 5, 6, and 7 the triangulation of research methods to reinforce and validate facts across methodologies, the gap analysis of this chapter, and the researcher knowledge of the Jamaican regulatory environment. These form the learned basis for the recommendations proffered in this section.

Furthermore, in fulfilling the public policy objective of this study, soliciting the views of key stakeholders on the way forward was critical. The objectives of these policy discussion groups were focused on determining pressures against and for CG reform as well as obtaining suggestions for the way forward. The approach was adopted from Solomon, Solomon and Park (2002), conceptual framework methodology. In summary, the issues are: pressures against reform, pressures for reform, and suggested initiatives to reform CG in Jamaica. See appendices 4 and 5.

Figure 8.1: Pressures Against and For CG Reform

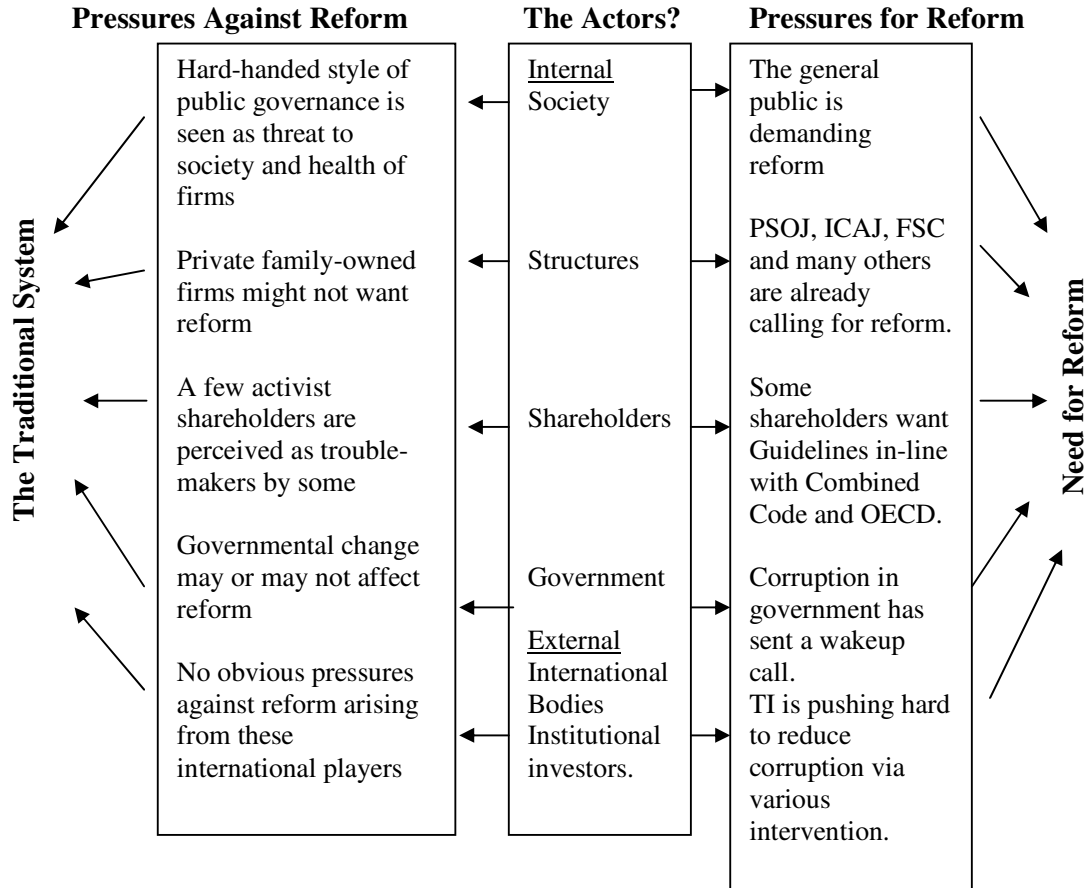


Figure 8.2: Suggested CG Initiatives that should constitute a Reform Agenda
What initiatives?

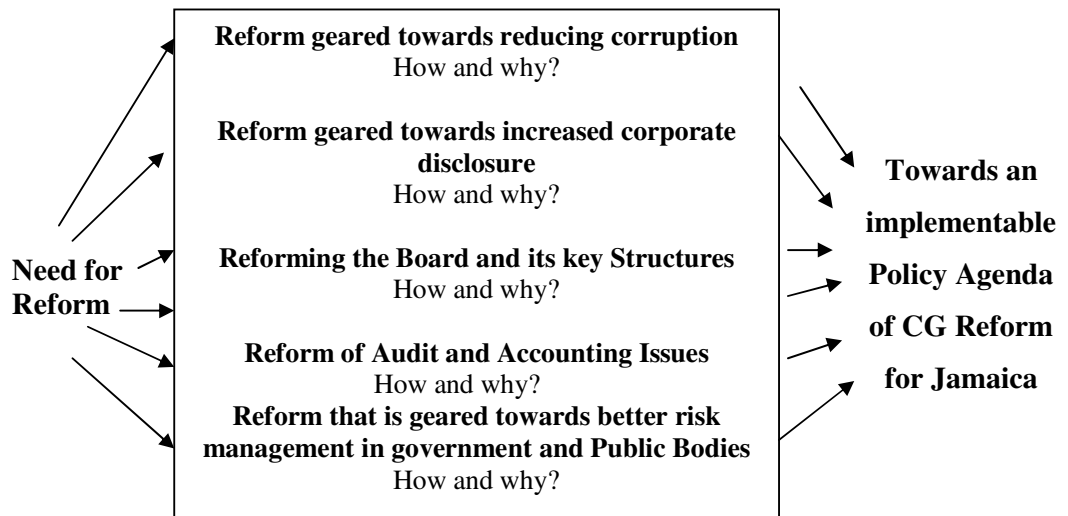


Figure 8.1 summarises the results of discussion groups on pressures against and for CG reforms. At one extreme, is a traditional system (culture) that prefers to maintain the status quo and hence tend to resist initiatives geared at reforming CG. At the other extreme, is the need for reform to be initiated by CG actors, both internally and externally. Key actors on either or both extremes are internally based, such as the Jamaican society, CG structures, shareholders, the Government, and external players—international organisations and institutional investors. Transparency international is a key player in efforts geared towards curbing corruption in Jamaica.

The third critical issue raised during the policy discussion forums concerns the question of what are the specific initiatives that must be of consideration within an agenda for CG reform in Jamaica? Figure 8.2 summarises the key initiatives as posited by stakeholders. The trend for reform will move (it is hoped) from the left of the figure, where the need is acknowledged (from model one) and extends through the initiatives towards an implementation agenda. It is hoped that this desired outcome will represent a CG system compatible with global trends, yet unique to the Jamaican context. Based on the models of figures 8.1 and 8.2, the suggested key initiatives are discussed in the next section below. These recommendations span a broad gamut of CG issues and include calls for the prevention or reduction in the incidents of corruption, reform to create an environment to encourage whistle blowing, reform to increase and improve the quality and quantity of information disclosure, reform to the board and its key structures and other less important but necessary issues.

8.4.2 Reform to Reduce Level of Corruption

A study cited earlier (CaPRI, 2007) concluded that corruption is prevalent and persistent in all government institutions, is negatively impacting on development, anti-corruption rules are adequate, but Government agencies are too weak to enforce them and although the rules are adequate, they (Government and its agencies) are not implementing them. In addition, there have been perennial concerns about the inability of the state to curb the incidences of corruption (Munroe, 2004). Against these empirical realities, Government could improve enforcement by: 1.) developing and enhancing appropriate sanctions for acts of corruption. This should include increasing stiffer penalties for those caught in the acts of corruption, strengthening codes of conduct aimed at sanctioning groups, individuals and institutions involved in corrupt acts such as bribery or the leaking of sensitive government information, private sector fraud and insider trading; 2.) expand the existing anti-corruption structures—laws and institutions to include “whistle-blowing” protection laws, rules on

political party financing, private sector competition, as well as legal changes which enable the press to report more freely on instances of corruption. The latter of these should focus on the degree to which powerful elites influence decisions and policy-making by the state.

Some party financing strategies to curb corruption, which have been suggested by respondents interviewed (CaPRI, 2007) include: 1.) ensuring that all political donations and other sources of political party financing are recorded and made public; 2.) limiting the amount of money that is spent on party politics; 3.) ensuring that public sector workers are politically neutral and are not allowed to make contributions to political parties and; 4.) establishing a body to monitor these arrangements. These suggestions are by no means exhaustive as many other recommendations have been proffered by other authors (Munroe, 2000, "Corruption Worse Now", May 3, 1997, *Gleaner*; Report of the West Indian Commission, 1992) and politicians, policy analysts, academics and consultants—working for both sovereign government and international organisations—all in the war against corruption.

Inextricably linked to a sound anticorruption model, is an environment that promotes and encourages whistle-blowing. In the next section, this important element is briefly discussed in the context of policy reform.

8.4.3 Reform to Create an Environment to Encourage Whistle-Blowing

In spite of voluminous literature that supports the merits of whistle-blowing such as Brinker et al. (1985), that whistle-blowers often act because, as professionals, they feel compelled to adhere to certain right-action ethical behaviour (Wim and Commers 2004) and that there are organisational needs for both loyalty and institutionalised whistle-blowing. Bowie and Duska (1990), in their moral motive for whistle-blowing thesis, argue that when it comes down to the practical realities, there is much apprehension by employees (a main source of information) to come forward. Employees may experience retaliation for doing so (Martin 2000). There might be the threat of job loss, an unexpected department demotion or physical threats. It is not surprising that there has been public acknowledgement that whistle-blowing is relevant to all organisations, and systems to protect whistle-blowers should be an everyday function of corporate life (Borrie and Dehn, 2001). The importance of whistle-blowing was evident when Sherron Watkins blew the whistle on Enron's management in the U.S. and Harry Templeton's challenge to Robert Maxwell's plundering of the pension fund, better known as "the Maxwell Saga" in the UK.

The literature on the level of preventative 'checks and balances' regarding failures in compliance suggests the importance of 'bottom-up' monitoring by employees involved in

business operation monitoring. To this end, the protection of employee ‘whistle-blowers’ is important to ensure that employees are able to disclose wrong doing and problems can be identified and quickly resolved. Employees making such disclosures must be protected to encourage the potential for qualified disclosures without having fear of retaliation or punishment.

Given the preceding, it is felt that the PSOJ proposal in tackling whistle-blowing offers some hope. According to the PSOJ, “perhaps the best approach is a non-prescriptive one which encourages and requires companies to set up channels for the purpose of blowing the whistle. Employees, for example, should feel free to raise their concerns with Directors, the audit committee, regulators, or law enforcement agencies. Non-executive Directors should also feel free to challenge the executive Directors and not be too concerned about ‘rocking the boat’” (Proposed Code on Corporate Governance requirement, provision D.2.1).

8.4.4 Reform to Increase and Improved Quantity and Quality of Disclosure

Policy discussion participants overwhelmingly identified Director interlocking as a critical area in need of closer scrutiny and greater disclosure and have suggested the establishment of a Directory of Corporate Directors to ameliorate this problem of poor disclosure. Director interlocking (or interlocking directorship) is the practice of one Director holding multiple board seats in related and unrelated companies. Given a specific director’s stockholding (which normally would be included or indicated for each company s/he is a Director of), a published directory would allow the public to determine a particular Director’s connectedness and possible influences. The directory of corporate Directors has become a very important corporate governance tool in Britain, particularly after the debacle of Maxwell Communications Group in the 1980s. For better or worse, the case surrounding late Robert Maxwell and his defunct Maxwell Communications, Polly Peck and others, have emphasised the need for and importance of adequate CG disclosure in increasing the ethics and integrity in both private and public sector businesses. Any move to consider the establishment of a directory of corporate Directors in Jamaica could be, indeed, a brilliant step towards increasing the standard of corporate disclosure.

Another issue of concern to informants is the annual report. Adequacy of CG disclosures must take into account the quality of information and its presentation in annual reports. It is indeed appalling to see the shabby state of some of our annual reports. The information presented is not always in the font size and language which can

be easily read and understood by many senior (older) shareholders. Companies with ultra-conservative presentation of information in annual reports should give consideration to their wide shareholder base, ensure that the language is as simple as possible, legible and can be understood by the average literate shareholder (Kerr, 2005).

While it can be accepted that it would be difficult for any company to adequately satisfy the taste, preference, and expectations of all its members, efforts should be made to ensure that annual reports are attractively presented and, generally, reader-friendly. Additionally, today's shareholders require much more than high quality graphics and flashy presentations; they require frank explanations about extraordinary items and under-performance. These should be visible and in legible print, not tucked away in the back in fine print. Companies should recognise that shareholders are only given a comprehensive statement once per year by their firm. It is the responsibility of the managers (hired hands) to ensure that shareowners receive a statement of the highest standard and in a non-discriminate manner.

8.4.5 Reforming the Board and its Key Structures

Against the background of lessons learned from the financial crisis of the 1990s, the fat cats' scandal of 1999, regulatory deficiencies, systemic weaknesses and poor corporate governance among public bodies in Jamaica, these issues have exposed clear evidence that boards lack the expertise, skills, and critical thinking to interrogate executive management, make critical decisions independent of politicians, and in understanding their roles as distinct from management. Clearly, the board must be appropriately selected, composed, trained, evaluated, and compensated if optimal performance is to be obtained. Furthermore, the practice of Chairman and CEO duality is fast becoming a practice of history in many jurisdictions. This section highlights several areas in need of reform in the context of the board.

8.4.5.1 Codify Chairman and CEO Separation

Consistent with recommendations of the Cadbury Reports and numerous other international CG codes, there should be a separation of Chairman and CEO. The literature is still in conflict with this issue but focus group respondents of this study unanimously agreed that there should be a separation between the positions of Chairman of the Board and Chief Executive Officer, and believed there is more to be gained from separation over duality. The Cadbury 2006, King III Report, and many others which have focused on policy reform for the

public sector and stock market companies, have at least one thing in common—the separation of the roles of Chairman and CEO. Respondents in this study believed that the dual role might be a hindrance to efficient operations. Separating them would allow for the CEO to focus more effectively on his duties. Also, the CEO serving as chairman could all too easily influence the board to an excessive degree, instead of himself being guided by their objective authority. One Lecturer of Banking and Financial Regulation, who is also an Attorney-at-law, argues that balanced reasoning, objectivity and thorough discourse of issues at the board level becomes subjected to the personality of the Chairman/CEO”.

8.4.5.2 On a Majority of Non-Executive Directors

Focus group participants unanimously acknowledged the importance of the presence of a majority of outside independent Directors on the Board who they believe would bring an objective voice, providing greater checks and balances and bringing to the insiders a fresh perspective on the strategic planning process. According to a lead Central Bank economist, “Non-Executive Directors might feel less obligated to the CEO and, hence, exercise their independent judgment more freely.” The non-executive Directors would offer a wide array of needed skills, bringing with them creativity, and experience that would be a valuable addition to those already present.

8.4.5.3 Director Selection

Historically, public boards are not as meticulously selected when compared to private boards. Although Statutes of most public bodies have prescribed the different stakeholder groups that should constitute the particular board, the ‘Responsible’ Minister normally chooses his Directors from among a specified few persons submitted to him/her from each stakeholder group. However, there is no formal system in place (at the level of the stakeholder entity) to decide who is nominated and the process to govern such nominations. More importantly, there are no written guidelines that set out the qualifications of a Director of the State-owned Enterprise except for those duties specified by the Companies Act of the particular jurisdiction. It is recommended that clear guidelines be established and inculcated in the PBMA Act as a separate schedule.

8.4.5.4 Training Development of Directors

Prior to 2002, there was no known programme for Director training and development in Jamaica. However, in recent years, many companies have established such programme

which often involved providing Directors with the company's operational manual and Director's guide book (where these exist) and familiarising new Directors with management and the business of the organisation. Policy reform is needed to codify a framework for Director training.

8.4.5.5 Director Remuneration

Chairmen and Directors of Public Bodies are very poorly compensated. However, the trend in more advanced economies is to formally recruit and compensate Directors similarly to the treatment of executives. In justifying compensation of Directors in those countries, Directors are given a service contract and there is a process for evaluating performance annually. In Jamaica all are absent (service contract, performance evaluation, and a competitive remuneration). If Directors are to become more committed to their task, and add greater value to the boardroom and organisation, then all three of these elements will be necessary. Again, this could be accommodated in the PBMA Act.

8.4.5.6 Performance Accountability

There is no system for evaluating and rewarding performance at the level of corporate boards, CEOs and Permanent Secretaries in the public sector of Jamaica. However, it has been established that only one stock-market listed company is known to have experimented with the practice of evaluating its Board of Directors. In other words, performance evaluation of corporate boards is non-existent in the Caribbean in both the public and private sectors.

The majority of focus group participants see merits in corporate board evaluations. Where there were reservations, these were rooted in a lack of knowledge or exposure to the process—how it would be conducted and the outcomes. Others had a clear picture of the procedure. They suggest that it should examine how decisions were taken, the timeliness of these decisions, and whether they proved correct or effectual. Another participant suggested that the board itself would set goals for its performance and would evaluate via peer review and other exiting methods.

8.4.5.7 A Suggested Code of Conduct for Board of Directors

Participants when prodded for answers to addressing corruption, improved boardroom performances, and more effective and efficient management of public affairs, have overwhelmingly agreed on a list of broad CG benchmark drivers. They believe that such code of key CG standards should constitute the very minimum for a CG framework to guide Public

Bodies in Jamaica. The CG framework drivers listed below are also consistent with most of the issues and recommendations which underpin similar CG frameworks in the UK (Combined Code, 2003), South Africa (King III Report), and models from Australia, New Zealand and Kenya:

- Board composition
- Criteria for nomination and selection of Board members
- Procedures for appointing Board of Directors
- Board Orientation, Training and Continual Development
- Roles and responsibilities of the Board and key fiduciaries-chairman, Directors, committees, corporate secretary
- Clarifying the relationship between Board vis-à-vis Management, and Management and Board vis-à-vis Stakeholders
- Board processes—meeting management, Director conduct and attitude
- Independence and Powers of Board in Decision Making
- Public Bodies Information Management and Disclosure
- Role and Independence of Audit and Internal Controls
- Treatment, value and limits of co-opted members, Invitees, and Ex-officio Officers
- Board and CEO Accountability & Performance Monitoring and Evaluation Framework
- Code of Ethics for Directors and Officers
- The Role and Duties of Directors and Public Officers
- Relationship between Permanent Secretaries and Ministers
- Relationship between Permanent Secretaries and Chairpersons
- Relationship between Board of Directors, CEO and Senior Officials of the parent Ministry

Notwithstanding the above swathe of key elements as recommended by expert informants, it is important that those in positions of authority are informed and convinced of the merits of good corporate governance. It is critical that education and edification takes place and that these persons buy into these ambitious recommendations. Also, it would serve the best interest of the Government to consider several workshops to bring major Government actors up-to-date on emerging issues in CG for the public sector, particularly in line with advancement in Britain in the last 15 years beginning with the origins and success of the Cadbury recommendations, the *Rutteman Report 1994*, on internal control, the *Greenbury Report, 1995*, in response to Directors' pay, *Hampel Committee* of 1996 which focuses on the extent to which objectives of the Cadbury was achieved, and hence both were combined resulting in what was latter known as the *Combined Code 1998*, which was then applied to all listed Companies in the UK. The UK having recognised the dynamism in the regulatory environment and the need to continuously respond to market demands has embarked on a continuous process of revision and upgrade of these codes.

In 1998 the *Turnbull Committee* was established to develop guidance for companies regarding internal control issues and thus the report, 'Internal Control: Guidance for Directors on the *Combined Code*' was first released in 1999. The Financial Reporting Council (FRC) undertook yet another revision of the *Turnbull Report* and published its revised version in 2005. Other reports that were released by the UK include, the *Myners Review* in 2001, regarding the relationship between institutional investors and shareholders; the Directors' Remuneration Report Regulations in 2002 addressing further concerns over the increasing levels of Directors' pay; and in 2003, the *Tyson Report* on the recruitment and development of non-executive Directors was released. In December 2004, the Department of Trade and Industry (DTI) launched "Building Better Boards", a set of guiding principles, by building on the Higgs and Tyson works, and was aimed at assisting firms to more diverse and effective boards.

