

*Challenges of Implementing Corporate
Governance in the Banking Sector within the
English-speaking Caribbean:
A Comparative Study of Belize, Jamaica and the United
Kingdom*

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Abbreviations

BCBS – Basel Committee on Banking Supervision

BIS – Bank for International Settlement

BOJ – Bank of Jamaica

BoE – Bank of England

BSA – The Banking Services Act

CBB – Central Bank of Belize

G-SIBs – Global Systematically Important Banks

DBFIA – Domestic Banks and Financial Institutions Act 2012

FCA – Financial Conduct Authority

FSMA – Financial Services and Markets Act 2000

IMF – International Monetary Fund

OECD - Organisation for Economic Co-operation and Development

PRA - Prudential Regulation Authority

UK – United Kingdom

US – United States of America

WCCU - World Council of Credit Unions

Abstract

Bank corporate governance has been given immense assessment as it pertains to the effects on G-SIBs and the principles that should guide bank governance generally. However, the unique aspects of bank governance as it pertains to developing countries, in particular the Caribbean, remains an area relatively unexplored.

This research paper aims to address this gap by providing limited investigation of bank corporate governance in respect to Belize and Jamaica in comparison to the UK, which has one of the more comprehensive bank corporate governance framework. Despite best efforts to provide probing analysis in the area, a disclaimer must be issued that the topic necessitates further study giving the changing nature of the intricacies of governance and with the availability of country specific data.

Within the context of the forgoing, the contributions of this research are threefold in respect to suitability of the current corporate governance framework, the role of the regulatory institutions, and the fundamental obligation of the governments primarily in Belize and Jamaica. These assessments led to the deduction that frameworks need to be personalized to the financial environment in which banks operate under in the developing states which are different from advanced economies and reflected in the companies laws of these countries. Secondly, regulators should fulfil a more focused role on the education of the citizenry of the state which would promote more market discipline and social pressure as the financial markets expand. Finally, governments need to ensure that legislations are enforced in order to improve investor confidence.

Introduction

The importance of corporate governance in banks have taken global centre stage over the last few decades because of the various bank collapses but predominantly after the 2007 financial crisis in which governance failures had a central role. Consequently, the topic has been explored widely but mainly from the perspectives of advanced western countries, such as the USA and Europe, and generally on banking institutions. However, there is insufficient exploration of the subject as it pertains to the Caribbean region.¹ Therefore, the objective of this research is to explore the adequacy of the corporate governance frameworks within Belize, Jamaica, and the UK. Furthermore, the role of the regulatory authorities and the government will be assessed to determine how the government of Belize and Jamaica can further promote bank corporate governance.

In the development of this research, the works of leading authorities on bank corporate governance have been consulted inclusive of Bob Trick, Sir Adrian Cadbury, Brian Finch, Iris H-Y Chiu, the BCBS, and the OECD among others. However, given the limited exploration on the Caribbean, this research makes inferences based primarily on available data from the regulatory bodies' websites and the IMF. These formed the core data sources for the assessments because despite efforts to acquire comments on

¹ Although Belize is not geographically located within the Caribbean, it will be considered as part of the region primarily due to its colonial history under the British Empire.

the specific experiences of some states from their regulatory authorities, those remain unsatisfied at the date of submission of this research.

The hypothesis of this research is to determine whether bank corporate governance can be implemented effectively in both Belize and Jamaica. If not, then why not? This was assessed by analysing the current governance framework, the unique role of the regulatory authorities, and the role of governments within the context of both developing countries.

The findings and my contribution to this relatively inadequately explored area of the global corporate governance infrastructure led to the following conclusions: firstly, while the current systems are promoting bank corporate governance, more can be done to make the systems more reflecting of the circumstances of these developing states. Secondly, regulators need to help raise financial awareness among the citizenry to promote better market discipline. Thirdly, governments need to ensure that the legal infrastructure provides applicable legislations, enforce legislations and governance codes, and support an independent judiciary which will build market confidence and create a thriving environment for its banking sector which contributes to economic development.

This research is categorized into five chapters with the aim to better appreciate the special challenges and circumstances of Belize and Jamaica in the promotion of bank corporate governance. Chapter 1 looks explores the basics of corporate governance and

its applicability to Belize, Jamaica, and the UK. Chapter 2 provides a brief summation of the financial markets of the countries. Chapter 3 offers the effects of colonization on the development of the banking sector and corporate governance. Chapter 4 is a comparative analysis of the current governance systems for the countries in this research. Finally, Chapter 5 explores the unique roles of the central banks as regulators and the government's role to promote bank corporate governance in developing nations.