Yet still, in 2002 the DTI and HM Treasury released a review of the *Combined Code, 1999* which was to be known as the *Higgs Report 2003* on "The Role of Non-Executive Directors". This was followed swiftly in 2003 by The *Smith Report 2003*, dubbed "Guidance on Audit Committees". It was the Higgs and Smith reports' recommendations that were merged to form the revised *Combined Code 2003*. Consistent with need to do constant review, the 2003 report was again reviewed in 2005 and an updated version released in 2006. Alongside all these developments in voluntary codes, the UK undertook its own review of Company law and the Final Report was presented in 2001, which sought to deliver a simple, modern, efficient, and cost effective framework for conducting business activity in Britain for the Twenty-first century. It is the wishes and intent of this study, that Jamaica would learn useful lessons from, if not, the preceding recommendations and Britain's experience with CG Reform over the last almost two decades.

8.4.6 Other Relevant Corporate Governance Issues

These issues to be discussed below include executive pay, market for corporate control, audit and accounting firms and enterprise risk management. These, while not as critical to the core focus of the thesis, is too important to be ignored.

8.4.6.1 Executive Pay

Although a key feature which was not a subject of this study, executive pay is very important in global CG at all levels (academic, public policy and practice) and must be considered for future research. Considerable debates are on-going regarding the effectiveness

of incentive schemes designed to give pay rewards based on performance. Research has been retarded due to exclusive emphasis on using financial rewards to improve motivation that has not been sufficiently balanced by considerations from other areas of social science. In particular, resource-based approaches to CG provide an alternative to managers being motivated singularly by financial rewards (Pfeffer and Salancik, 1978).

There can't be found any evidence that such rewards as Long Term Investment Plans (LTIP), with purely stock options, has provided motivation for employee extended tenure, impetus and zealousness towards work, and their greater contribution to corporate profits. In Jamaica, some executives wait until they are qualified for stock option plans and service same even if they had to borrow to acquire the shares, and then move on to other more lucrative jobs. In the views of these former employees, they would have made a contribution and had something to look at for having made a contribution to the company. This is in regards to their portfolio of shares held with a former employer. Future research should address the notion of 'potential' rewards versus the 'actual' ones received. Additionally, the upside versus downside risks involved in pay for performance schemes. Furthermore, this would give valuable insight into the motivational issues surrounding the grants of share options, and provide more meaningful explanation for real costs, which could then be measured against an increase in shareholder value.

8.4.6.2 Market for corporate control

Research into the CG implications of mergers and acquisitions is an area where empirical results remain non-existent in Jamaica and ambiguous internationally. While takeovers are obviously important for corporate restructuring, the positive and negative effects on performance are often unclear. Future research should address the roles of contingency factors (e.g., size, age, complexity, etc.) on takeover markets, both in terms of its value-protecting and value-creating aspects. The mix of positive or negative results regarding the market for corporate control reflects the fact that both 'good' and 'bad' deals exist. Stout (2006) is suggesting that future research should be directed at the way investors of bidding firms approach the takeover process, and to what extent those investors are protected. The governance functions of a market for corporate control is likewise based on a fundamental assumption of the capital market efficiency.

Furthermore, a new mechanism for evaluating the efficiency of the stock market, called "behavioural finance," and a growing number of empirical studies pose a serious challenge to the efficient markets hypothesis. Further research that brings together CG and behavioural

finance may help to shed light on the efficiency of market for corporate control (Gilson and Kraakman, 2004). Future research should also take note of the growing international dimension to the market for corporate control. There is currently no data available on the extent of non-compliance with the well heralded codes such as Combined Code 2003 (UK) and the Sarbanes-Oxley Act (USA).

8.4.6.3 Audit and Accounting Firms

Another under-explored area of research concerns the role of professional accounting bodies. Various scandals such as Enron, Tyco, or Parmalat, have led to international debates about the need to re-examine the incentives inside the audit firms that would be needed to encourage audit professionals to exercise judgment, and walk away from clients that don't deserve their certification, even when they are large and important clients (Bratton, 2002). In this exploratory study, this issue was not considered. However, from personal experience, there is the double standard (conflict of interest) of accounting firms conducting external audits and yet earning fees for consulting services rendered to the same client. This is a rather pervasive practice in Jamaica. Whilst, the Sarbanes-Oxley Act has prevented this by American owned firms since Enron, there is still no law in Jamaica that prescribes against this conduct by the big accounting firms. Indeed, research is needed to determine its extent of prevalence and appropriate public policy intervention to prevent such practices and punish perpetrators. These inappropriate actions compromise the integrity of corporate accountability, fairness, and honesty.

8.4.6.4 Enterprise Risk Management (ERM) for the Public Sector

With increased demand by the public for greater transparency in decision-making, better educated and discerning citizens, the pressures of globalisation, technological advances, and numerous other factors, adopting to change and uncertainty while striving for operating efficiency, is a fundamental part of the Public Service. Such an environment requires a stronger focus on public policy within State Agencies and Central Government in order to strategically deal with uncertainty, capitalise upon opportunities, and inform and increase involvement of stakeholders (including parliamentarians). Canada, Australia, and New Zealand, are just few of the successful economies around the world that have reaped tremendous benefits from adopting and implementing sound policies of ERM in their respective public sector and across public institutions.

ERM addresses organisation-wide public policy issue that, as one of several coordinated functions, will improve decision-making, and enable the shift to results-based management. Enterprise Risk Management requires looking across all aspects of the public agency (organisation) to better manage risk. Organisations that formally manage risk have a greater likelihood of achieving their objectives and desired results (Victorian Auditor-General Office, 2004). Effective ERM minimises losses and negative outcomes and identifies opportunities to improve services to stakeholders and the public at large. ERM contributes to better use of time and resources, improved teamwork, and strengthened trust through sharing analyses and actions with partners. It also increases confidence in the organisation's process, and improves public and stakeholder understanding. These are fundamental imperatives for sound public policy in government of any country.

In the UK, The Walker Review of CG in the financial industry, on behalf of the UK government has recommended as many as 39 specific recommendations for ways in which banks and other financial industry entities can enhance CG. Five of these recommendations relate specifically to risk governance which can be adopted by both the public and private sectors of Jamaica are: 1.) the board of a British-Owned Financial Institution (BOFI) should establish a board risk committee separately from the audit committee with responsibility for oversight and advice to the board on the current risk exposures of the entity and future risk strategy; 2.) the board should be served by a Chief Risk Officer (CRO); 3.) the board risk committee should have access to and, in the normal course, expect to draw on external input to its work as a means of taking full account of relevant experience elsewhere and in challenging its analysis and assessment; 4.) in respect of a proposed strategic transaction involving acquisition or disposal, it should as a matter of good practice, be for the board risk committee to oversee a due diligence appraisal of the proposition, drawing on external advice where appropriate and available, before the board takes a decision whether to proceed; and 5.), the board risk committee (or board) risk report should be included as a separate report within the annual report and accounts. Such report should describe the strategy of the entity in a risk management context, including information on the key exposures inherent in the strategy and the associated risk tolerance of the entity (Walker Review, 2009).

Therefore, the challenge for Jamaica must be to first adopt risk management as another complementary function to those now obtained in the public service at both ministry and agency levels. The second challenge will be to approach risk management in a more

integrated (enterprise wide) and systematic way that includes greater emphasis on consultation and communication with stakeholders and the public at large. In meeting these challenges, the public service of Jamaica could fulfill its increased responsibility to demonstrate sound decision-making, in line with increasing expectations of due diligence, more intense public and media scrutiny, and initiatives for transparency, accountability and open government and join-up government.

8.5 CONCLUSIONS

Clearly, balancing the needs of different corporate governance demands must be a factor in contemplating any policy driven governance reform agenda which addresses coverage and content of regulations. From the gap analysis presented, it has demonstrated that there are glaring differences between the stated aims and actual outcomes of many of the local regulations, given the wide array of both content and effectiveness gaps (implementation). Another factor against public policy in Jamaica is the limited or non-existence of a national self-regulatory code similar to the Combined Code of the UK, which is respected and accepted by both the private and public sectors internationally. The PSOJ code in Jamaica was designed solely for its members, and further constrained by its design for mainly listed Companies of which there are 44 (at the time of writing). Comparatively, the UK Combined Code provides the flexibility of “Comply or Explain”, thus not locking in a box an entrepreneur who would regard box-ticking regulations as too constraining to his business.

The CG recommendations proffered are inexhaustible. Lobbying government and member companies requires time, understanding and much work. Countries, including the UK, Canada, Australia, New Zealand, South Africa, Kenya, Singapore, Malaysia, and many others, were able to develop and establish CG guidelines and regulations within a few years as their governments were in support of these actions from the start of the process. The level of mistrust of politicians and lack of political will to do the right things, were probably less problematic than the reality in Jamaica. Furthermore, these countries all had what could be called a “Country Strategy” on corporate governance. These governments understood their role as facilitators too well and were never seen as barriers to progress.

It must also be stressed that most of the successful *National Corporate Governance Codes* were developed with private sector groups playing a key role. Conceptualisation, planning, and strategising were left up to the private sector groups. Where is the PSOJ? What are their concerns regarding CG? Why has the PSOJ not concentrating more on synergising with government while, at the same time, developing an agenda for the way forward?

CHAPTER 9: THESIS CONCLUSIONS, LIMITATIONS OF THE STUDY, AND SUGGESTIONS FOR FUTURE RESEARCH

9.1 INTRODUCTION

The current financial crisis which has already ravished businesses and economies across the world, has highlighted ways in which existing CG arrangements have in many instances failed in providing adequate checks and balances. This failure in CG coming only a half decade after the demise of the energy giant Enron, has again lowered the confidence of the investing public, not only in the financial sector but across all spheres of businesses. Jamaica has not escaped this crisis and for the second time in three decades is heading back to the International Monetary Fund for fiscal support (at the time of writing).

Against this background, it is time the Government and key stakeholders re-evaluate the extent to which the present CG framework is appropriate for the way forward. Such re-evaluation ought to be the responsibility of individual boards in the public sector and private sectors as well, given their importance in the CG framework of any national system of governance. Concerns about absence of or weak and inadequate CG systems are not limited to developing economies such as those of the Caribbean. The Enron experience, the sub-prime crisis and subsequent bank bail-outs by the Obama administration of the United States and Gordon Brown of Britain, as well as countless others, have shown that corporate failures are not just the results of crony capitalism, greed, fraud, and a lack of regulation in many instances, but can be the resultant effect of negligence on the part of corporate fiduciaries and sometimes incompetence and poor managerial judgment.

While the field of CG has been gaining increasing academic significance, it continues to suffer from a lack of solid theoretical foundation and methodological soundness, academic rigor, peer review and misplaced emphasis on what boards should do and not enough evidence documenting the actual tasks executed by boards. Also, there is a dearth of literature from developing countries on CG structures, practices, and boards' role, accountability and behaviour. Therefore, in an attempt to bridge these gaps and generate data of sound empirical base, this body of work was created. It is the first of its kind in Jamaica and the Caribbean.

This thesis seeks to enrich CG practitioners (corporate profit-oriented professionals who want to improve board effectiveness and company performance), politicians and public policy leaders (who want to improve accountability and transparency in government and

efficiency and effectiveness of the public sector), and the academic community of scholars, students and researchers (who want new insights into a CG from a developing country's perspective), and the wider community—journalists and the media, watchdogs groups and independent scholars and consultants.

This chapter connects the problem statement of chapter 1 with research questions of chapter 4 and integrates findings of chapters 5, 6 and 7 with policy analysis and recommendations of chapter 8, into a theoretical and empirical framework. This framework, it is hoped, will benefit practitioners, policymakers, the academic community, and all other actors in the organisational context. The chapter is organised into five sections as follows: 9.1 introduction; 9.2 conclusions on key elements of the study such as regulation, corruption, ownership and control, stakeholder relations (representation), institutional investors, board characteristics and processes and corporate disclosures; 9.3 discusses limitations of the study; 9.4 highlights implications and suggestions for future research, and 9.5, provides an epilogue.

9.2 Conclusions on Key Elements of the Study

9.2.1 Introduction

Corporate Governance refers to any set or combination of rules, voluntary practices or regulations which can control and govern the relationship between the company's shareowners, Board of Directors, management, and its wider constituents. In addition to providing checks and balances to the actions of Directors and professional managers, sound CG should ensure that the company fulfils its primary goal of existence, honours corporate obligations, including corporate social responsibility, while continually renewing itself.

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

The question confronting Jamaica and by extension, the wider Caribbean at this time, is not whether—but when, businesses that want to succeed in the new global economy will begin

to reshape their CG. The urgency stems from a rapid pace of convergence of international financial standards and CG practices. Traditional ownership and control structures which were dominated by family members have been giving way to outside professional managers, not only in Jamaica as preliminary research findings have shown, but there has been a trend of this sort throughout other Caribbean and Latin American countries. Studies have also reported this trend in parts of Asia, e.g., in Singapore (Mak, Y.T. and Chng, K., 2000). Domestic and international investors, creditors, multilateral institutions, and international organisations are pressing for improved CG.

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

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

Before committing resources, investors and institutions all over the world want to be able to analyse and compare potential investments by the same standards of transparency, clarity and accuracy as in financial statements. They want to have risk assessments. More and more, Caribbean companies are seeking global reach by attracting new capital and are listing their shares on regional stock exchanges. GraceKennedy Limited, Jamaica Money Market Brokers Limited, the Capital & Credit Merchant Bank Limited, National Commercial Bank Group, to list just a few.

Being credible businesses that can withstand the scrutiny of international investors is more than just a matter of global marketing—it has become essential for local companies to grow and prosper. Good CG not only stimulates healthy growth, but it is a shield against widespread financial crisis. The Jamaican financial crisis of the 1990s underscored the urgency for businesses to transform the way they govern themselves. Re-shaping CG adequately will not happen overnight. Many business leaders believe that by adjusting a few procedures here,

adopting a few rules there, and hiring a corporate relations specialist, or even including a few sentences on CG in annual reports, is adequate. For example, in Jamaica recently, an IPO placed a statement about its CG in its Initial Offer Document, yet that company failed to report on its CG in its first Annual Report as a listed company. Is there a commitment to good CG here? The concept of CG is still new to many corporate leaders. In the Caribbean, it is only now being given increased attention by a few. Any effort towards a Jamaican or Caribbean-wide framework will need capacity strengthening to conduct critical training as well as to build awareness and promote conformance.

In the next section, the key issues of the thesis are identified and conclusions are presented. These include regulation, corruption, ownership and control, stakeholder relations, institutional investors, board characteristics and processes (Chairman/CEO duality or Separation, NED vis-a-vis Executive Directors, Board Size, board committee and composition, director tenure, gender and equality issues (women representation), board performance evaluation training), board's role in strategic decision-making, and corporate disclosure.

9.2.2 Regulation

For the past two decades, the UK has been a pioneer of a voluntary CG model in contrast to the legislative approach to be found in the United States. The UK framework has sought to strike a balance between “hard laws” (e.g., Companies Acts of various countries; Stock Exchange Listing Rules) and “soft laws”—Best Practice Principles such as the recommendations of the Combined Code 2003, among others. While this study has reviewed and presented analyses of several pieces of Jamaican regulation (chapters 5 and 8), Government needs to be cognisant that reforming CG is best met with a mix of ‘hard’ and ‘soft’ laws. This allows board flexibility in their implementation of CG Best Practices, and encourages dialogue between boards and shareholders. Results in the UK have attested to significant improvement in CG standards and have been achieved without the imposition of significant regulatory costs on businesses. It has indeed been widely praised and imitated by policy makers and CG practitioners around the world. Therefore, there are lessons to be learnt by Jamaica regarding a balance of “hard” and “soft” laws when it contemplates rolling out a corporate governance framework for the public sector. Further research specifically focusing on the impact, implications and contribution of ‘hard’ laws versus ‘soft’ laws in jurisdictions such as Britain (Cadbury and others—soft), the United States (Sarbanes Oxley—hard), France (Vénot Report—mixed of hard and soft) and some Anglo-Saxon examples such as Hungary, Germany (two-tier boards) and others, could possibly bring new perspectives to the

international literature in corporate governance generally and the role of regulation, specifically.

9.2.3 Corruption

Corruption has been a perennial problem in Jamaica and efforts to curb this scourge have been gaining momentum over several years. Supporting this is a recent report released by USAID, through its Director for Jamaica, which states that corruption has declined significantly since 2006. An earlier report had revealed that 36% of Jamaicans surveyed had been victims of corruption during the previous year. This figure has since dropped to 24% in 2008, and a 12% drop over a year and a half, or over two years (Jamaica Information Service, March 14, 2009).

On the one hand, this means that efforts by the Government and the private sector are producing tangible results. On the other, in spite of these results, the vast majority of Jamaicans still consider the country to be highly corrupt. There is no reason, therefore, for the Government and the private sector to become complacent. In fact, Transparency International is committed to intensifying its resolve to continue the fight against corruption in Jamaica and has only recently announced its intention to set up a permanent office. With these coordinated efforts, it can be expected that over time, the perception and incidence of corruption in Jamaica will decrease. This however can only be achieved through continued efforts by Government, private sector, civil society, and international and local watchdog groups.

Jamaica can learn many useful lessons in its quest to curb corruption. First, TI's measure of corruption should not be the only guide post as there are many others from which Jamaica could learn useful lessons on how to curb corruption. Second, corruption in normal times is bad, but in these harsh economic times, might get worse.

There is a recently launched initiative at the University of the West Indies, Mona dubbed "National Integrity Action Forum" (NIAF), which seeks to achieve transparency, effective disclosure, and improved auditing and accounting. It is a network of corruption-fighting partner agencies and individuals. According to Professor Trevor Munroe, its founder, "these persons are those on the front-line combating corruption who need greater collaboration to produce more effective outcomes."

The NIAF is drawing on the rich expertise of network participants, along with foreign counterparts, combining these with research and coming up with a practical action plan to raise Jamaica's levels of national integrity. This plan would strengthen the fight at all levels and

also target the 'big fish', who often get away with illicit wealth thereby discrediting the rule of law and all constituted authority.

To achieve its objectives, the NIAF will need to maximise its resource network over the two-year life of the initiative. Its strengths lie in the support of Professor Munroe, the Department of Government's Centre for Leadership and Governance (CLG), as well as current principal, Professor Gordon Shirley. The initiative has the support of the Contractor General, Director of Public Prosecution, Commissioners of Customs and Inland Revenue, Auditor General, Commissioner of Police and Assistant Commissioner in charge of anti-corruption. It is supported by the Prime Minister and the Leader of the Opposition. It has the backing of USAID. With the collaborative approach being taken by the NIAF and its many important stakeholders, this could be another opportunity for the government to demonstrate its seriousness to fighting corruption by its own endorsement and support. The official Opposition People's National Party, has only recently established an anti-corruption and Integrity Commission in an effort to signal their intention to fight this scourge within their party which has been plagued with corruption for nearly two decades of at the helm of government.

In addition to the efforts outlined above, the Jamaican Government and people could benefit from studying and adopting, where applicable, anti-corruption strategies employed by other countries and institutions. However, the experience of Jamaica in combating corruption is being watched closely by other territories especially through the eyes of the international cooperation agencies that have been funding a number of the anti-corruption initiatives. It is expected that, these outcomes will have significant transferability and hence will benefit not only the international corruption literature but serve to improve public policy focused on curbing corruption in other countries.

9.2.4 Ownership and Control

The challenges brought about by 'ownership and control' of corporations in Jamaica are quite distinct from those of the USA and UK. The many challenges to ownership and control in Jamaica have been exacerbated by the following complex of issues: (1) the prevailing high ownership concentration in Jamaica (a total contrast to USA and UK with highly dispersed stock markets); (2) no forthcoming legislation in sight to improve the plight of minority shareholders and no incentives for businesses to issue greater proportion of shares to the public and to entice the investing public, particularly individual shareholders, to increase their

participation in the stock market; (3) these have all compounded by weak listing rules which still have not been geared towards a high degree of disclosure in line with growing international trends. These issues have exacerbated the many challenges and problems to ownership and control arrangements in Jamaica. This author believes that it will be difficult to expect beneficial changes anytime soon in CG among Jamaican private sector, in particular, without addressing the many challenges associated with the ownership and control arrangement.

9.2.5 Stakeholder Relations (Representation)

There are indeed examples of innovative strategies employed by selected companies to engage and communicate to stakeholders over and beyond the box-ticking prescriptions of stock market rules and government legislations. Some of these include frequent investor briefings and informal information sessions. However, there are at least two imminent challenges that must be addressed for the way forward. First is the fact that communication might be becoming more difficult between board and stakeholders. Jamaica Stock Exchange data (2008 Report) show that many listed companies have still not been making contact with their stakeholders on critical matters in a timely manner. Second, because shareholders hardly attend AGMs in significant numbers (personal experience), this makes it difficult for companies to establish meaningful dialogue and to obtain critical and representative responses which could aid in making more informed and beneficial decisions for those shareholders and stakeholders.

In spite of these challenges, it is still possible to improve board-stakeholder relationships through increased disclosure, greater transparency and the enactment of legislation to strengthen shareholders' rights and increased focus on participation of institutional investors. This has been achieved (albeit too early for a conclusive position) through the JSE Best Practice Awards competition which challenges and rewards contestants for meeting many different 'good corporate governance standards'. In an effort to be recognised vis-a-vis appearance in all local media as a firm that is practicing high standards of CG, these firms put out all possible efforts to ensure victory (JSE Best Practice Competition data, 2005-2008).

Incentivizing market players to adopt good CG practices is not a common phenomenon in the international arena and thus, the JSE model could be studied for both further improvement and as an approach for consideration in the international policy and practice circles of CG development.

9.2.6 Institutional Investors

Based on the findings of this study of the perception and nature of Jamaica institutional investors, they (as well as ordinary shareholders) have had a poor attendance record at AGMs and have not been exercising any significant influence on the companies and their boards. As a result, underperforming boards have not been made accountable for their poor and less than satisfactory management of shareholders funds. Institutional investors and ordinary shareholders need to play a more active role in monitoring the performance of their investee companies or face the risk of managerial dominance over the firms legitimate owners—the shareholders. It has been highlighted that institutional investors will in due course become accountable to ‘the millions of ultimate owners... who may come to question the policies of the new powers that be. Then the questions may extend from whether the professional money managers are achieving maximum private return, to whether they are fostering maximum public good. Their demands for downsizing and single- minded focus on shareholder benefits,—whatever the costs, may come to constitute a new target of ownership challenge’ (Mallin, 2007, p.14⁴³).

9.2.7 Board Characteristics and Processes

In terms of board characteristics and processes, the issues of consideration here are those that have been identified in the thesis introduction of chapter 1, discussed in the literature review of chapter 3, and for which empirical findings have been obtained and discussed in chapter 7, and further examined as elements for public policy considerations in chapter 8. These include board size, Chairman/CEO duality or separation, board committees and their composition, director tenure, gender and inequality issues, board performance evaluation, and Director training. These issues, as expected, are also aimed at impacting the international literature on corporate governance.

Board Size: The findings on board size in Jamaica revealed a mean size of 9.1 and median of 8-10 Directors. These figures are less than the realities in more developed Anglo-Saxon and Non-Anglo-Saxon countries. However, this Jamaican average is large enough to ensure nimbleness and optimal effectiveness and to keep each Director occupied with organisational issues, unlike with larger boards where social loafing is the norm. With no significance (relationship) between board size in stock market listed and unlisted firms, and in

⁴³ Mallin, Christine in *Corporate Governance* (2007), second edition, discusses the potential problems of the separation of ownership and control, and the importance of the influence of the work of Berle and Means (1932) which is often cited as providing one of the fundamental explanations of investor and corporate relationships.

dominantly-owned highly dispersed and closely-held firms, the research could perhaps benefit from a larger sample involving at least 150 Jamaica firms. In this way, more detailed statistical analysis could yield meaningful relationships from which more beneficial conclusions could be drawn on the way forward for board size in Jamaica.

Chairman/CEO Duality or Separation: With inconclusive results on whether or not Chairman/CEO duality or separation yields greater value to organisational performance (Bhagat and Black, 1999; Daily 1997), some critics (Davis et al, 1997; Pearce and Zahra, 1991) believe the debate is not worth the importance it is accorded. Also, there is a tendency in the UK (and the US at a much slower pace) and other European countries to separate both roles. In Jamaica with a 70% separation among firms studied in this thesis, a weak association has been observed from cross tabulation conducted to determine existing relationship, if any, between the duality of Chairman/CEO in listed and unlisted firms. Similar statistical analysis was performed on firms with dominant ownership that are highly dispersed and closely held. The results have all revealed no significance in relationships. Therefore, it appears that Jamaican firms have neither preference for duality or separation, both in listed and unlisted companies.

In spite of the preceding facts, these findings are limited based on the small sample size of the groups (27 listed and 23 unlisted) and hence might not necessarily reflect the true realities of the Jamaica situation. Therefore, a much larger sample which could facilitate the testing of more variables, their interrelationships and causalities, is recommended for future research.

Non-Executive versus Executive Directors on Boards: The need for objectivity and independence in boardroom deliberations has rendered the focus on NEDs far more important than that which is accorded to Executive Directors. As such, the theoretical and practical debates are really centred on achieving a majority board of NEDs. NEDs have also become very important constituents on such committees as audit, corporate governance, risk management, and compensation.

From the findings of this research on the presence of NEDs on Jamaican boards, of a mean board size of 9.1, there are 6.8 NEDs. In this said study, an average of 5.6 of the 6.8 NEDs have been reported to be independent Directors. While these results cannot be disputed on the basis of wrong or right as this is what is reliably generated methodologically and statistically, the practical realities are, however, much different. Jamaican NEDs, and more so independent Directors, are hardly ever independent based on their relationship with owners of the firms, their dependent and interconnected business relationships, and family ties which

transcend oligarchic groups (personal experience). These Directors are also very often chosen to ensure that the interests of the beneficial owners are served and perpetuated.

It is not surprising also that although listed firms are highly regulated where the number of NEDs is concerned (are required to have minimum number of Directors and independent members), there was no statistical significance in the number of NEDs on listed or unlisted firms based on cross tabulation of this variable in listed and unlisted firms. Furthermore, the requirement for NEDs and independence by the JSE is rather meaningless as there has been no clear and coherent definition of independence issued and no minimum standards established and communicated to these firms by the Jamaica Stock Exchange or any source.

It will be difficult to achieve independence in the NEDs who are nominated to Jamaican boards, and if not achieved, will be an ongoing challenge to boardroom objectivity and independence in decision-making—hence making a mockery of accountability, transparency—good corporate governance in Jamaica.

Director Tenure: Tenure is defined in this study, is the length of continuing appointment that may be granted and is made effective at the AGM. There is still no such “appropriate” length of tenure and at least one empirical study has concluded that tenure should be limited to two terms to ensure the infusion of fresh minds and youthful intellectual vigor, knowledge and skills (Director Compensation Report, 2008). Opponents of term limits argue that while turnover is good and inevitable on a case by case basis, continuity and experience is just as important (Michals, 2008). In an attempt to balance the term limits and continuity, some Jamaican companies have opted to retain Directors with valuable experience by permitting service beyond previously mandated age limits and beyond term limits.

To be open enough to assess each Director on his own merit, may be the best way forward for corporations in balancing immediate needs of the board and the need of continuity. Given that tenure is not, an important concern of Jamaican businesses at this time, it will be long before any attention (academic and policy-related) will be given to this area. Furthermore, empirical studies on director tenure is scanty and at best weak and hence, there will be a slim chance convincing businesses that it is important (or unimportant), over and beyond the knowledge and opinion they hold over many years of practicing multi-term appointments.

Gender and Equality Issues: Findings of a recent study by Women’s Resources and Outreach Centre (WROC, 2007) has also confirmed this low participation of women in public life, revealing that female representation is at an average of 29% on boards, including public

sector boards (33%), private sector boards (16%), and those of trade unions (30%). These findings still depict a more positive representation of women on Jamaican boards than the 78% of boards in this thesis study that were represented by women. Further dissecting of the data of the findings in this study (thesis) showed that although average board size was 9.1 members, only 1.8 females or 19.8% of board members were women. The major weakness of the WROC study is that the data focused on the number of individuals sampled who were actually members of boards rather than the number of boards and their gender composition and from which (like the sample of the research of this thesis), the ratio of male versus female could be determined. Without the latter approach, the WROC study gives rise to multiple representation which could over inflate the actual female representation (on average) compared to men, on Jamaican boards.

With the above findings in mind, and the important issue of gender equality which continues to receive serious attention, the Commonwealth Plan of Action for Gender Equality (2005-2015)⁴⁴ calls for a focus on four critical areas for advancing gender equality. This plan addresses gender, democracy, peace and conflict, and it highlights the fact that the empowerment of women is a part of the democratic ideal that contributes to sustainable development. Since September 1981, the United Nations Convention on the *Elimination of all Forms of Discrimination Against Women* has entered into force and has been ratified as an international treaty by 185 countries including Jamaica. Article 7 of its provisions speaks to Political and Public Life, specifically the right of women in relation to political participation. The Article notes, “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal term with men, the right:

- 1.) To vote in all elections and public referenda and to be eligible to election to all public elected bodies;
- 2.) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- 3.) To participate in non-governmental organisations and associations concerned with public and political life of the country.”

Notwithstanding the above, and while much progress has been made in implementing the tenets of Article 7, there is still a far way to go in eliminating several stereotypes and negative cultural practices which continue to retard women’s progress in development.⁴⁵ The area of

⁴⁴ Commonwealth Ministers responsible for Women’s Affairs, 2000.

⁴⁵ United Nations CEDAW Committee, 2006

political, economic and social decision making is of particular relevance in Jamaica where there is still a low level of participation in political and public life by women, and where there is a call for increased female representation and participation at the highest level of decision-making.⁴⁶ This study, rather than suggesting any form of gender balance, would suggest that board members should be selected on the basis of a competency profile rather than any form of affirmative action.

Board Performance Evaluation: Board evaluation has been receiving increased interest in recent years (personal knowledge) due to more intense scrutiny and the need for greater accountability by shareholders, regulatory and monitoring bodies, stricter enforcement of laws, the public in general is becoming more interested in business ethics, more law suits against Boards of Directors, and greater consequences for mistakes made by the board (Companies Act of Jamaica, 2004; Public Bodies Management & Accountability Act, 2001).

Research findings of this study have shown that there is no system for evaluating corporate boards in Jamaica, even though some companies pay retainer fees in addition to an honorarium per meeting attended, particularly in the private sector. Performance evaluation can be beneficial in giving the board a chance to reflect on its own performance and address its strengths and weaknesses, and may provide an invaluable yardstick by which it can prioritise its activities for the future (focus group respondents). A formal and well-structured board evaluation could assess such issues as meeting frequency, length, and agenda management. For example, does the agenda help NEDs to come to grips with the business? Is the board a constructive working group? In knowing this, the group's behaviour is assessed. Management should be asked about the board's role and involvement given their unique responsibility to the effective functioning of the board. In addition, the board should be assessed based on the insight each Director brings to the table, how they listen to each other, their contribution to cohesion and behaviour towards management (focus group respondents).

Against the preceding, Jamaican boards could benefit from a structured and sustained approach to performance evaluation. In this way, each Director and the board as a whole, could understand the benefits of critical feedback from peers, become more mentally alert, ask more penetrating questions and participate more meaningfully in board deliberations, see the need for and more willingly participate in education and training activities, manage board time better, and become better decision makers and leaders.

⁴⁶ United Nations (August 2006). Concluding comments of the committee on the elimination of all forms of discrimination against women: Jamaica, CEDAW/JAM/CO/5.

Director Training: Training and development of Directors in Jamaica has been a recent phenomenon but somehow gaining momentum among the more enlightened corporations and individuals. In recent years, many companies have sought and insist that their boards attended sessions with a view to improving their knowledge about their roles and responsibilities as Directors. From personal experience, many of the facilitators of these training sessions tend to offer areas of training for which they are capable, and not necessarily what is most appropriate for individual firms. Firms vary from private sector versus public sector, and even in different legal forms, thus each having unique training needs. Policy reform is needed to codify a framework for Director training. To ensure that at least a minimum standard be achieved and Directors benefit from training that will redound to optimal value to the organisation, standards in quality, content and duration should be established. More so, training needs' analysis should be established and implemented to determine the most appropriate content, taking into account differences in roles, mandate, and legal forms of these organisations.

For boards which have already benefitted from training and those to be exposed to training, a tracer study could be considered to establish the relationships, if any, between improved Director knowledge and organisational performance. This finding could assist in validating and reinforcing the importance of Director training and development.

9.2.8 Board's role in Strategic Decision Making

Findings in this study (chapter 7) on Board's role in strategic decision making have been largely consistent with empirical literature cited in chapter 3. Specifically, Jamaican boards play critical roles such as ratifying, approving, assessing, and evaluating strategic projects initiated and implemented by executive management. Executive management on the other hand, has been more involved in initiating and implementing strategies, and their implementation, than the board as a whole. These differences can be explained given the nature of board composition in Jamaica. With an almost balanced mix of NEDs and Executive Directors, there seems to be a division of the role and work of the board. It appears also that if the board was majority or exclusively executives, then there would be an even greater initiation and implementation of roles of the board. In this regard, a reduced number of outsiders would see the board doing less ratification and monitoring, and increase emphasis on strategic issues in line with growing international trends.

9.2.9 Corporate Disclosure

In any country, the critical role of accurate information and disclosure means that thorough, reliable and prudent business and financial reporting are essential to encourage good CG. It was the failure of many Jamaican companies to disclose accurate information on credit lines, business risks, and highly leveraged investments that has been identified to be the cause of the financial meltdown of the 1990s (Hylton, 1999). This crisis demonstrated to Jamaica, and indeed the world, that investors and governments have to take CG more seriously. Corporate disclosure is credited with mitigating the volatility of the market. Fox (1999) opined that “required disclosure” positively affects four of the economy's key mechanisms for controlling corporate management: (1) the market for corporate control, (2) share price based managerial compensation, (3) the cost of capital and (4) monitoring by external sources of finance. Through its effects on these mechanisms, required disclosure improves the selection of new investment projects in the economy and the operation of its existing productive capacity (Ibid).

For shareholders (and institutional investors) exercising their voting franchise, corporate disclosure serves as a source of corporate power. Armed with superior information, shareholders are better informed as to which vote is in their best interest as it relates to various amendments, mergers or ratification. In addition, shareholders are better equipped to evaluate the performance of management in the execution of its duties. In fact, Louis Lowenstein (citing Fox, 1999) has argued that required disclosure can improve managerial performance simply by forcing managers to “become more aware of reality.”

Notwithstanding the above, there are still significant gaps that render the corporate disclosure landscape of Jamaica inadequate. Drawing on information provided in the Annual Reports of the case companies in this study and supported by other types of corporate disclosure made by these companies, several other areas have been under reported. These include information on relationships with shareholders, the nature and quality of key relationships, human resources, election of Directors, mergers and acquisitions, information on subsidiaries and associated companies, Chairman’s Report, The CEO’s Report, shareholding of Directors and senior executives, top-ten stock holders and their profile and change or appointment of auditors.

Table 9.1 summarises details of selected issues which lack sufficient attention in Jamaica in the field of CG and the disclosure of private and public information. It also suggests what media such disclosures could be made through.

Table: 9.1: An Illustrative List of other Beneficial Disclosures

Area	Disclosure Requirement	Proposed Media
1. Human Resources	Disclosure should be made of the company's human resource policies, internal management structure and workplace development initiatives.	CG Statement
2. Stakeholders' Relations	The company should explain the process by which it ensures effective communications with shareholders.	CG Statement
3. Quality of key Relationship	Commentary should be given on the quality of the company's key relationships with employees, creditors, suppliers, and other significant parties.	CG Statement
4. Election of Directors	The qualification and method of voting at meetings of members and shareholders should be in accordance with the company's governance procedures for this matter and other issues such as voting by proxy, personal interest, indiscipline of members and counting of votes should be addressed.	Voting Procedure
5. Retiring, electing, paying Directors & appointing auditors	In the Notice of the AGM, the items of business should be identified—among other things the director's report, statement of accounts, auditor's, election of Directors, appointment of auditors and any other business.	Report of Directors/ Notice of AGM
6. Chairman's Report	Regulatory compliance, Retiring Directors, Gratitude to employees, auditors, milestones and the way forward should be included	Chair's Report
7. CEO Report	Performance, operations, strategic direction, risk management, and outlook	CEO Report

9.3 LIMITATIONS OF THE STUDY

This study has been challenged by a number of factors, some of which may be construed to be inadvertently self-imposed while others may have been beyond the control of the author. First are the continuous changes in the regulatory environment of Jamaica over the period of fieldwork and write-up. Several new legislations, incidents of CG governance failures and change of political leadership took place. Between 2001 when the author commenced studies in England and 2007, when fieldwork would otherwise have been long completed and writing up taking shape, the following legislations came into being: Public Bodies Management and Accountability Act, 2001, Access to Information Act 2002, Corruption Prevention Act, 2003, Companies Act of Jamaica, 2004; and several amendments to the BOJ Act and the FSC Act. These new or amended laws have affected the operational dynamics, compliance regime, and CG behaviour of companies listed on the Jamaica Stock Exchange, members of the financial sector, and public bodies in various ways.

Compounding these issues are the general elections of 2002 and 2007. During this period, the country was led by three different Prime Ministers, with several changes of Ministers which led to major shifts in policy directions. In this regard, this thesis experienced constant updating and changes, including changes to research instruments and the return of instruments to various companies for new and updated information. It was rather difficult to cope at times. Secondly, a number of assumptions at the beginning of the study were predicated on a dearth of empirical literature and lack of awareness of CG Best Practices by would-respondents. However, a few years into the study, things would have changed dramatically and there was to be significant awareness building stemming from various activities in CG such as training and development of boards, frequent publications in the local printed media about different aspects of CG, and in most recent times, sponsored developmental projects by international donor agencies directed towards improving CG and political governance. This study, while challenged on the one hand to keep abreast of the new information, has benefitted tremendously from more knowledgeable and informed respondents, on the other hand.

Third, the timing of completion of this study was severely affected initially by personal circumstance but more importantly, by the need for the author to make time to balance work and studies, due to significant international demand for his services. Also, the author could not resist writing on the subject and hence published extensively over the first three years after completion of the taught component of the doctoral programme while working professionally in the field.

Fourth, this study was further limited by its very broad, yet not all encompassing scope. For example, such important emerging issues as corporate social responsibility, socially responsible investments, role of risk management and the financial aspects of CG, and company performance were either not studied or merely mentioned in the study. However, the approach has been one of exploratory research from the very beginning and hence this body of work was never intended to address all the important issues on the international CG agenda, at this stage.

Other issues and areas not studied which could perhaps enrich the findings of this study include but are not limited to, 1.) board's role in stakeholder relations; 2.) board's role in mergers and acquisitions; 3.) retirement age of Directors; 4.) the role of the audit committee in assuring sound internal control and its widening role in dealing with issues of CSR and environmental reporting; 5.) the study being exploratory, suffers from an in-depth analysis into how corporate executives perceive the cost of making adjustments to emerging CG

reforms; 6.) inadequate work into the impact of training and development of Directors, although this has been happening for the past six years in Jamaica, pioneered by this author; and 7.) the dearth of empirical and theoretical literature from other parts of the Caribbean. However, the latter issue of a lack of empirical work in the Caribbean is a far contrast to the development of theoretical, empirical, and comparative literature in other parts of the world during said period (gleaned from extensive reading on the subject). There is in fact an information overload on many aspects of CG relating to different structures, practices, and board composition and dynamics. Also, many new authors have emerged, and several academic Chairs in CG have been established in leading Universities around the world.