Chapter 1: A Critical Analysis of the Factors of Corporate Governance

1.1 Development of Corporate Governance

1.1.1 History of the Concept of Governance

The concept of governance is both ancient and natural going back to creation or evolution, depending upon one's subscribed concept of how the world came into existence. Mankind has always sought a path with order to achieve an objective whether it be for the building of a civilization or purely for the preservation of life. Consequently, in the absence of any such clear concept of order and direction that is made available under the designation of governance, there exists only anarchy. Based on the aforementioned, it can undoubtedly be concluded that the concept of governance has always been a part of human history. However, the coining of the term 'corporate governance' and its eventual adoption to corporate entities is relatively of a recent nature.

The use of the terminology that is now known as 'governance' has its genesis with Chaucer, an English writer 1343-1400, who scripted the word but was not definitive with its spelling.² So even though the idea of governance is ancient, its terminology

² Bob Tricker, *Corporate Governance: Principles, Policies, and Practices* (3rd edn, OUP 2015) 4 (Tricker).

has been around for some time, and the phrase ‘corporate governance’ is relatively new although has been practiced for centuries.

The practice of corporate governance is embodied in the conduct of business, particularly as it relates to the ownership and control of a business. During the 17th century, the creation of companies through charters by European empires led to massive expansion of business operations across the explored world. Consequently, the liability exposure of directors and management came into focus and was addressed by the French through the invention of the limited liability company which offered protection to shareholders’ exposure to losses.

This limited liability idea marked a decisive point in the evolution of the English company law. This change began with the Bubble Act being repealed in 1825 as it was ineffective in serving the development needs of that period.³ The British Companies Act of 1855 and 1862 incorporated this concept by extending the limited liability protection to all shareholders whether they had management responsibilities or not.⁴ This translated to companies having a separate legal identity from its owners, with the rights of a person, and the ability to be perpetual in operations.

³ Janet Dine and Marios Koutsias, *The Nature of Corporate Governance: The Significance of the National Cultural Identity* (Edward Elgar Publishing Limited 2013) 162-167. (Dine and Koutsias)

⁴ Tricker (n 2) 6.

The limited liability that was afforded under this form of business served to attract many investors who wanted to make profits while limiting their exposures to financial loss should their company go into bankruptcy. Consequently, this led to an inflow of capital which allowed companies to expand globally and becoming very complex in structure, leading to the separation of owners from the operations of their businesses.⁵ As companies became more complex and opaque, many corporate failures resulted during the 1970s and 1980s⁶ resulting in attention to be directed to the responsibilities that exist or should exist between a company's board of directors and its shareholders and more recent between other stakeholders, which has a reciprocal benefit to shareholders.⁷

This attention on the proper functioning of corporate entities led to the creation of corporate governance codes in many jurisdictions and by various international bodies. One such code is the UK's The Financial Aspects of Corporate Governance: A Report of the Committee on Corporate Governance (Cadbury Report) in 1992 which influenced corporate governance codes in many countries.⁸ Another is the corporate

⁵ This separation will be explored under the next section of this research.

⁶ Tricker (n 2) 9-12.

⁷ Felix Martin, 'Corporate Social Responsibility and Public Policy' in Ramon Mullerat (ed), *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2nd Edition, Kluwer Law International 2011) 95-96; Tricker (n 2) 24-25.

⁸ Tricker (n 2) 13.

governance which was practiced in the US⁹ and was expected to become the global norm,¹⁰ but it was not realized due to corporate failures such as Enron.¹¹ Compounding the corporate failures were bank failures, including Bank of Credit and Commerce International, which contributed heavily to the focus on bank corporate governance.¹² Other failures included companies in the UK such as British Rail and Vodaphone Mannesmann in Germany. This led to a wave of amendments to the expectations of what corporate governance should provide both in the US, the UK and globally by the OECD.¹³

The history of corporate governance demonstrates that it is constantly evolving to satisfy the demands of stakeholders in the wake of corporate failures and increasing expectations. Hence, the provisions of corporate governance guidance for corporate

⁹ The US used a mandatory compliance infrastructure while the UK employed a ‘comply or explain’ corporate governance mechanism.

¹⁰ Due to the US’ global economic power, it was anticipated that its corporate governance practices would be adapted along with the US generally accepted accounting principles (US GAAP) due to the US its ability to provide capital on a global stage. See Tricker (n 2) 15.