Factors that may limit the effectiveness of policy reform in CG in Jamaica: There are still other factors that may limit an agenda to influence policy reform in CG in Jamaica at this time. First, apart from this body of work, there have been no previous academic studies undertaken to determine basic CG features in Jamaica in spite of seven consecutive years of awareness building and insights that could have been gleaned from international CG failures. This limitation of a solid empirical understanding of board practices and structures, could restrain efforts geared towards the development of national and regional CG Codes. It is hoped that this body of work will become available to the Jamaican, Caribbean, and international publics, and may serve to narrow, if not fill, these existing gaps.

Second is limited human capacity in CG from a multidisciplinary perspective. There is still no course or certification programme in CG at any of the institutes of higher learning in Jamaica and the Caribbean, and the few such opportunities are only limited to more advanced countries such as the USA, the UK, Canada, Australia, and New Zealand. Therefore, there is a significant scarcity of CG professionals both locally and internationally, who have studied and understood CG from a multidisciplinary perspective. This will require extensive awareness building to include both Government and the private sector, as well as entrepreneurial astuteness at the institutional levels to implement these programmes.

Third, many CG structures are either underdeveloped or have been too divergent in maturity and development. Standards of Best Practices will have to be unified before any one model can be achieved across the Caribbean. Fourth, the emphasis on individual island states by their respective stakeholders, rather than a Caribbean-wide focus, continues to plague regional progress and will certainly affect cooperation in forging a regional governance framework. Fifth, there is no existing national code and there is no Caribbean model of CG. Therefore, it is likely that any model that emerges will be one adopted from elsewhere. However, this author hopes that this will not be necessarily so but rather, one that will reflect

the nature and realities of CG needs within the region. Otherwise, such effort will not be in the Caribbean region's best interest.

In addition to the above factors, more than 120 delegates representing 24 Caribbean countries met at the Headquarters of the Eastern Caribbean Central Bank, St. Kitts, where the first Caribbean Forum on CG was held on the September 3-5, 2003. From the deliberations, the following challenges were identified to have potentially important implications on any future agenda of a Caribbean-wide CG framework: 1.) the judicial systems are poorly equipped to address healthy governance practices; 2.) the ownership structure of corporate sector is very complex and bureaucratic; 3.) the high level of interlocking directorships (JSE, 2008 information) among publicly-listed and private sector companies, and Government, particularly occurring in the financial sector; 4.) Governments have been known to have intervened and interfaced with boards and this has hindered their effectiveness; 5.) there is minimal investor participation in companies; 6.) transparency in the management of companies is lacking; 7.) there is little regard for the rights of minority shareholders; 8.) there are limited/scarcely human resource capabilities in the relevant areas; 9.) companies' ability to innovate, set trends and attract talented people is limited; and 10.) there is a tendency for organisations to resist change.

In spite of the above limitations, several developments have taken place during the period of this research that have served to advance the understanding of and appreciation for CG in Jamaica and the wider Caribbean, as well as partially fulfilling aspects of the aims and objectives of this study. First, is a significant level of awareness by corporate leaders and the public at large on the merits of good CG. These have arisen through increased levels of awareness building seminars, training workshops and other forms of intervention such as donor agency funded projects addressing one of more aspects of CG. Second, this researcher has published 35 articles in the *Financial Gleaner* between 2002 and 2007, a book in 2005 and presented more than 100 training workshops, short presentations, speeches and media interviews over the period, all addressing various aspects of CG. Other local professionals and academics have also contributed in similar manner and hence bombarded the local environment with the importance of CG. Third, events such the JSE Competition and PSOJ Code published in 2006 and most recently revised in 2010 (March) have contributed to greater level of visibility on the subject. The involvement of international donor agencies such as CIDA, IDB, USAID and the World Bank in funding local activities—research, training and development initiatives in CG have also played important roles.

In order to ensure that reforms are successfully implemented and that commitment to improve CG is reinforced, the following are edited suggestions proposed by the Caribbean Forum: 1.) establish regional codes to demonstrate intent and emphasis on better CG; 2.) establish regional and national professional institutes to promote CG standards; 3.) encourage training and professional development among corporate Directors; 4.) incorporate CG in national development and finance policies; 5.) encourage and develop a regional strategy to promote better CG in the public and private sectors; 6.) establish well-defined power sharing and accountability regulations; 7.) develop a system that ensures board member independence and protection of shareholder and stakeholder interest; and 8.) establish a clearly defined code of values, professional conduct, and ethical standards to guide market participants.

It is instructive to note that the 2003 Forum recognised that CG must not be viewed as another 'set of rules' imposed from outside for someone else's benefit, but as a framework based on Caribbean values designed to meet Caribbean needs.

9.4 IMPLICATIONS AND SUGGESTIONS FOR FUTURE RESEARCH

9.4.1 Introduction

This section highlights several important areas identified from the literature review and the analytical discussions of chapters 5, 6, 7, and 8, to be in need of further research which could redound to contributing to the scholarship on international CG. Also, many of the issues to be discussed here were either not covered or merely covered in this thesis but are important areas in the international CG debate from which Jamaica could benefit. These areas include: integration of different theoretical perspectives in the study of corporate governance. There is the need for CG research on non-Anglo-Saxon countries other than the USA and the UK, the involvement of and contribution by employees in CG, emphasis on process studies; the board as an instrument for influencing strategy, emphasis on the diffusion and effectiveness of so-called self-regulation, emphasis on SMEs, public bodies and non-profit organizations, focus on Enterprise Risk Management, corruption and non-employee stakeholders.

9.4.2 The Integration of different Theoretical Perspectives

Future research could benefit from multi-disciplinary approaches to the formal organisation of corporate boards to provide a richer, more comprehensive theoretical explanation and understanding of governance structures (Davis, 1991). This might not only stimulate the scholars in the various disciplines of CG to cite the ideas and/or findings of each other, and the exchange of concepts, theories and ideas, but also eliminate the fragmentation of

research and the application of different terminologies and operationalisations that are used for similar constructs (Maassen, 2000; Judge, 1989; Zahra and Pearce, 1989).

9.4.3 The Need for more CG Research on Non-Anglo-Saxon Countries other than the USA and Britain

A challenge for future research on boards' role, behavior, and characteristics would also reveal developments over time in the composition and organisation of corporate boards, not only in other Non-Anglo-Saxon and continental European countries but in the Caribbean, Latin America, Africa, and Asia. In Jamaica and the Caribbean, there is need to identify the critical features and factors to develop company, national, and regional action plans and influence international actions. The absence of lessons from these smaller island states leaves a critical gap in the international CG debate.

9.4.4 The Involvement and Contribution of Employees

The famous Cadbury Committee probably failed dismally when it upheld the tripartite relationship of Directors, shareholders and auditors, as if these groups were the only claimants to the organisation. This researcher is suggesting that research is needed, firstly, to evaluate the role of employees "outside the boardroom" influence on boardroom decisions, their contribution to organisational survival through their competencies and why their representation on corporate boards have for a very long time been pervasively ignored.

9.4.5 Emphasis on Process Studies

Numerous studies have looked beyond the doors of boardrooms to observe board independence, board's roles, and board characteristics versus performance. Also, some authors have managed to directly observe the behavior of Directors in their board rooms. However, studying boardroom processes as they happen is proving to be elusive (Pettigrew, 1985; Thurman, 1990; Samra-Fredericks, 2000). Future research could fill the gap in the literature by building up strategic alliances with Directors and practitioners who recognise the need to understand more about board structures and processes that contribute to the involvement of Directors in decision-making, and particularly through board-in-action observations.

9.4.6 The Board as an "Instrument" for Influencing Strategy

Given the importance of strategic management for organisational performance, it is necessary for studies of governance, as well as boards of Directors in carrying out their role, to have a clear strategic focus. This would draw attention to the fact that a Director's role is not simply to a monitoring mechanism over management (as advocated by agency theory), but

also to offer expertise and advice (consistent with stewardship theory) and offer linkages with external resources (consistent with resource dependency perspective) (Dalton et al, 1999).

Against the preceding, future methodological directions for research on corporate governance should include: 1.) a higher concern with validity and reliability of measurements 2.) employment of methodological triangulation, through the use of fieldwork primary data as a rich resource for improving the operationalisation of concepts 3.) the explicit incorporation of a contingency perspective in theory building and theory testing and 4.) a focus on factors related to productive group dynamics as part of a higher concern with board processes than simply with board structure. It is hoped that these factors would lead scholars to a deeper understanding of the “environment” through mapping techniques and maps and improve the dialogue between the various stakeholders, through the production of robust descriptions and consequently sound recommendations for adoption in improving the role of the board in strategy (Heracleous 2001:172).

Another suggestion for future research relates to the strategic impact of the changing international context on strategic renewal processes of corporations in economies, just emerging from one crisis or another, e.g., Jamaica, South Africa, Argentina, just to name a few. The scientific and managerial significance can be highlighted by positioning CG as a strategic management “instrument” for influencing strategy and strategic renewal processes of corporations. The analysis, both in theory and practice of different CG structures, and their impact on strategic renewal processes can contribute to better scientific and societal assessment of the importance of CG (Maassen, 2000).

9.4.7 The Emphasis on the Diffusion and Effectiveness of Volunteered Governance

Future research could concentrate on the effectiveness of volunteered governance (or self-regulation) that aims to set new (international) CG standards. Most often, researchers have focused on developments in the UK where the Cadbury Code, and in the USA, the Sarbanes-Oxley Act, have dominated the CG debate. Very little is known empirically, about the way Directors voluntarily comply with codes of Best Practices in important financial regions such as South Africa (King III Report), Non-Anglo-Saxon continental European countries (i.e., Germany, France, the Netherlands), and how Anglo-Saxon codes of Best Practices have influenced initiatives in other regions.

9.4.8 Emphasis on SMEs, Public Bodies, and Not-for-Profit Organisations

These groups have been ignored to a great extent by the literature on CG. There are advantages to a research approach that concentrates on large listed corporations given the ease

and access to readily available data. Also, listed corporations are much more regulated than non-listed and are mandated to make innumerable forms of disclosures. As a result, most governance researchers tend to gravitate towards the larger corporations. Academic information and empirical studies on governance structures and practices of smaller firms and public bodies have been very scarce in the international literature. Future research could also reveal clearer understanding in the organisation and composition of Boards of Directors in small enterprises and non-profit organisations.

9.4.9 Corruption

In spite of hard data that can be traced back to theft and recovery or other forms of fraudulent actions by politicians, public servants, and corporate leaders, who by and large, when caught are punished, there is no precise evidence which indicates that corruption is or is not having a significant impact on development in Jamaica. Research is needed with the objective of investigating or estimating economic losses due to corruption. Some participants in a CaPRI (2007) study downplayed the economic impact of corruption. Such economic and financial determination could serve as a basis for justifying further governmental and international donor agencies' support to pursue, arrest, charge and imprison the perpetrators of corrupt practices.

9.4.10 Non-Employee Stakeholders

Research is needed into the contribution of shareholders activism and its impact on the improvement of financial performance of corporations. The few studies thus far, have only concentrated on institutional shareholder activism in the USA. Research on the role of institutional investors in other countries is underdeveloped in the literature.

Existing research on stakeholders has been relatively underdeveloped in Jamaica and many other countries. Not surprising, since stakeholders can be regarded as a 'non-entity' in the Jamaican context. Compounding this crisis, have been recent developments in corporate social responsibility (CSR) and socially responsible investment (SRI) from a general stakeholder perspective. While there is no literature on these areas in Jamaica, in the UK, much of this literature has remained rather normative (e.g., arguments for and against) and the empirical work in the UK has often been rather exploratory and descriptive (e.g., describing what individual companies are doing voluntarily). However, in the USA, some research suggests that broader stakeholder involvement can have an effect on governance and on performance. Future research is also needed that sees CSR and SRI from a governance

perspective, and which explores the processes whereby stakeholders such as SRI funds, NGOs, communities, etc., use information provided by companies to actually affect CG.

In terms of debt holders, Chan et al. (2003) are suggesting further research to complement work on shareholder engagement. The goal would be a more comprehensive picture of the investment chain, and a mapping of the key ‘gatekeepers’ involved in various aspects of the investment process. Here they (Ibid) are claiming that investment analysis and ratings agencies play particularly important roles, given that previous research identifies a number of potential problems that ‘gatekeepers’ may have when dealing with individual companies and their investors.

In terms of employees, at least three areas for future research are important. First, is the role of pension funds and how and whether they can give employees a voice in governance. Second, is collective form of involvement—what makes works’ councils and information sharing with employees effective and what can be the positive outcomes. The third area would be to investigate the mechanisms and effectiveness of more individual forms of employee voice via employee reports, briefing meetings, and so forth (Ibid).

9.4.11 Enterprise Risk Management

A corporation exists in a rather complex environment of various risks with which it is mandated to comply. In the financial sector, for example, ever since the invention of modern banking and insurance, these sectors have been riddled with risks, particularly, “regulated risks⁴⁷”—liquidity, credit, market, operational, foreign exchange, transaction, to name a few. More so, the regulatory and compliance landscape has changed significantly over time, so have market realities. Companies must comply with other strategic risk exposures ranging from accounting and finance laws to health and safety. Strategic risks can affect a company in a number of ways, such as failure to design and implement a company-wide risk management framework and a have strategic plan to ensure that future uncertainties are mitigated against and a clear direction for strategic actions is documented and pursued. There is ethical risk to the company which could involve items such as the failure to have high ethical standards across the business, and obtaining contracts via unethical means (Cooke, 1991). Also, there is now environmental risk to the company depending on the nature of its business, where it operates business, and how it disposes of its by-products and waste materials. Research must,

⁴⁷ Risks recognized by key financial laws (Financial Services Commission and Bank of Jamaica) for which the corporation must make certain specific disclosures periodically and usually in their Annual Reports.

therefore, be directed towards exploring how these emerging risks are impacting company bottom-line by considering the cost versus benefit implications.

9.5 EPILOGUE

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

One lesson learned from the Jamaican financial crisis is that poor CG can create huge liabilities for both individual companies and society. Foreign Direct Investment (FDI), part of the overall flow of private finance worldwide, has grown especially important in globalisation. Money flowing into stock markets and other short-term equity investments is significant, but recent experiences of the Jamaican financial crisis and elsewhere have shown that such flows can reverse quickly and easily, with devastating effect.

To meet the urgent demand of convergence and capital investments, Jamaican firms must first embrace and conform with international financial reporting standards, specifically, and corporate governance Best Practices, in particular. They must be transformed, not just dressed up a bit.

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

Therefore, the way forward must see all stakeholder groups joining forces—private sector, regulators, watchdog groups, the legal framework, institutional investors, academics, and others. They must design strategies, establish timelines and put a realistic programme of activities on the road. At least there is some initiation in Jamaica through the PSOJ, and as recently as September 2003, with the first Caribbean CG Forum.

Finally, for an institution to survive, compete effectively, and be profitable in the newly converging global financial architecture, its corporate Directors must take responsibility for their own CG. Information on their CG must be readily available to investors, shareholders, consumers, and others, even if regulatory bodies have not required such disclosures.

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APPENDICES

APPENDIX 1: COMPANIES AFFECTED BY THE FINANCIAL SECTOR MELTDOWN OF THE 1990s*

Union Bank of Jam. Ltd.	NCB Group Ltd.	Corporate Group Ltd.	Dyoll Group Ltd.	Eagle Holdings & Invest.	Eagle Premium Growth Fund.	Fidelity Finance Bank	Horizon Group Ltd.	Island Life In. Ltd.	Life of Jamaica	Jamaica Mutual Life Assurance Ltd.	Caldon Finance Group	CNB Holdings Ltd.	Other Companies
Citizen Bank Jamaica. Merged with UBJ. Citizens Asset Mgt. Citizens Bank (Guyana). Citizens Building Society. Citizens Fin. & Ins. Agency. Citizens Merchant Bank. Doncaster Holdings Consulting Services. IFCOL Leasing Ltd. Jamaica Citizens Invest .Ltd. Odessa Services Ltd. World Trade Services Corp.	Caribbean Home Ins Co. Jamaica Orange Co. Ltd Egnaro Ltd. Carp Corp. Cherry Brook Club Ja. Beach Resort Ltd. Computer Services & Prog. Ltd. Glen Abbey Ltd. Mamee Bay Resort Ltd. Mutual Securities Ins. Broker Ltd. NCB Hotels Ltd Epsom Holding. NCB Trust & Merchant Bank. Securicor (Ja) Noxid Ltd. National Mutual Invest.Ltd. NCB(Ja.) Ltd. Edward Gayle & Co. Ltd. Data Cap. Processing Ltd. NCB Nominees. Omni Ins. Ltd NCB (Cayman). West Indies Trust. NCB Investment Pembrook Hotel Enterprise Ltd. Zentor Ltd.	Friends Group Ardene Ltd. Hambro Holdings Ltd. Negril Invest.Ltd Negril Negril Holdings. CMB Invest. Continental Imp/Exp Ltd. Corp. Ins. Brokers Ltd. Corp. Life Ins. Co. Ltd. Corp. Money Markets Ltd. Formidable. Workers S&L Bank. Workers Bank Cap. Fin.Ltd. Workers Bank Fin &Inv.(UK) Corporate Merchant Bank Consumer Brands. Island Broadcasting Service Ltd. Cap. Assurance Building Soc. CABS Investment	Dyoll Insuran Co. Ltd. Dyoll Life Ins. Co.Ltd. Dyoll/Wataru Coffee. Co. Ltd. Dyoll Carib. Financial Service Ltd. Buck Securities Partners Ltd. Buck Mgt. Buck Securities Merchant Bank Ltd. Caribbean National Group Ltd. Cayman Financial Services Cayman Ins. Centre. National Building Society of Cayman Ltd. Caribbean Trust & Merchant Bank Ltd. New Seville Dev. Ltd.	Eagle Housing Dev. Corp. Eagle Info Systems Ltd. Eagles Ins Brokers Ltd. Eagle Trade Serv. Ltd. First Equity Corp of Florida. Flexnon Ltd. Hillhaven Ltd. Martins Travel Service. Martins Holiday Ltd. Martins Coach & Car. Number Sixty Ltd. Oakville Ltd. Optima Invest. Mgt. Paul Chen Young & Ass. Ltd. Peninsular Ltd. Top rated Holdings Ltd. Cinchona Heights Ltd. Innswood Distilleries. Jamaica Fruit & Shipping Co. Ltd. Old England Coffee Billy Dunn Dev. Corp. Country Inns by LRI. First Capital Advisory Corp. USA. Daru Investments Ltd. Cayman. Barnett Holdings. Luxury Resorts Intl. Luxury Resorts Enterprises Ltd. Pier 1 Dev. Corp. Ltd. Forte Belle Mgt Ltd. Eagle Permanent Building Ltd. Eagle Trust Co. Ltd. Eagle G-7 Mexico Fund (Cayman) Eagle Fund Mgt (Cayman). EBH Invest. Corp (USA)	Eagle Merchant Bank Eagle Commercial Bank Eagle General Ins. Co. Eagle Holdings (Cayman) Ltd. Eagle Ins. Co. (Cayman) Ltd. Eagle Merchant Bank (Cayman) Ltd. Eagle Invest.& Securities (USA). Genco Trading Co.Ltd. West Coast Holding Crown Eagle Hotels Woodpecker Ltd. Eagle Foundation for Enterprise. Crowne Plaza Holdings Trumpton Ltd. Coolit Ltd. Ciboney Group Ltd. Ciboney Hotel Developers Ltd. Ciboney Hotels Ltd. Ciboney Colony Mgt. Ciboney Holdings Ltd. Ciboney Inv. Ltd. Ciboney Ocho Rios Ltd. Sun Island Resorts Ltd. Ciboney Proprietors Radisson Ciboney Resorts Ltd. Ciboney Apt .Ltd Ciboney Caribbean Resorts Ltd. Eagle Nominees Ltd. Eagle Unit Trust Eagle I.R.P Ltd. Ebony View Ltd Exeter Holdings Ltd. Fairfield Dev. Ltd. Hospitalities Inns of Ja. Leisure Operators Ltd.	Fidelity Invest. Ltd.	Dolphin Distributors Horizon Building Society. Horizon Consulting Services Ltd. Horizon Dev. Co. Ltd Horizon Financial Services. Horizon Ins. Brokers Ltd. Horizon Life Ins. Ltd. Horizon Merchant Bank Ltd. Horizon Securities Horizon Trade Services. Horizon Venture Capital Ltd. Kematics Worldwide Ltd. CPMS. Rent-A-Car (1994) Ltd. Sun Invest & Finance Ltd Swift Chemicals Ltd.	Island Life Merchant Bank Ltd. Cherry Gardens Home Ltd. Island Resource Ltd. Island Victoria Bank Ltd.	Atlantic Southern Ins. Co. Ltd. Global Bahamas Holding Ltd. Global Life Assurance Bahamas Ltd. Global Life Assurance Co. Ltd. Hitek Software Engineers Lested Dev. LOJ Property Mgt. Co. LOJ Pooled Invest. Funds St .Andrew Developer Health Corp. of Jamaica. CIBC Jamaica Ltd. CIBC Building Society. CIBC Trust & Merchant Bank Ltd.	N.E.M Ins Ltd. Restaurants Ass. Jamaica Unit Trust. Kingston Restoration Ltd. Independent Radio Spring Vale Banana Farms Ltd. 866 Realty Inc. Bloody Bay Hotel Development. Commercial & Residential Dev. Dural Dev. Halsbury Ltd. International Hotels Ltd. Int'l Hotels (St.Lucia) Ltd. Intl Hotels Ltd Ja. Hotel Properties Assoc. Ja. Hotels Ltd. Ja. Housing Dev. Ja. M&S Invest. Ja. Mutual Inc. Ja. Mutual Pension Fund. Ja. Mutual Properties Ltd. Mutual Life (Cayman). Mutual Life (Belize). Mutual Life Turks & Caicos. Ja. Mutual Holdngs. Consort Manufacturing Ltd. Mutual Services Caribbean (UK).	Caldon Finance Merchant Bank Ltd.	Century Commercial Bank Ltd. Century Merchant Bank Ltd. Century Building Society. Century National Development Ltd.	Inter Continental Merchant Bank Ltd. Partner Merchant Bank Ltd Billy Craig Finance Merchant Bank Ltd. Refinance Trust Ltd. Recon Trust Ltd. Renovation Ltd Tisane Ltd.

Source: Mr. Ian Tomlinson, Managing Director of Business Recovery Services Limited (BRSL), Kingston, Jamaica

**APPENDIX #2:
INTERVIEWER'S ADMINISTERED QUESTIONNAIRE SURVEY**

Section 2: Ownership and Control

Q.1	What is the dominant ownership structure of your company? (Select those applicable to your company)	1. Publicly-held 2. Family dominated management -listed 3. Foreign-owned subsidiary - listed 4. Foreign-owned subsidiary –not listed 5. Private-Multi-partners 6. Private-family dominated management 7. Other_____
Q.2	What is the percentage of registered shares owned by common shareholders of your company?	_____ %
Q.3	Who are the 10 largest shareholders if your company is publicly-listed?	Provide a copy of annual report if this information is therein.
Q.4	Is there an employee share-ownership plan?	Yes No
Q.5	What is the stake of members of the ESOP of the common shares of your company (exclude executive directors)?	_____ %
Q.6	Is there an employee representative on your board?	Yes No
Q.8	Is your company unionized?	Yes No
Q.9	Is there a union representative on your board?	Yes No
Q. 10	To what Industry is your company most closely associated? Please indicate the one representative of your firm. If our firm represents a multiple of the choices then select the relevant ones.	1. Agriculture (A) 2. Banking (B) 3. Non-bank finance firms (NB) 4. Retail (R) 5. Distribution (D) 6. Real Estate (RE) 7. Consulting Services (CS) 8. Hospitality (H) 9. Services: (state)_____ 10. Manufacturing: (M) Chemical (C) Energy (E) Construction materials (CM) 11. Educational Training (ET) 12. Other_____

Section 2: Board Practices, Composition and Characteristics

Q.11	What is the total number of directors comprising your board?	
Q.12	What is the number of executive directors comprising your board?	
Q.13	What is the number of non-executive directors comprising your board?	
Q.14	What is the number of non-executive directors who are independent, comprising your board?	
Q.15	What is the average age of non-executive directors?	
Q.16	What is the age of the oldest non-executive director?	
Q.17	What is the age of the youngest non-executive director?	
Q.18	What is the retirement age of non-executive directors, if applicable?	
	What is the average number of year service given by your current non-executive directors?	

Q.19	core, to date?		
Q.20	What is the average age of all executive directors?		
Q.21	What is the age of the oldest executive director?		
Q.22	What is the age of the youngest executive director?		
Q.23	What is the average year of service given by your executive directors, to date?		
Q.24	Please tick where applicable (✓) Does your board comprise of any foreign non-executive director?	<u>Yes</u>	<u>No</u>
Q.25	If Q.24 is yes, how many? _____		
Q.26	Is there an executive chairman of the board?		
Q.27	Is there a deputy executive chairman?		
Q.28	Is there an appointed lead non-executive director on the board?		
Q.29	Are there female directors on the board?		
Q.30	If Q.29 is yes, how many?		
Q.31	How many in Q. 30 are non-executives?		
Q.32	Do non-executive directors provide any transferable expertise or skill to the board?	<u>Yes</u>	<u>No</u>
Q.33	What is the average annual compensation a non-executive director receives for board duties in your company?		
Q.34	Is there a stock/share option plan for non-executive directors of your board?	<u>Yes</u>	<u>No</u>
Q. 35	Please indicate the board committees found in your organisation, and indicate beside each, the size? 1. Audit (A) _____ 2. Remuneration (R) or Compensation (C) _____ 3. A & R combined _____ 4. Nomination (N) or Selection(S) _____	5. Corporate Governance (CG) _____ 6. Succession Planning (SP) _____ 7. Risk Management (RM) _____ 8. Research & Development (R &D) _____ 9. Corporate, Regulatory & Social _____ 10. Others (indicate):	
Q. 36	Please indicate the number of non-executive directors on each of the following committees, if applicable to the board: 1. Audit (A) _____ 2. Remuneration (R) or Compensation (C) _____	3. A & R combined _____ 4. Succession Planning (SP) _____ 5. Nomination (N) or Selection(S) _____	
Q.37	Are younger managers (executives or non-executives who would not normally attend regular board meetings) allowed to make presentations to the board, regarding strategic issues or projects?	<u>Yes</u>	<u>No</u>
Q. 38	Is there a formal system in place for evaluation of director performance (including the Chairman and/or CEO)?		
Q.39	Is formal training provided for new Directors?		

Q.40	What is the average time in advance of board meetings, that board papers are distributed to members?	(In weeks)	
Q.41	What is the average time prior to an AGM are proxy forms for voting distributed to shareholders?	(In weeks)	
Q.42	What is the average annual number of board meetings convened in the last three financial years?		
Q.43	What are the criteria used in selecting non-executive directors? 1. Elected by shareholders at AGM 2. Nominated by CEO or Chairman or other members, appointed by the Board subject re-election by shareholders at AGM. 3. Nomination Committee 4. Self-appointed director 4. Nominated by a shareholder 5. Other		
Q.44	Is there a limit on how many times a board member can be elected (in terms of number of elections or number of years on board?)	<u>Yes</u>	<u>No</u>
Q.45	Are you or other members of the board aware of any corporate governance best practices?	<u>Yes</u>	<u>No</u>
Q.46	If Q.45 is yes, what are those governance best practices? 1. _____ 2. _____ 3. _____ 4. _____		
Q. 47	Has the board developed or presided over the development and implementation of any corporate governance practices voluntarily?	<u>Yes</u>	<u>No</u>
Q.48	If Q.47 is yes, what are those practices? 1. _____ 2. _____ 3. _____ 4. _____		
<u>SECTION THREE</u>			
BOARD'S ROLE IN STRATEGY			
Q. 49	What do you think should be the level of involvement of your board, in the strategic direction of the organization? 1-Very involved; 2-Moderately involved; 3-Marginally involved; 4- Should not be involved at all		
Q. 50	Is there a clear statement of the company's overall mission and vision?	<u>Yes</u>	<u>No</u>
Q. 51	If the answer in Q. 50 is yes, who is actually responsible for creating this vision and mission? 1. Exclusively the board 2. Mostly the board 3. Evenly divided between board and management 4. Mostly management 5. Other: (please state):		
Q. 52	Do you have a strategic planning committee?	<u>Yes</u>	<u>No</u>

Q. 53	Does the board spend time debating the firm's objectives and strategies, and measuring performance against them?		
Q. 54	Does the board actually play a role in strategy?		
Q. 55	How would you position the board's involvement in strategy? 1. Exclusively the board 2. Mostly the board 3. Evenly divided between board and management 4. Mostly management 5. Other: (Please state):		
Q. 56	What role does the board actually play in strategy? Please tick (✓) where applicable.		
		<u>Yes</u>	<u>No</u>
	1. Development of corporate vision	<input type="checkbox"/>	<input type="checkbox"/>
	2. Ratify and sign off on strategy after it is developed by management	<input type="checkbox"/>	<input type="checkbox"/>
	3. Direct and guide the strategic planning process	<input type="checkbox"/>	<input type="checkbox"/>
	4. Responsibility for monitoring the health of the Firm	<input type="checkbox"/>	<input type="checkbox"/>
	5. Hire, appraise and fire the CEO	<input type="checkbox"/>	<input type="checkbox"/>
	6. Converse with shareholders/stakeholders (responsible for corporate communications or corporate governance relations).	<input type="checkbox"/>	<input type="checkbox"/>
	7. Ensure corporate renewal	<input type="checkbox"/>	<input type="checkbox"/>
	8. Responsible for ethical framework	<input type="checkbox"/>	<input type="checkbox"/>
	9. Review and monitor corporate social responsibility policy, if applicable	<input type="checkbox"/>	<input type="checkbox"/>
	10. Ensure corporate survival	<input type="checkbox"/>	<input type="checkbox"/>
	11. Lead strategic change	<input type="checkbox"/>	<input type="checkbox"/>
	12. Act as ambassadors for the firm	<input type="checkbox"/>	<input type="checkbox"/>
	13. Interpret and advise management about current and forthcoming legislation	<input type="checkbox"/>	<input type="checkbox"/>
	14. Boundary spanning (through director interlocking)	<input type="checkbox"/>	<input type="checkbox"/>
Q.57	How would you position the non-executive directors' involvement in strategy? 1. The ones mostly involved 2. Marginally involved 3. Never involved 4. Executives and non-executive directors equally involved 5. Hard to determine if non-executive directors are involved		
Q.58	How would you rank on a scale of 1 – 5, the mode of strategic involvement of the board? 1 -Non-involvement; 2 - Marginally involved; 3 - Average involvement; 4 -Fairly strong involvement; 5 - Very strong involvement.		

		(Please circle where applicable)				
	Discuss strategy	1	2	3	4	5
	Approve strategy	1	2	3	4	5
	Ratify strategy	1	2	3	4	5
	Decision-making	1	2	3	4	5
	Monitor strategic plan	1	2	3	4	5
	Guide strategic planning process	1	2	3	4	5
	Help formulate strategy	1	2	3	4	5
	Define strategic framework	1	2	3	4	5
Q.59	What is a good estimate of board meeting time spent on strategy issues?	1. < 10% 2. 10-25% 3. 26-50% 4. 51-75% 5. 76-100%				

GENERAL

	<p>As a follow up to this researcher-designed questionnaire, a more in-depth approach involving 'boards-in-action' observation might be necessary.</p> <p>Would you or your board allow a corporate governance researcher to observe at least three consecutive board meetings or selected sittings on board committees, as a follow up to this preliminary survey instrument? Yes _____ No _____.</p> <p>If the answer is no, do you care to state you or your board's objection?</p> <p>_____</p> <p style="text-align: right;">Yes No</p> <p>Would you like a copy of the summarized findings of this study? <input type="checkbox"/> <input type="checkbox"/></p>
--	--

Position of Interviewee:

Could you please provide an Email address (if possible): _____

Thank you very much for you time and for making this interview possible.

**APPENDIX #3A:
INSTITUTIONAL INVESTORS AND INTERVIEW QUESTIONNAIRE**

Name	Company	Asset Under Management (US\$) Million
Professor Gordon Shirley	National Insurance Fund	730.0
Rita Humphries Lewin	Barita Investment Limited/Barita Unit Trust	124.0
David Wan	Victoria Mutual Investment Limited	112.4
Donald Barrett/Anna Young	Capital and Credit Securities Limited	36.0
National Capital Markets/WITCO Pension Fund	Mureth Rhone	804.0
Wayne Wray	First Global Securities Limited	483.15
Leo Williams	JMMB Securities Limited	79.0
Carlene Barrett/Rema Spence Dunn	Grace Pension Fund	213.5
	Total	US\$2.6 billion.

**APPENDIX 3B:
INSTITUTIONAL INVESTOR QUESTIONNAIRE**

1. Name of Fund (Company) _____
2. Total Asset under management _____
3. Shareholders' Equity _____
4. Approximate annual average return on investment (percentage) _____
5. What are the top five industry sectors representing your fund investment portfolio? Please state beside each the percentage of your portfolio invested in the respective sectors:
 - I. _____
 - II. _____
 - III. _____
 - IV. _____
 - V. _____
6. Are you guided by established investment criteria on which you rely to make investment decisions?
Yes ____ No ____.
7. If yes above, what are these criteria? _____
8. Do you have a set of established corporate governance guidelines that you use to determine in which company you invest? Yes ____ No ____
9. If above is no, why not? _____

10. If answer to question 8 is yes, could you please provide a set of these CG guidelines?
11. Do you request of your 'investee' companies that they provide you with corporate governance guidelines. Yes _____ No _____.
12. If no in question 11, why not? _____
13. Would a firm's corporate governance practices influence your decision to invest in it?
- (1.) Not important at all (2.) Of little importance (3.) Of significant importance
14. Would you be interested, at all, in influencing the corporate governance practices of the companies in which you invest? Yes _____ No _____.
15. If no, why? _____
16. Do you have an internal audit committee? Yes _____ No _____
17. If 16 is yes, who comprise the committee? Total size _____ Number of outside directors _____ Number of inside directors _____.
18. In question 16, is the Chairman a non-executive director? Yes _____ No _____.
19. How many members constitute your board? _____
20. How many non-executive directors versus executive directors constitute your board? Non-executives _____ Executives _____
21. Do you have an independent Compensation Committee? Yes _____ No _____.
22. If no, who determine the compensation of your executives, including the CEO? _____
23. Do you have an established system of communicating to stakeholders? Yes _____ No _____.
24. If yes in 23, how? _____
25. Do you think Jamaican institutional investors, generally, see corporate governance as important in the way they do business? Yes _____ No _____

Please indicate yes or no as to whether you would like a copy of the analysed data and information of this study.

Yes, I would like a copy _____ No, you may not send me a copy _____.

Send to: _____ (Name) _____

(E-mail address). _____

APPENDIX 3C

Regulation and Corruption (Chapter 5)

1. What is the nature of the regulatory framework in Jamaica?
2. What are some of the relevant CG legislations?
3. How helpful or inimical have these legislation been to curbing corruption and CG misdeeds?
4. Are there evidences of failing regulatory framework in Jamaica?
5. If Q.4 is so, what are they and to what extent have they impacted good or bad CG?
6. Are there important lessons to be learnt?
7. Why is corruption a problem in Jamaica, if at all?
8. What are the perceptions and causes of corruption in Jamaica?
9. Are there cases of perception and incidences of corporate and political corruption in Jamaica?
10. What anticorruption measures have been employed in Jamaica, if any?
11. In question 10, have these measures worked?

Corporate Governance Structural Issues (Chapter 6)

a. Ownership and Control

1. What is the dominant ownership structure of your Company?
2. Does ownership and control impact, if at all, board composition and leadership?
3. To what extent, if at all, does ownership structure influence the adaption of modern CG best practices?
4. If item 3, is in the affirmative, is there a preference for or bias towards rule-based governance practices versus volunteered mechanisms such as Cadbury Code (comply compare and explain)?
5. Is the current structure of ownership concentration (assuming this is the case), a threat to CG in Jamaica?

b. The Nature and Role Stakeholder Relations (Representation)

1. Why is stakeholder relation (or representation) an important issue in this study?
2. What are the identities of an organization's stakeholders and what is the basis for their legitimacy?
3. What is the nature of stakeholder relations in Jamaica, i.e. "Cause and Effect".
4. What is the prevalence of trade union presence in Jamaican companies?
5. What is the extent of, if any, is of trade union representation on corporate boards in Jamaica?
6. Is there employee representation on Jamaican boards?

c. Perceptions and Role of Institutional Investors (IIs)

1. Who are the key IIs in Jamaica?
2. Are there preconditions or criteria on which these IIs rely to make investment decisions?
3. Are IIs guided by CG guidelines of investee Companies?
4. If so in Q.3, what are they?
5. Do IIs require investee Companies to provide CG guidelines as preconditions?

6. Would IIs be interested in influencing CG practices of investee Companies?
 7. What is the general feeling of IIs about the level of development of CG government in Jamaica?
- a. *Board Characteristics and Processes*
1. Board Size
 - a. What is the average size of Jamaican boards?
 - b. Why is board size and important issue in CG?
 2. Chairman/ CEO Duality of Separation
 - a. What is your view on one person holding the positions of Chairman and CEO?
 - b. Do you think the positions should be separated? If so, elaborate?
 - c. Are there problems with the current duality in Companies in Jamaica?
 3. NEDs vs. Executive Directors, and Director Selection
 - a. What is the ratio of NEDs to executive Directors on Jamaican boards?
 - b. Do you think a balance between non-executive and executive directors is important in board composition?
 - c. How are directors selected for Jamaican boards?
 - d. Why should director selection matters?
 4. Board Committees and Composition
 - a. What are the committees of your board?
 - b. Why is the composition of these board committees (NED vs. Executives and independent) important?
 - c. Does the presence and composition of committees contribute to the overall performance of the board?
 5. Director Tenure
 - a. What is the average number of years served by both NEDs and executive directors on your board?
 - b. Why is tenure an actual or potential problem in Jamaica, and elsewhere, if at all?
 - c. Does tenure have any influence on board effectiveness?
 6. Gender and Inequality Issues
 - a. What is the number of women present on your board?
 - b. Why should there be an advocacy, if at all, for women to be nominated to corporate boards?
 - c. Is it just a matter of equality or are there are possible other problems that can arise with the absence of women on these boards?
 7. Frequency of Board Meetings, Timing of Board Papers and Proxy Forms
 - a. What is the timing of delivery of board papers before board meetings, and proxy forms before AGMs?
 - b. How important is timeliness of delivery of these documents?
 - c. How would lateness or non-delivery of these papers affect board dynamics and Company shareholder relations, if at all?
 8. Board Performance Evaluation and Training

- a. How prevalent is the practice of evaluating board performance in Jamaica?
- b. To what extent could mandatory training benefit corporate bottom-line?

b. Board's Role in Firm's Strategic Decision-Making

1. Is there a Statement on your Companies Company's Vision and Mission?
2. Who is responsible for creating Vision and Mission Statements in your Company?
3. What do you think should be the level of involvement of your board in strategic decision-making in your organisation?
4. What role does the board actually play in strategic decision-making, if at all?
5. How do you perceived the role of the board in the strategic direction of the Company?

c. Nature and Role of Corporate Disclosure

1. What is the nature of corporate disclosure practices in Jamaica?
2. Why is it important now more than ever?
3. What are the downsides to corporate disclosure?

**APPENDIX 4A:
LIST OF CASE STUDY INTERNAL AND EXTERNAL PARTICIPANTS**

Name	Position	Organization
Douglas Orane	Chairman & CEO	GraceKennedy Limited
Ted Alexander	Former Director and now Head of IT	GraceKennedy Limited
Adrian Wallace (since deceased)	Former Director & Pension Fund Trustee	GraceKennedy Limited
Rafael Diaz	Former Chairman & CEO	GraceKennedy Limited
Christopher Bovell	Lead Directors	GraceKennedy Limited
Gordon Shirley	NED, Chairman of Compensation Committee	GraceKennedy Limited
Byron Ward	Corporate Secretary	Jamaica National Building Society
Janice Henlin	Marketing Manager	Jamaica National Building Society
Maxine Laidlaw Wong	Accountant	Jamaica National Building Society
Ryland Campbell	Chairman & CEO	Capital & Credit Financial Group
Curtis Martin	President & CEO	Capital & Credit Merchant Bank
Ruth Walters	Senior Secretary	Capital & Credit Merchant Bank
Suzette Hemmings	Vice President, Risk Management & Compliance	Capital & Credit Merchant Bank
Anna Young	Company Secretary	Capital & Credit Merchant Bank
Claudine Douglas	Office Clerk	Capital and Credit Merchant Bank

External Participants

Name	Position	Organsation
Greta Bogues	CEO	Private Sector Organization of Jamaica
Garth Kiddoe	President	Institute of Chartered Accountants of Jamaica
Marcia Brian	CEO	Jamaica Chamber of Commerce
Clifford Borough	Independent Radical Minority Shareholder	-----
Gayon Hosin	Deputy Governor	Bank of Jamaica
Noel Shippey	Senior Research Economist	Bank of Jamaica
Elice Douet	Compliance Officer	Bank of Jamaica
George Roper	Deputy Executive Director	Financial Services Commission
Lawrence Crossly	Compliance Officer	Financial Services Commission
Wayne Iton	General Manager	Jamaica Stock Exchange
Neville Ellis	Members Education Office	Jamaica Stock Exchange
Michael Johnson	Research Officer	Jamaica Stock Exchange
Gordon Shirley	Chairman	National Insurance Fund
Dwight Richardson	Trustee/Chief Financial Officer	BNS Pension Fund
Adrian Wallace	As Trustee of the Pension Fund	GraceKennedy Pension Fund

**APPENDIX 4B:
OPEN-ENDED INTERVIEW GUIDE FOR CASE COMPANIES,
WATCHDOG GROUPS AND REGULATORY RESPONDENTS**

Case Companies Directors and Executives

1. How many boards all together do you currently sit on?
2. How many times does you board meet annually?
3. What factors influence the structure of your board membership?
4. If you had a choice, would you have a board?
5. If above, is yes, would its membership be the same?
6. Is your board strong enough to say no to you and has that ever happened?
7. Is your board well enough informed to do a good job of picking your successor if you were suddenly "hit by a truck"?
8. Do you seek your board's advice and counsel on important corporate questions
9. before you decide on the answers?
10. Do you keep your board informed on when there are differences of opinion on significant issues within your management team?
11. Would an outside observer of your board meeting conclude that you are an employee?
12. Has the corporation performing its functions under the independent oversight of your board.
13. How do you respond to the current debate on the duality of the role of
14. Chairman/CEO?
15. How differently, if at all, is your role as CEO/Chair influencing board decision making process?
16. Do you choose your directors?
17. What is the selection process, if any, like?
18. What board committees do you have?
19. What formal structural mechanism, if any, do you use to justify accountability in your company?
20. How, if at all, has your board structure of accountability been influenced by regulatory or industry-specific compliance measures?
21. What regulations, if any, compel your company to be accountable to all its

- stakeholders?
22. How different (if at all) would have been your business prudence and leadership style were you a minority shareholder?
 23. What is your view on the issue of multiple directorships?
 24. How frequently does your Audit committee meet annually?
 25. What is your certain, or perceived, opinion of the relationship between effective corporate governance and your companies performance?
 26. How has the corporate governance structure of your company helped (if at all) it to influenced performance?
 27. Could you identify a clear link (if there is any) between the two?
 28. How long have you been Chairman/CEO?
 29. Were you ever CEO before becoming chairman?
 30. What led you to have implemented such radical corporate governance innovations in recent years?
 31. How were you able to successfully implement such programme?
 32. You have only recently slashed your board into one-half, why was this necessary, if at all?
 33. How do former directors who were casualties in this restructuring view this move?
 34. How supportive were they?
 35. How did you decide on whom will go versus whom stay?
 36. How would you describe your relationship with other members of your board?
 37. How does the duality of your role as Chairman/CEO affect (if at all) the level of support you receive from your non-executive directors?
 38. Have you to do (if at all) with the selection of directors on your board?
 39. What is your certain (or perceived) opinion of the relationship between effective corporate governance and your companies performance?
 40. How do you think the corporate governance structure of your company has helped (if at all) in influencing performance?

Regulators

1. What institutions do you regulate? _____
2. Are there institutions that are regulated by both _____ and _____ in one way or another?
3. Why the need to regulate?
4. What is the role of the _____ in regulating _____ taking institutions?
5. Why the need to separately regulate deposit taking from investment firms?
6. What are some of the most recent initiatives implemented by your agency with the view to improve accountability and transparency among the institutions it regulates?
7. More specifically, what are those regulations governing who became board directors of companies?
8. To what extent, if at all, does the regulating arm influence the corporate structures of institutions under your jurisdiction?
9. What are some of the limitations of regulations in the context of internal management of these firms; institutional reputation and economic
10. How effective is the process of regulating?
11. How satisfied are you as a regulator with the level of response from those you regulate?
12. Are you satisfied with the way companies are governed in Jamaica?
13. What concerns do you have, if any, about the inclusion or exclusion of critical elements in the recently drafted Company Bill of Jamaica (2001)?
14. Do you believe, if at all, that institutional investors are as influential as they ought to be here in Jamaica?
15. What say you of the future of regulations to achieve greater level of transparency and accountability in Jamaica?
16. How do you think institutional investors could be more influential in achieving good governance among firms?
17. What are some of the Corporate Governance Codes that your agency would have adopted in the last five years, if any?

18. If so, what are the critical elements of this Code?
19. If not, does the your agency have an alternative to the Code?
20. What is the role of the Board of Governors of the Financial Services Commission?

Watchdog Groups

1. What is your role as CEO of _____?
2. How many corporate boards do you sit on and in what organizations are they, any?
3. For how long has been the establishment of the _____?
4. What is the role of the _____?
How influential has been the _____, if at all, in responding to public policy issues?
5. How does the _____ view Jamaican boards today?
6. What is your perception of the level of transparency and accountability as exhibited by Jamaican firms?
7. What evidences, if any, are there to confirm that good governance is lacking (or needed) among Jamaican firms?
8. What are the emerging corporate governance issues of which you are aware, if at all?
9. How does your organization perceive corporate governance issues in relation to Jamaica?
10. What are the corporate governance practices of your organization, if any?
11. Are you satisfied with the way companies are governed in Jamaica?
12. What if any, are the corporate governance intentions of the _____ regard to Jamaica?
13. How influential, if at all, has been the _____ in emerging corporate governance issues in Jamaica?
14. Are you abreast with the inclusion or exclusion of critical elements in the recently drafted Company Bill of Jamaica (2001)?
15. How do you think the persistent corruption (or perceived corruption) in government could be addressed from a corporate governance perspective?
16. Do you believe institutional investors are as influential as they should in influencing the governance of companies in Jamaica?

**APPENDIX 5:
FOCUS GROUP PARTICIPANTS, QUESTIONS AND THE MODERATOR'S GUIDE**

Names Participating Organisations and their Professional Engagements

FOCUS GROUP 2			FOCUS GROUP 1		
Name	Title	Company	Name	Title	Company
Dr. Brian Langrin	Chief Economist	Bank of Jamaica	Ann-Marie Rhoden	Deputy Financial Secretary	Ministry of Finance & the Public Service
Robin Levy	General Manager	Jamaica Stock Exchange Central Depository	Roy Johnson	CEO	Jamaica Stock Exchange
Chris Bovell	Managing Partner	Dunn-Cox – Private Law Firm	Alverly Casserly	Chairman	United Way of Jamaica- Non-profit Organization
Ian Sangster	Executive Chairman	Jamaica Institute of Management	Michael DuQueney	CEO	Central Information Technology Office --SOE
Michael Ramsay	Manager, Consulting Unit	Planning Institute of Jamaica	Sushil Jain	Company Secretary	Seprod Limited -- Publicly-listed Company
Shirley-Ann Eaton	Lecturer in Banking and Financial Regulations	University of the West Indies	Ms. Barbara Ellington	Business Journalist	Printed Media
Leighton McKnight	Partner	International Accounting and Audit Firm	Dr. Henley Morgan	Chairman and Lead Consultant	Caribbean Applied Technology Centre

Questions of Focus Group #1(Appendix 5 Contd.)

Pressures for Corporate Governance Reform:

1. What are the pressures for reform?
2. Who are the major actors exerting these pressures?
3. What are possible reasons for these pressures being exerted?
4. What initiatives might you include in an agenda for reform in Jamaica?
5. Do these initiatives represent a Corporate Governance system compatible with a global compromise/trend?
6. Can the global compromise governance approach be applied in the Jamaican context?

Pressures against Pressures against Reform:

7. What are the pressures against reform?
8. Who are the major actors exerting these pressures?
9. What are possible reasons for these pressures being exerted?
10. What are the advantages of maintaining existing systems in place?
11. In order of your priority, what are the three most important things needed to be done in Jamaica to improve Corporate Governance in the Public Sector?
12. In order of your priority, what are the three most important things needed to be done in Jamaica to improve Corporate Governance in the Private Sector?

Questions for Focus Group # 2 (Appendix 5)

Ownership and Control Patterns

Do you think high ownership (closely held) concentration is a threat to corporate governance development in Jamaica? Justify your response with reasoning.

Chairman/CEO duality versus Separation

What is your view on one person holding the positions of Chairman and CEO? Should they be separated? Justify your answer with reasoning.

Non-Executive versus Executive Directors

Do you think a balance between non-executive and executive directors is important in board composition? Justify your response with reasoning.

Directors' Age and Gender

Do you think Jamaican boards should adopt a policy to specify an age limit for retiring directors?

Would you advocate for a woman to be nominated among the board of directors of every company in Jamaica?

Justify your responses with reasoning.

Board Evaluation and Training

Do you see any merits in evaluating the performance of corporate boards? Justify your response with reasoning.

Nature and Role of Corporate Disclosures

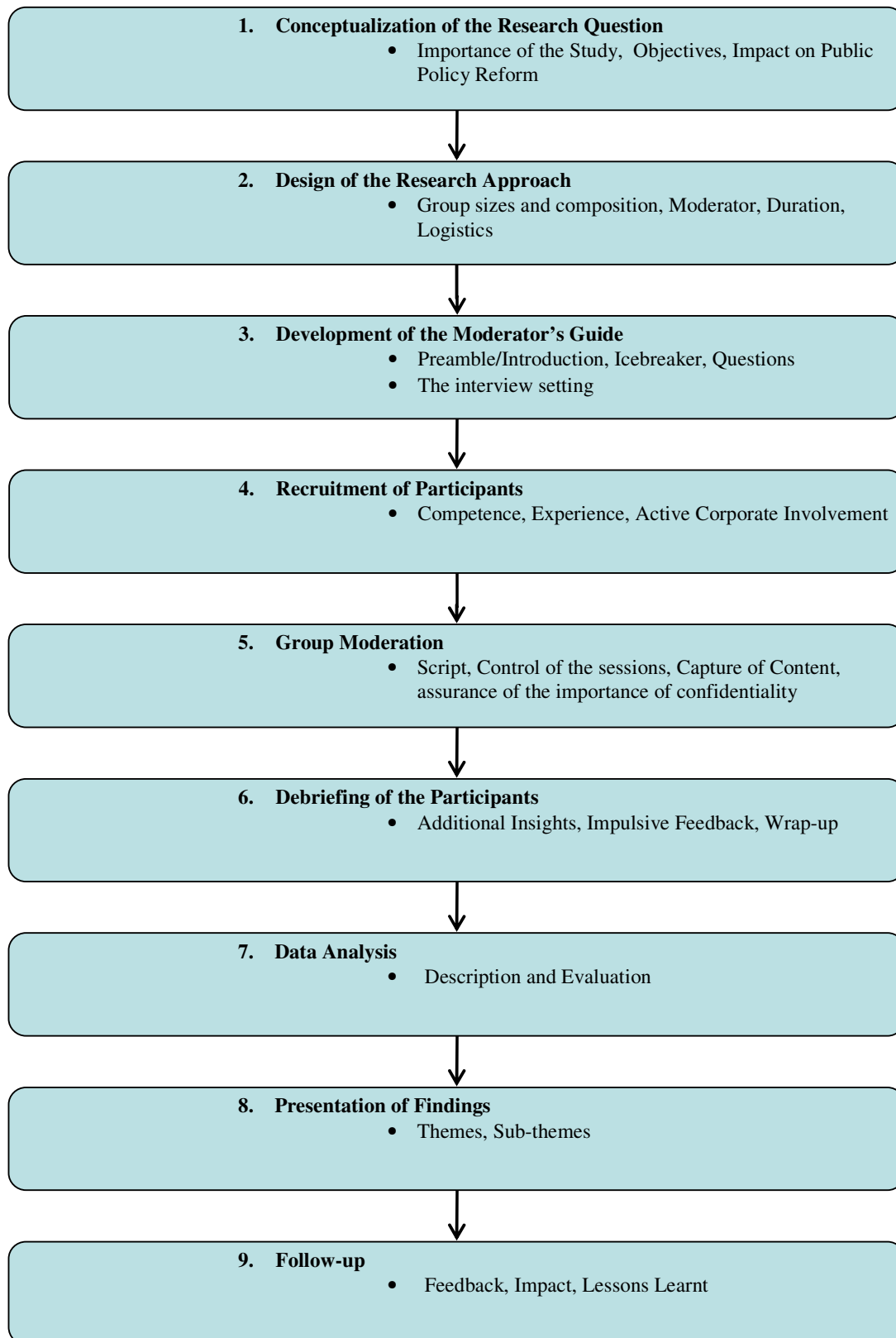
Are you satisfied with the nature (content) of disclosure of information among Jamaican companies? Justify your response with reasoning.

Board's Role in Strategic Decision-making

How do you perceive the role of the Board in the strategic direction of the company?

Background: Traditionally, the Board monitors the CEO and ratify strategic decisions while management initiate and implement strategy.

MODERATORS GUIDE SUMMARIZED (APPENDIX 5 CONTINUED)



APPENDIX 6: CORPORATE GOVERNANCE STRUCTURES

The structures of corporate governance, in any country, can usefully be thought of as comprising key “actors” and formal and informal rules, including generally accepted practices. They include:

- Legislation that gives corporations judicial personality (recognizes their existence as legal “persons” independent of their owners), determines corporate chartering requirements, and limits the liability of the owners of a corporation to the value of their equity in the corporation;
- Legislation on the issuing and trading of corporate equity and debt securities (including laws on the responsibilities and liabilities of both securities issuers and market intermediaries and liabilities such as brokers and brokerage firms, accounting firms and investment advisors);
- A government body (“securities commission”) empowered to regulate the issuing and trading of corporate securities with the means to monitor and enforce compliance with securities laws;
- Stock-exchange listing requirements (conditions corporations must meet to be allowed to list and trade their shares on the exchange);
- A judiciary system with sufficient political independence and the investigative as well as judicial powers and the resources required to make and enforce, without excessive delay, informed and impartial judgments;
- Professional associations or “guilds” (such as those of accountants, stock brokers, institute of directors) that contribute, for example, through membership licensing, information sharing, peer pressure – to the definition and maintenance of professional conduct in their field;
- Business associations and chambers of commerce and other private sector organizations that, in a similar fashion, use formal and informal means to influence members’ thinking on and behaviour with respect to acceptable business practices;
- Other private and public monitors of corporate and securities-market participants’ (notably pension funds and other institutional investors, rating agencies, financial media, etc.)

In addition to these corporate governance “actors” (including the body or bodies that enact relevant legislation), four broad categories of laws, regulations, other formal and informal rules and generally accepted practices are important: those that concern corporate oversight and control (ownership and control issues), those that concern the role of regulations (laws and rules—enforced governance) and self-regulation (volunteered governance), the role of Stakeholding, the role and importance of institutional investors in corporate governance and the influences and impact of corruption on both corporate and political governance systems. The former group notably includes rules and acceptable practices with respect to: 1.) shareholder voting rights and procedures (including those that are especially important for the protection of minority shareholder rights *vis-à-vis* dominant shareholders as well as *vis-à-vis* management, such as cumulative rights and other “so-called” anti-director rights⁴⁸); 2.) the duties, powers and liabilities of corporate directors (boards and individual directors, including definition of what constitutes an “independent” director and requirements on board composition and on the constitution of board committees on audit, the nomination of directors and remuneration of directors and top executives); 3.), proscription of self-dealing by corporate insiders (whether self-dealing occurs via related-party transactions⁴⁹ or tunnelling⁵⁰ or takes the form of insider trading⁵¹); 4.), stock-tendering

⁴⁸ “**Anti-director rights**” is the expression used by La Porta et al to refer to six key shareholders rights: the right to mail their proxy vote to the firm; to participate in the General Shareholders’ Meeting without having previously deposited their shares with the company; to benefit from cumulative voting or proportional representation of minorities in the board of directors; to benefit from the existence of an oppressed minorities mechanism; to hold an Extraordinary Shareholders’ Meeting if it is called for by a minimum of no more than 10% of share capital; and to pre-emptive rights to new issues that can only be waived by a shareholder’s vote (cf. Oman 1999, citing R. La Porta, F. Lopez-de Salines, A. Shleifer and R. Vishny, “Law and Finance” in the Journal of Political Economy, 106, 1998).

⁴⁹ **Related party transactions** are business dealing between a corporation and one or more other firms, or one or more individuals outside the corporation, with which (whom) one or more corporate insiders has a personal (often family)

requirements (notably to protect small shareholders in the context of a corporate merger, acquisition or privatization)⁵²; 5.) and Judicial recourse for shareholders *vis-à-vis* managers and directors (derivative suits, class-action suits⁵³).

**APPENDIX 7:
OECD KEY PRINCIPLES OF CORPORATE GOVERNANCE (2004)**

PRINCIPLES	Explanation
I. Ensuring the Basis for an Effective Corporate Governance Framework	The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory, and enforcement authorities.
II. The Rights of Shareholders and Key Ownership Functions	The corporate governance framework should protect and facilitate the exercise of shareholders' rights.
III. The Equitable Treatment of Shareholders	The Corporate governance framework should ensure 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.
IV. The Role of Stakeholders in Corporate Governance	The Corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financial sound enterprises.
V. Disclosure and Transparency	The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.
VI. The Responsibilities of the Board	The Corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Source: OECD (2004)

relationship. Related party transactions are widely used as a vehicle or self-dealing, although not all related-party transactions involve self-dealing.

⁵⁰ **Tunnelling** is self-dealing that occurs within pyramidal ownership structures when controlling shareholders transfer resources from companies in which they have smaller cash flow rights to companies in which they have larger cash flow rights; it is analogous to asset-stripping. See S. Johnson, R. La Porta, R. Lopez de-Salines and A. Shleifer, "Tunnelling" in the *American Economic Review*, 90, 2000.

⁵¹ **Insider trading** occurs when corporate insiders or others with privileged access to information significantly likely to affect the market value of a company's shares before the information is released to other market participants.

⁵² Particularly important are pre-emptive rights to new issues – sometimes referred to in Brazil as "tag along" rights – included among the "anti-director rights" cited here in note 1.

⁵³ **Derivative suits** allow shareholders to sue corporate directors on behalf of the company itself; class-action suits allow individuals to sue on behalf of an entire class of individuals (e.g. shareholders in a given company).

APPENDIX 8: CADBURY REPORT (1992)

The Cadbury Report recommended a **Code of Best** has now been utilized in a significant way internationally in academia, practice and in influencing corporate governance reform internationally. The main recommendations were as follows.

THE CODE OF BEST PRACTICE

1. The Board of Directors:

- 1.1. The board should meet regularly, retain full and effective control over the company, and monitor the executive management.
- 1.2. There should be a clearly accepted division of responsibilities at the head of a company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the chairman is also the chief executive, it is essential that there should be a strong and independent element on the board, with a recognized senior member.
- 1.3. The board should include non-executive directors of sufficient calibre and number for their views to carry significant weight in the board's decisions.
- 1.4. The board should have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the company is firmly in its hands.
- 1.5. There should be an agreed procedure for directors in the furtherance of their duties to take independent professional advice if necessary, at the company's expense.
- 1.6. All directors should have access to the advice and services of the company secretary, who is responsible to the board for ensuring that board procedures are followed and that applicable rules and regulations are complied with. Any question of the removal of the company secretary should be a matter for the board as a whole.

2. Non-executive Directors:

- 2.1. Non-executive directors should bring an independent judgment to bear on issues of strategy, performance, resources including key appointments, and standards of conduct.
- 2.2. The majority should be independent of management and free from any business or other relationship which could materially interfere with the exercise of their independent judgment, apart from their fees and shareholding. Their fees should reflect the time which they commit to the company.
- 2.3. Non-executive directors should be appointed for specified terms and reappointment should not be automatic.
- 2.4. Non-executive directors should be selected through a formal process and both this process and their appointment should be a matter for the board as a whole.

3. Executive Directors:

- 3.1. Directors' service contracts should not exceed three years without shareholders' approval.
- 3.2. There should be full and clear disclosure of directors' total emoluments and those of the chairman and highest-paid UK director, including pension contributions and stock options. Separate figures should be given for salary and performance-related elements and the basis on which performance is measured should be explained.
- 3.3. Executive directors' pay should be subject to the recommendations of a remuneration committee made up wholly or mainly of non-executive directors.

4. Reporting and Controls:

- 4.1. It is the board's duty to present a balanced and understandable assessment of the company's position.
- 4.2. The board should ensure that an objective and professional relationship is maintained with the auditors.
- 4.3. The board should establish an audit committee of at least three non-executive directors with written terms of reference which deal clearly with its authority and duties.
- 4.4. The directors should explain their responsibility for preparing the accounts next to a statement by the auditors about their reporting responsibilities.
- 4.5. The directors should report on the effectiveness of the company's system of internal control.
- 4.6. The directors should report that the business is going concern, with supporting assumptions or qualifications as necessary.

Source: Cadbury Code (1992)

**APPENDIX 9: INTERVIEWERS' ADMINISTERED SURVEY PARTICIPANT
KEY CHARACTERISTIC FEATURES**

Company (Respondents) Board Composition and Characteristics									
Name of Company	# D	# E D s	# NED s	ID	CEO/ Chair Split	Committees	Board Evaluation/ Appraisal	Formal Training of Directors	Avg. Time Spent on Strategy (%)
1. ALL	8	2	6	6	Yes	A, R/C, N/S, CG, SP, RM, CRS	No	No	-
2. BAR	5	2	3	-	Yes	R/C, RM, R&D, CRS	Yes	No	<10
3. BCJ	7	0	7	3	Yes	A,R/C, RM, CRS, Conduct Review, Finance	No	No	10-25
4. BAN CO	9	4	5	-	Yes	-	No	No	51-75
5. BNS	13	1	12	9	Yes	A, R/C, Pension, Executive	No	Yes	10-25
6. CAP	6	2	4	2	Yes	A, R/C, CG, CRS, RM, Credit & Investment	Yes	No	51-75
7. CAP SEC	11	7	4	4	Yes	A, CG, RM, HR, Marketing	-	-	51-75
8. CCU	13	0	13	13	Yes	A, N/C, SP, RM, Credit, Finance, Supervisory	-	Yes	<10
9. CIBY	6	1	5	5	Yes	-	No	No	10-25
10. CITO	13	0	13	13	Yes	A, R/C	No	No	10-25
11. COU. JA	10	6	4	-	No	A, R/C, CG, SP, RM	No	Yes	26-50
12. CW	9	6	3	3	Yes	A, Contracts	No	No	26-50
13. CW CO-OP	11	0	11	-	Yes	A, N/S, Credit	No	Yes	<10
14. DB&G	9	2	7	4	No	A	No	No	10-25
15. DIL	6	-	6	-	Yes	-	No	No	26-50
16. DYL	9	3	6	5	Yes	A, Finance, IT	Yes	No	10-25
17. FLI	10	5	5	4	No	A	No	No	26-50
18. G Ja.	10	2	8	8	No	R/C, N/S, Finance	No	No	10-25
19. G SHIP	7	3	4	-	Yes	A, R/C	No	No	26-50
20. G&B	8	3	5	5	Yes	A, R, CREDIT	Yes	No	26-50
21. GL	10	1	9	7	Yes	A, R/C, A&R, CG, Conduct Review	No	No	10-25
22. GRA	13	5	8	8	No	A, R/C, CG, RM	Yes	Yes	26-50
23. GS	5	-	5	-	No	A, R/C, CG, RM,	No	No	10-25
24. GY	12	2	10	10	Yes	-	No	No	10-25
25. H & L	10	5	5	2	Yes	A, SP, RM, R&D, CRS, Executive	No	No	10-25
26. ICWI	8	1	7	7	Yes	A, R/C, A&R, CG, Finance & Investment	Yes	Yes	26-50
27. JADF	11	1	10	10	Yes	A, R&D, Finance	No	Yes	10-25
28. JB	12	3	9	4	Yes	A, R/C	No	No	<10
29. JIIC	9	3	6	4	Yes	A, CG, Conduct Review	No	No	26-50
30. JMM	10	3	7	4	Yes	A, R/C, RM	Yes	-	10-25
31. JMM SECS.	8	2	6	2	Yes	A, HR	No	No	26-50
32. JAM B	14	1	13	11	Yes	A, R/C, N/S, CG, SP, RM	No	No	26-50
33. J GROW	13	4	9	6	Yes	A, CG, R/C	No	No	26-50
34. JP	15	9	6	-	Yes	N/S, RM, Finance, Delinquency	No	Yes	26-50
35. KEN F	3	3	0	-	No	-	Yes	No	-
36. KFP	7	1	6	1	Yes	-	No	No	51-75
37. KWL	12	1	11	7	Yes	A, CG	No	No	10-25
38. MLI	9	1	8	5	Yes	Pension	Yes	Yes	-
39. MMJ	5	2	3	3	No	R/C, Finance, Personnel	No	No	26-50
40. PAN C	7	3	4	-	Yes	A, R/C	No	No	26-50
41. PEG	10	-	10	4	Yes	R/C, Pension, Union	No	No	51-75
42. PFS	9	2	7	4	Yes	-	No	No	10-25
43. PJI	11	6	5	2	No	A, R/C, RM	No	No	10-25
44. RJ G	10	1	9	9	No	R/C, SP, CRS, Finance	No	No	26-50
45. SAL	5	0	5	2	Yes	-	No	No	51-75
46. SAM	3	2	1	1	No	RM	No	No	10-25
47. SEP	13	1	12	12	Yes	A, Executive	No	No	< 10
48. TVJ	7	2	5	5	Yes	R/C, Finance	No	No	26-50
49. VIC I	8	5	3	3	Yes	Finance	No	-	26-50
50. VIC S	9	1	8	7	Yes	A, N/S, Standing	No	No	10-25

Company (Respondents) Board Composition and Characteristics									
Name of Company	# D	# EDs	# NEDs	ID	CEO/Chair Split	Committees	Board Evaluation/ Appraisal	Formal Training of Directors	Avg. Time Spent on Strategy (%)
Averages	9.1	2.6	6.8	5.6	Yes(39)- 78% No(11)- 22%	3.3 per company	Yes(9)- 19% No(39)- 81% NR-2	Yes(9)- 19% No(38)- 81% NR-3	

Key: D- Director, ED- Executive Directors, NED- Non Executive Directors, N/C- Nomination or Selection, A- Audit, SP- Succession Planning, A&R- Audit & Remuneration, RM-Risk Management, R&D- Research & Development, CRS- Corporate, Regulatory, & Social, CG- Corporate Governance, R/C- Remuneration or Compensation, NR-No Response

APPENDIX 9 (CONTD.): RESPONDENTS KEY CHARACTERISTIC FEATURES

Name of Company	Female Directors	Female NEDs	Foreign NEDs	Avg. age NEDs	Avg. Age EDs	Retirement Age	# of Meetings per year	Compensation
51. ALL	2	-	-	45	-	-	3	270000
52. BAR	3	1	-	50	52	-	na	-
53. BCJ	-	-	2	65	-	-	4	714000
54. BAN CO	-	-	-	60	64	-	11	576000
55. BNS	3	3	3	54	52	-	5	360000
56. CAP	1	1	-	53	51	-	15	417600
57. CAP SEC	1	1	-	53	49	-	11	-
58. CCU	6	6	-	45	-	-	12	172800
59. CIBY	1	-	-	57	58	-	5	81000
60. CITO	2	2	-	40	-	-	10	288000
61. COU. JA	1	-	2	68	48	-	4	198000
62. CW	1	-	-	-	-	-	3	-
63. CW CO-OP	1	1	-	-	-	-	13	-
64. DBG	1	1	-	47	42	-	6	180000
65. DIL	-	-	3	53	-	65	4	144000
66. DYL	1	1	-	50	45	70	11	72000
67. FLI	-	-	-	60	56	-	6	86400
68. G Ja.	2	2	-	46	60	75	11	226800
69. G SHIP	-	-	-	52	48	65	10	-
70. G&B	1	1	1	50	44	-	7	120000
71. GL	-	-	5	60	54	70	12	-
72. GRA	1	1	1	62	51	-	11	1135000
73. GS	1	-	-	45	-	65	8	-
74. GY	2	1	-	60	54	-	12	360000
75. H & L	-	-	-	63	44	-	6	-
76. ICWI	1	1	1	61	68	-	4	240000
77. JADF	2	2	2	-	44	-	12	-
78. JB	1	1	-	57 ¾	50 ½	-	12	288000
79. JIC	2	1	-	50	43	-	4	-
80. JMM	3	3	1	44	40	-	10	225600
81. JMM SECS.	3	3	-	40	40	-	12	172800
82. JAM B	2	2	-	64	44	-	12	244800
83. J GROW	2	2	-	62	59	-	8	112800
84. JP	4	1	-	50	55	-	10	-
85. KEN F	2	-	-	-	43	-	-	-
86. KFP	4	3	-	45	55	75	4	144000
87. KWL	-	-	1	55	51	-	11	252000
88. MLI	1	1	3	50.5	47	-	6	360000
89. MMJ	-	-	-	45	45	-	12	96000
90. PAN C	-	-	-	52	48	66	10	-
91. PEG	2	2	-	55	-	75	5	180000
92. PFS	1	-	-	58	38	-	6	62400
93. PJI	1	1	2	57	55	-	6	86400
94. RJ G	2	2	-	60	62	-	12	96000
95. SAL	1	1	1	44	-	-	12	252000
96. SAM	1	1	-	46	40	-	4	48000
97. SEP	-	-	-	61	63	-	11	156000

Name of Company	Female Directors	Female NEDs	Foreign NEDs	Avg. age NEDs	Avg. Age EDs	Retirement Age	# of Meetings per year	Compensation
98. TV JAM	2	1	-	53	57	-	12	96000
99. VIC I	3	-	-	40	46	65	6	180000
100. VIC S	1	1	-	60	60	-	10	420000
Averages	1.8	1.6	2	53.1	50.6	62.8	8.5	246335.1

Keys:

Foreign NED- Question 24/ Female- Question 29 / Female NE- Question 30/ Compensation- Question 33/ Independent D- Question 14/ Avg. Age NED- Question 15/ Retirement Age- Question 18/ Avg. Age Execs- Question -20/ # of meetings- Q42

APPENDIX 10: STATISTICAL MODEL FOR DATA ANALYSIS

Variable Information for SPSS Applied in Field Data Analysis

Q. #		Variable Type	Variable Labels	Options
SECTION 1				
1.	1.	Num	Dominant Ownership Structure	As is other ⁱⁱⁱ
2.	2.	Num	% registered shares owned by common shareholders	Apply range
	3.	Num	Top 10 Shareholders	Derive options from annual reports provided
3.	4.	Num	Employee Share Ownership Plan	As is
4.	5.	Num	Common Stake of Members in ESOP	Apply range
5.	6.	Num	Employee Representative on Board	As is
	7.	Num		
6.	8.	Num	Unionized Companies	As is
7.	9.	Num	Union Rep on Board	As is
8.	10.	Num	Industry	As is other ^{iv}
SECTION 2				
9.	11.	Num	Number of Directors on Board	7 and less 8-10 11-12 13 and over ^v
10.	12.	Num	Number of Exec. Directors on Board	3 and less 4-5 6-8 9-10
11.	13.	Num	Number of Non-Executive Directors on Board	3 and less 4-6 7-10 11 and above
12.	14.	Num	Independent Non-Executive Directors	2 and less 3-5 >5
13.	15.	Num	Average Age of Non-Executive Directors	29 and less 30-39 40-49 50-65 >65
14.	16.	Num	Age of Oldest Non-Executive Director	49 and less 50-59 >60
15.	17.	Num	Age of Youngest Non-Executive Director	29 and less 30-39

				40-50 49 and less
16.	18.	Num	Retirement Age of Non-Executive Directors	59 and less >60
17.	19.	Num	Average Years of Service of Current Non-Executive Directors	4 and less 5-9 10-14 15-20 21 and over
18.	20.	Num	Average age of Executive Directors	29 and less 30-39 40-49 50-59 >60
19.	21.	Num	Age of Oldest Executive Director	49 and less 50-60 >60
20.	22.	Num	Age of Youngest Executive Director	29 and less 30-39 >40
21.	23.	Num	Average Years of Service of Executive Directors	4 and less 5-9 10-14 15-20 21 and over
22.	24.	Num	Foreign Non-Executive Directors	As is
23.	25.	Num	Average Number of Foreign Executives	2 and less 3 and over
24.	26.	Num	Executive Chairman of the Board	As is
25.	27.	Num	Deputy Executive Chairman	As is
26.	28.	Num	Appointed Lead Non-Executive Chairman	As is
27.	29.	Num	Female Directors	As is
28.	30.	Num	Number of Female Directors	<2 ^{vi} 2 and over
29.	31.	Num	Number of Female Non-Executives	2 and less 3 and over
30.	32.	Num	Non-Executive Transferable Expertise	As is
31.	33.	Num	Average Salary of Non-Executives	<.5M Between .5-99M 1-1.9M >2M
32.	34.	Num	Stock/Share Plane for Non-Executives	As is
33.	35.	Num	Audit Committee on Board	As is
34.		Num	Size of Audit Committee	<4 4 and over
35.		Num	Remuneration/Compensation Committee on Board	As is
36.			Size of Remuneration/Compensation Committee	<4 4 and over
37.		Num	A & R Committee on Board	As is
38.			Size of A & R Committee	<4 4 and over
39.		Num	Nomination/Selection Committee on Board	As is

40.			Size of Nomination/Selection Committee	<4 4 and over
41.		Num	Corporate Governance Committee on Board	As is
42.			Size of Corporate Governance Committee on Board	<4 4 and over
43.		Num	Succession Planning Committee on Board	As is
44.			Size of Succession Planning Committee	<4 4 and over
45.		Num	Risk Management on Board	As is
46.			Size of Risk Management	<4 4 and over
47.		Num	Research and Development of Board	As is
48.			Size of Research and Development Committee	<4 4 and over
49.		Num	Corporate, Regulatory and Social Committee on Board	As is
50.			Size of Corporate, Regulatory and Social Committee	3 and less 4 and over
51.		Num	Others	
52.	36.	Num	Number Non-Executives on Audit Committee	3 and less 3 and over
53.			Number Remuneration/Compensation Committee	3 and less 4 and over
54.			Number Non-Executives on A & R Committee	3 and less 4 and over
55.			Number Non-Executives on Succession Planning Committee	3 and less 4 and over
56.			Number Non-Executives on Nomination/Selection Committee	3 and less 4 and over
57.	37.	Num	Involvement of Non-Board Members in presenting Strategic Recommendations to Board	As is
58.	38.	Num	Formal System for Evaluation of Director Performance	As is
59.	39.	Num	Formal Training for New Directors	As is
60.	40.	Num	Average time for Distribution of Board Papers Prior to Meetings (Weeks)	<1 week 1-2 weeks >3 weeks
61.	41.	Num	Average Time for Distribution of Proxy Forms Prior to AGM (Weeks)	<2 weeks 2-4 weeks 5-8 weeks >8 weeks
62.	42.	Num	Average Annual Number of Board Meetings in Last Three Years	4 5-9 10 and over
63.	43.	Num	Criteria for Selecting Board Members	As is
64.	44.	Num	Limit on Number of Elections or Years on Board	As is
65.	45.	Num	Knowledge of Corporate Governance Best Practices	As is
66.	46.	Num	Most Frequently Known Best Practices	-----
67.	47.		Voluntary Implementation of Corporate Governance Best	As is

			Practices	
68.	48.	Num	Most Frequently Implemented Best Practices	-----
SECTION 3				
69.	49.	Num	Involvement of the Board in Strategic Direction	As is
70.	50.	Num	Company's Mission and Vision Clearly Stated	As is
71.	51.	Num	Who is Responsible for Vision and Mission	As is
72.	52.	Num	Strategic Planning Committee	As is
73.	53.	Num	Examination of Objectives and Strategies and Performance Measurement	As is
74.	54.	Num	Board involvement in strategy	As is
75.	55.	Num	Extent of Board involvement in strategy	As is
76.	56.	Num	Develop Corporate Vision	As is
77.		Num	Ratify Strategy after it is developed by Management	As is
78.		Num	Guide the Strategic Planning Process	As is
79.		Num	Monitor the Health of the Organization	As is
80.		Num	Hire, Appraise and Fire CEO	As is
81.		Num	Undertake Corporate Communication/Governance	As is
82.		Num	Ensure Corporate Renewal	As is
83.		Num	Responsible for Ethical Framework	As is
84.		Num	Review and Monitor Corporate Social Responsibility Policy	As is
85.		Num	Ensure Corporate Survival	As is
86.		Num	Lead Strategic Change	As is
87.		Num	Act as Ambassadors for the Firm	As is
88.		Num	Interpret and Advise Management of Forthcoming Legislation	As is
89.		Num	Boundary Spanning	As is
90.	57.	Num	Non-Executive Directors Involvement in Strategy	As is
91.	58.	Num	Mode of Strategic Involvement of Board in Discussing strategy	As is
92.		Num	Mode of Strategic Involvement of Board in approving strategy	As is
93.		Num	Mode of Strategic Involvement of Board in ratifying strategy	As is
94.		Num	Mode of Strategic Involvement of Board in decision making	As is
95.		Num	Mode of Strategic Involvement of Board in monitoring strategic plan	As is
96.		Num	Mode of Strategic Involvement of Board in guiding strategic planning process	As is
97.		Num	Mode of Strategic Involvement of Board in helping to formulate strategy	As is
98.		Num	Mode of Strategic Involvement of Board in defining strategic framework	As is
99.	59.		Estimate of Board Meeting time	As is

			spent on Strategy	
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Please pay special attention to Variable labels as these are the axis labels in the output.

ⁱ On-site examinations refer to supervisory review activities of actual operations of the licensee carried out at its place of business. The process involves the collection of on-the-spot information that will indicate the current financial condition of an institution and the situation prevailing at its various operational areas/portfolios, verification of financial data already furnished to the Bank of Jamaica, and the review of its compliance with laws, regulations and standards of best practice (BOJ Pamphlet No. 7, October, 2000).

ⁱⁱ Material Information is any information relating to the business and affairs of the company that results in or would reasonably be expected to result in a significant change in the market price or value of any of the company's listed securities. Material information consists of both material facts and material changes relating to the business and affairs of a listed company. In addition to material information, trading on the Exchange is sometimes affected by the existence of rumours and speculation. Where this is the case, the Exchange may require that an announcement be made by the company whether such rumours and speculation are factual or not (Jamaica Stock Exchange Rules, January 2007:8-1).

ⁱⁱⁱ A variable option will be added to the list if that option appears 10% of the time

^{iv} A variable option will be added to the list if that option appears 10% of the time

^v outliers

^{vi} With the ranges it is important to state overall % of sample. E.g. Of the boards sampled less than 5%

APPENDIX 11: PRIVATE SECTOR ORGANISATION OF JAMAICA CORPORATE GOVERNANCE CODE

SECTION 1: COMPANIES

A. DIRECTORS

A.1 The Board

Principle:

Every company should be led by an effective Board, which is collectively responsible for promoting the success of the company by directing and supervising the company's affairs.

A.2 Chairman and Chief Executive

Principle:

The company's constitution should include a clear division of responsibilities at the head of the company between the running of the Board (the Chairman) and the executive responsibility for the running of the company's business (The CEO). No one individual should have unfettered powers of decision.

A.3 Board Balance and independence

Principle:

The Board should include a balance of executive and non-executive directors, such that no individual or small group of individuals can dominate the Board's decision taking. Of the non-executive directors, two thirds of these should be independent non-executive directors. The Chairman should also normally be an independent non-executive director.

A.4 Appointments to the Board

Principle:

There should be a formal, rigorous and transparent procedure for the appointment of directors to the Board.

A.5 Information and Professional development

Principle:

The Board should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties. New directors should receive a comprehensive induction to the company affairs on joining the Board and all directors should continually update and refresh their skills and knowledge.

A.6 Performance Evaluation

Principle:

The Board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors.

A.7 Re-election

Principle:

All directors should be submitted for re-election at regular intervals, subject to continued satisfactory performance. The Board should ensure planned progressive refreshing of the Board.

A.8 Liability of non-executive directors: care, skill and diligence

Principle:

Liability of non-executive directors and executive directors owe the same legal duty of care, diligence and skill to the company.

REMUNERATION

B.1 The Level and Make-up of Remuneration

Principle:

Levels of remuneration of a company's executives and board members should be sufficient to attract and retain and motivate persons of the quality required to run the company successfully. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

B.2 Procedure

Principle:

Companies should establish a formal and transparent procedure for developing policy on executive directors' remuneration and for fixing the remuneration packages of individual executive directors. No executive director should be involved in deciding his or her own remuneration.

B.3 Disclosure

Principle:

The company's annual report should contain a statement of remuneration policy and details of the remuneration of its executives and directors.

C. RELATIONS WITH SHAREHOLDERS

C.1 Dialogue with Institutional Shareholders

Principle:

There should be regular communication between the company and its shareholders based on the mutual understanding of objectives. Whilst recognizing that most shareholders' contact is with the executive directors, the chairman and the Board as a whole should maintain sufficient contact with shareholders to understand their issues and concerns.

C.2 Constructive Use of the AGM

Principle:

Boards should use the AGM as a major opportunity to inform shareholders and investors on the company's affairs and encourage their participation. Boards should ensure that shareholders are provided with sufficient information for the AGM to make well-informed decisions on issues put for voting at the AGM.

D. ACCOUNTABILITY AND AUDIT

D.1 Financial Reporting

Principle:

The Board should ensure that the company provides its shareholders and investors with information that presents a balanced and understandable assessment of the company's financial and business position and prospects.

D.2 Internal Control

Principle: The Board should ensure that a sound system of internal control and risk management is maintained to safeguard shareholders' investment and the company's assets.

D.3 Audit Committee and Auditors

Principle: The Board should establish an Audit Committee. The Board should establish formal, rigorous and transparent arrangements for selecting independent auditors and ensure that the independent auditors make a thorough checking of the company's financial accounts, application of financial reporting standards and efficiency of internal control mechanisms. The Board must maintain an appropriate relationship with the company's auditors.

SECTION 2: INSTITUTIONAL SHAREHOLDERS'

E. INSTITUTIONAL INVESTORS

E.1 Shareholder Voting

Principle: Institutional shareholders have a responsibility to make considered use of their votes.

E.2 Communication with companies

Principle: Institutional shareholders should maintain regular communication with companies based on the mutual understanding of objectives.

E.3 Evaluation of Governance Disclosures

Principle: When evaluating companies' Governance arrangements, particularly those relating to Board structure and composition, transparency and disclosure, institutional investors should give due weight to all relevant factors drawn to their attention.

Source: PSOJ Corporate Governance Code 2006

APPENDIX 12: GLOSSARY OF TERMS

1.7.1 Agency Theory: One party, the principal, delegates work to another party, the agent. In a corporate scenario, the principal is the shareholder and the agent the directors/managers. Agency theory relates to the costs involved in this principal-agent relationship, including the costs of aligning the two sets of interests (Mallin 2007).

1.7.2 Anglo-Saxon Corporate Governance: This refers to systems and practices of corporate governance as currently obtains in countries such as the United States of America, the United Kingdom, Canada, Australia, New Zealand, etc., and known as shareholder corporate governance.

1.7.3 Audit: The process of examination of financial accounts and internal processes by an independent external auditor to determine whether the annual report and accounts have been appropriately prepared and give a true and fair view.

1.7.4 Audit Committee: This committee is a committee of the board and is generally comprised of independent non-executive directors. It is the role of the audit committee to review the scope and outcome of the audit, and to ensure that the objectivity and integrity of the audit process and auditors is maintained.

1.7.5 Auditor Rotation: The audit firm is changed after a number of years in order to help ensure that the independence of the external auditor is preserved. There are disparate views on the effectiveness of auditor rotation. It is still not commonly practiced in commonwealth jurisdictions.

1.7.6 Board Attitude: This is more to do with the approach of each director to his or her responsibility as a member of the board. It includes key elements such as preparation for board meetings, attendance, participation, feedback and the management of absenteeism.

1.7.7 Board Committees: The board of directors may delegate various duties in specific areas to specialized committees such as the audit committee, remuneration committee, nomination committee, and so forth.

1.7.8 Board Composition: This refers to the physical size and characteristics of any given board: number of inside versus outside directors, female to male ratio and stakeholder group representation.

1.7.9 Board Evaluation: Boards should be evaluated annually to determine whether their performances have met the objectives set. The board as a whole, the board sub-committees, individual directors and the Chairman may form the targets for evaluation.

1.7.10 Board Independence: This can be positively influenced by having a majority of outside (non-executive directors) who have no material interest in the company and who bring an objective and independent view.

1.7.11 Board Processes: This refers to such elements as the structure and functionality of board meetings; frequency and duration of meetings and board leadership. This is important to the function of an effective board and involves monitoring the CEO, approving strategic decision making, resource allocation and boundary spanning the influence of critical networks.

1.7.12 Chairman/CEO Duality or Non-duality: Duality in this context refers to the practice of the *Chairman* of a board of a corporation also playing the role of *Chief Executive Officer*. Non-duality refers to the separation of both positions.

1.7.13 Comply or explain: A company should comply with the appropriate corporate governance code but if it cannot comply with any particular aspect of it, then it should explain why it is unable to do so based on Cadbury 1992 recommendations.

1.7.14 Controlling shareholders: Those who have control of the company, although this may be indirectly through their holdings in other entities, and not directly, or through connected parties such as spouses and other close family members.

1.7.15 Corporate Governance: The voluntary and regulated actions of a corporate body in ensuring the highest level of transparency, accountability and probity in its operation. It requires the Board of Directors to operate in a prudent manner to ensure maximum returns to shareholders and its wider stakeholders—society at large.

1.7.16 Corporate Governance Codes: These are *best practices* established by corporations, international organizations, multinational groupings and/or independent nation states. Classic examples of these best practices are the Cadbury Report (1992)—a British creation; OECD Principles and Guidelines; CalPERS Codes of Corporate Governance (public pension fund-serving employees of the State of California) and numerous National Codes established by different countries.

1.7.17 Corporate Governance Practices: These include issues concerning board composition, characteristics and attitude (board size, ratio of non-executive versus executive directors, types of board subcommittees, and chairmanship of committees, the separation or duality of the position of *Chairman* and *CEO*, etc.).

1.7.18 Corporate Governance Structures: These are the regulatory institutions which reinforce good corporate governance such as Central Banks, Financial Services Commissions, Stock Exchanges; legal, judicial and regulatory instruments such as laws, regulations, industry-specific *Codes of Best Practices*, etc.

1.7.19 Corporate Misdeed or (Sleaze): This refers to wrongdoing by corporate insiders (directors, management or staff) resulting from self-interest. Such activities include corruption, fraud, professional misconduct or any act that may be deemed a criminal offence or which might have criminal implications and resulted in the tarnishing of corporate reputation.

1.7.20 Director Interlocking (or Interconnected Directorship): The concept of director interlocking refers to the practice in which one director holds multiple board seats across interconnected and at times competing companies. Its prevalence is not surprising given the methodology of choosing directors with knowledge and experience of a corporation's business. However, the problem is that when an individual simultaneously serves as director (or officer) of two competing companies, he or she stumbles into prime opportunities for collusion.

1.7.21 "Fat cats": Refers to executive or managerial classes in corporations who have sought to compensate themselves with what shareholders and the public may consider excessive salaries. These salaries are sometimes

authorized by boards of directors but have been known to attract severe public scrutiny only after someone, a shareholder, journalist or political figure places it in the public's purview.

1.7.22 Fiduciary duty: This is an obligation to act in the best interests of another party, for example, directors have a fiduciary duty to act in the best interests of the shareholders.

1.7.23 Insider system: Ownership of shares is concentrated in individuals, or a group of individuals such as families or holding companies.

1.7.24 Institutional investors: Generally, large investors such as pension funds, insurance companies and mutual funds.

1.7.25 Jamaican Financial Meltdown: This refers to the failure of many of Jamaica's financial institutions in the 1990s which led to significant losses to depositors, investors and the government who had to implement a comprehensive program of intervention, rehabilitation and recovery.

1.7.26 Lead Director (or Senior Director): The Cadbury Report advocates that when the two roles (Chairman and CEO) are combined, there should be a recognized senior, strong and independent element on the board. Going further than the Cadbury, the Hampel Committee added that whether or not the roles of Chairman and CEO were combined, there should be a clearly identified lead non-executive director.

1.7.27 Outsider system: There is dispersed ownership of shares and hence individuals, or groups of individuals, do not tend to have direct control.

1.7.28 Poor or Ineffective Corporate Governance: Where corporate governance is poor or ineffective, the activities of management and directors have been known to come under severe public scrutiny, corporate reputational damage would have occurred and public trust in the particular institution eroded.

1.7.29 Proxy Vote: The casting of shareholders' votes by shareholders, often by mail, fax, or electronic means.

1.7.30 Qualitative Research: Qualitative research is at the other end of the spectrum in relation to quantitative research. The qualitative researcher seeks answers and explanations by becoming involved in the organizational contexts being studied through personal interaction and participation, case study analyses, ethnography and other non-hypothesis testing approaches. This approach requires probing, uncovering, unweaving, interpreting and understanding critical phenomena too complex to be assessed using quantitative analytical measures.

1.7.31 Self-regulation: Refers to the tendency of corporations to adopt existing corporate governance best practices for their own purposes and/or initiate and implement those of their own invention.

1.7.32 Stakeholders: Any individual or group on which the activities of the company have an impact, including the employees, customers, local community, the media, creditors, investors and the general public.

1.7.33 Stakeholder Theory: This theory takes into account the views of a wider stakeholder group and not just the shareholders.

1.7.34 Shareholder's Recourse: Refers to restitution for shareholders who have suffered losses as a result of the failure of companies in which they have invested.

1.7.35 Shareholder Value: The value of the firm after deducting current and future claims.

1.7.36 Supervisory Board: In a dual or two-tier board system, the supervisory board oversees the direction of the business whilst the management board is responsible for the running of the business (see the German model of corporate governance).

1.7.37 Transaction Cost Economics: Views the firm itself as a governance structure, which in turn can help align the interests of directors and shareholders.

1.7.38 Unitary Board: A unitary board of directors is characterized by one single board comprising of both executive and non-executive directors.

APPENDIX 13:
Criteria Framework for Jamaica Stock Exchange Best Practice Web Site
(Listed Companies and Securities Brokers)-- Actual Scores for Case Companies Included

	Max	Conglomerate	Merchant Bank	Mutual Society
Content (36%)				
<i>Company's Information</i>	5	4	4.5	4.5
<i>Macroeconomic Background</i>	3	1.5	1.5	1
<i>Management Discussion and Analysis</i>	5	4	3.5	3
<i>Timeliness of Information</i>	7	5.5	4.5	n/a
<i>Relevance of Information</i>	6	4	4.5	5
<i>List of Products and Services</i>	2	1.5	1.5	2
<i>Events Schedule</i>	2	2	0	2
<i>Disclosure of Corporate Social Responsibility</i>	2	2	2	2
<i>Disclosure of Corporate Governance Practices</i>	4	4	2	4
	36	28.5	24	23.5
Usability (15%)				
<i>Ease of Use of Navigation</i>	3	3	3	3
<i>Consistent Navigation</i>	3	3	3	3
<i>Ease of Downloading and Printing Information</i>	2	2	2	2
<i>Use of Foreign Language Options</i>	1	0	0	1
<i>Search Functionality</i>	3	3	3	3
<i>Help Functionality</i>	3	0	2.5	3
	15	11	13.5	15
Interactive/Innovativeness (14%)				
<i>Ability to receive feedback</i>	3	1.5	2.5	3
<i>Use of Web Cast/Multimedia</i>	2	1.5	0	2
<i>Allow for subscription of investors updates</i>	3	1.5	2.5	3
<i>Company Announcements</i>	6	6	4.5	6
	14	10.5	9.5	14
Presentation Style(25%)				
<i>Aesthetic Appeal</i>	6	4.5	3	5
<i>Use of Colour</i>	4	3	3	3.5
<i>Font Size</i>	3	3	2.5	2.5
<i>Layout and Spacing</i>	4	3	3.5	3.5
<i>Clarity of Presentation</i>	4	4	3.5	3
<i>Userfriendliness</i>	4	4	3	4
	25	21.5	18.5	21.5
Functionality (10%)				
Loading Time	4	3	4	4
Error Messages	2	1	1	1
Cross Browser Compatibility	2	2	0	2
Use of Common Technology	2	2	2	2
	10	8	7	9
Grand Total	100	79.5	72.5	83

Source: JSE 2009. The scores are those furnished by the JSE for the Conglomerate and Merchant Bank while the Scores for the Mutual were generated by this researcher.

**APPENDIX 14:
THE JAMAICA NATIONAL BUILDING SOCIETY
134th ANNUAL GENERAL MEETING
AGENDA**

PARTICULARS

- a) Date: Wednesday, November 19, 2008
- b) Location: Jamaica National Building Society
Half-Way-Tree Branch
2-4 Constant Spring Road
Kingston 10
- c) Time: 4:00 p.m.
1. CALL TO ORDER & WELCOME: Chairman, Hon. Oliver F. Clarke O.J.
2. PRAYER Mrs. Rose Miller, Manager, JN Mail
& Courier Services
3. NOTICE CONVENING THE MEETING
(Advertised in the Gleaner on the 24th day of October, 2008 in accordance with Rule 28(B))
4. APOLOGIES FOR ABSENCE
5. CONFIRMATION OF THE MINUTES OF ANNUAL GENERAL MEETING HELD ON TUESDAY,
OCTOBER 30, 2007
6. DIRECTORS' REPORT AND PERFORMANCE HIGHLIGHTS:
- Chairman, Hon. Oliver F. Clarke O.J.
 - General Manager, Mr. Earl Jarrett
7. AUDITORS' REPORT
8. ADOPTION OF DIRECTORS' REPORT AND STATEMENT OF ACCOUNTS FOR THE YEAR
ENDED MARCH 31, 2008
9. ELECTION OF DIRECTORS:
- i) Mr. Peter Morris
 - ii) Mr. John Small
 - iii) Dr. Dhiru Tanna
10. APPOINTMENT OF AUDITORS – KPMG, Chartered Accountants
11. ANY OTHER BUSINESS ARISING OUT OF THE FOREGOING
12. ADJOURNMENT.

**THE JAMAICA NATIONAL BUILDING SOCIETY
MINUTES OF THE 133rd ANNUAL GENERAL MEETING OF SHAREHOLDERS HELD ON
TUESDAY, OCTOBER 30, 2007 AT THE HALF-WAY-TREE BRANCH, 2-4 CONSTANT SPRING
ROAD, KINGSTON 10**

PARTICULARS

- a) Date: Tuesday, October 30, 2007
- b) Location: Jamaica National Building Society
2-4 Constant Spring Road,
Kingston 10
- c) Time: 4:00 p.m.

-
1. CALL TO ORDER
The meeting was called to order at 4:00 pm by Chairman the Hon. Oliver F. Clarke, O.J.
 2. WELCOME & PRAYER
The Chairman welcomed the members present to the 133rd Annual General Meeting of the Society. Mr. Ian Campbell, Collections Officer from the Society's Mortgage Department commenced the meeting with a prayer.
 3. NOTICE CONVENING THE MEETING
The Secretary confirmed that Notice of the meeting was first published in the Gleaner newspaper of September 6, 2006 in keeping with Rule 28(b) of the Rules of Society.
 4. APOLOGIES FOR ABSENCE
Apologies for absence were tendered on behalf of Director Mr. William Mahfood, former Director Noel Johnson and Mrs. Kathy Moss.
 5. CONFIRMATION OF MINUTES OF ANNUAL GENERAL MEETING HELD ON THURSDAY, SEPTEMBER 28, 2006
 6. INTRODUCTION OF BOARD OF DIRECTORS
 7. INTRODUCTION OF SENIOR MANAGEMENT
Introduction of Management Team
 8. DIRECTORS' REPORT
Sections include: Introduction, Member Focus, Member Benefits, Communication Channels,
Financial Performance, Products and Services and Subsidiaries
 9. QUESTIONS AND ANSWERS ARISING FROM THE PRESENTATION
 10. AUDITORS' REPORT
 11. ADOPTION OF DIRECTORS' REPORT AND FINANCIAL STATEMENTS
 12. ELECTION OF DIRECTORS
 13. APPOINTMENT OF AUDITORS
 14. ANY OTHER BUSINESS
Directors' Fees
 15. COMMUNITY PROJECTS
 16. CHAIRMAN'S CLOSING REMARKS AND ADJOURNT.

APPENDIX 15: NON PARTICIPANT RESPONDENTS

- Mr. Ian Tomlinson - Managing Director, Business Recovery Systems,
Jamaica
- Mr. Anthony Johnson - Jamaican Ambassador to Washington D.C., USA
- Mr. Andrew Holness - Minister of Education, Jamaica
- Mr. Phillip Armstrong - CEO, Global Corporate Governance Forum, IFC, World Bank
- Mrs. Faith Innerarity - Permanent Secretary, Ministry of Culture, Youth and Sports,
Jamaica
- Mr. Donavon Stanberry - Permanent Secretary, Ministry of Agriculture, Jamaica
- Mr. Ian Neita - CEO, Tourism Enhancement Fund, Jamaica
- Dr. Neville Duncan - Professor of Political Science and Economics, UWI, Jamaica
- Mr. Berome Edwards - Director of Financial Investigations Unit, Ministry of
Finance and the Public Service, Jamaica
- Mrs. Elaine Foster-Hilton - Former Principal, Shortwood Teacher's College
- Mr. Damian Crawford - Former Guild President, University of the West Indies,
Mona