¹¹ Arthur E Wilmarth Jr, ‘Conflict of interest and corporate governance failures at universal banks during the stock market boom of the 1990s: the cases of Enron and WorldCom’ in Benton E Gup (ed), *Corporate Governance in Banking: A Global Perspective* (Edward Elgar Publishing Limited 2007) 97-112.

¹² Philip Stiles and Bernard Taylor, *Boards at Work: How Directors View their Roles and Responsibilities* (OUP 2001) 5. (Stiles and Taylor)

¹³ Since 1998, the OECD has been instrumental in promoting universal corporate governance guidelines. See, OECD, ‘OECD Secretary General announces launch of a high-level business group initiative to promote better boardroom practices’ <<http://www.oecd.org/daf/ca/corporategovernanceprinciples/oecdsecretarygeneralannounceslaunchofahigh-levelbusinessgroupinitiativetopromotebetterboardroompractices.htm>> accessed 23 August 2015.

entities will continue to be redefined for countless years in order to address the agency problem that has been created ever since the separation of ownership and management.

1.1.2 Separation of Ownership and Management

The subject of governance arises whenever a principal has to depend upon agents to conduct business on his or her behalf, i.e. whenever there is a separation of ownership (shareholder) and management/control (directors)¹⁴ combined with information asymmetry among the parties. The need to have an effective corporate governance framework arose from the identified increasing separation of power between the management of major public companies and the growing diverse and distant shareholders within companies that could effectively compete with governments to become the dominant form of social organization.¹⁵

This separation came to be known as the *agency problem*, an idea which was recognized by Adam Smith. In this classic writing, he held that directors cannot be expected to watch over other people's money with the same vigilance with which they would watch over their own.¹⁶ This undoubtedly lends itself to a conflict of interest scenario between

¹⁴ Benton E Gup, 'Corporate governance in banks: does the board structure matter?' in Benton E Gup (ed), *Corporate Governance in Banking: A Global Perspective* (Edward Elgar Publishing Limited 2007) 18. (Gup)

¹⁵ Adolf A Berle and Gardiner C Means, *The Modern Corporation and Private Property* (Revised Ed, Harcourt, Brace & World Inc 1968) 309-310.

¹⁶ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* in Tricker (n 2) 8.

directors and shareholders because if both parties are utility maximizers then it should be reasoned that directors will not always act in the best interest of shareholders.¹⁷ However, opposing views such as Spong and Sullivan's whose research found that if a form of ownership within the bank such as shares was allowed then it would more closely align the interest of stockholders and management, essentially addressing the principal-agency problem.¹⁸ Their views however, does not support the findings of the recent financial crisis as share packages did not alleviate but rather promoted risky behaviours among bankers. This problem is further increased as directors who are also shareholders could be more influential than those who are only shareholders given that these non-directors would not be as familiar with the company leading to managers controlling the boards rather than boards controlling managers.¹⁹

The remoteness of shareholders from boards, who are appointed to direct and oversee, was initially just one removed from each other in its simplest form. This is still the case with some smaller institutions, like the Belize Bank, which is owned principally by

¹⁷ Michael Jensen and William Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, Journal of Financial Economics No. 3 /4 October 1976; Andreas Kokkinis, 'A Primer on Corporate Governance in Banks and Financial Institutions: Are Banks Special?' in Iris H-Y Chiu, *The Law of Corporate Governance in Banks* (Edward Elgar Publishing Limited 2015) 3-4. (Kokkinis)

¹⁸ Kenneth Spong and Richard J Sullivan, 'Corporate governance and bank performance' in Benton E Gup (ed), *Corporate Governance in Banking: A Global Perspective* (Edward Elgar Publishing Limited 2007) 40-56. (Spong and Sullivan)

¹⁹ Stiles and Taylor (n 12) 6-7.

Lord Michael Ashcroft.²⁰ However, as banks are listed on stock exchanges or receive foreign investors the distancing of ownership and management becomes more pronounced. This lends to additional difficulties for owners to influence directors, which was the original idea of the corporate concept.²¹

The protection of stakeholders is complicated given that different stakeholders exists with different purposes including long-term and short-term objectives, environmental protection, and financial stability. In order to balance these conflicting interests and to safeguard the interests of diverse stakeholders, governance procedures have developed initially through legislations.²² It is worthwhile to note that the development of corporate governance and the checks and balances that company law demands are the result of attempts to address the agency problem.²³ In that regard, the Cadbury Committee held that a ‘comply or explain’ mechanism which is based on voluntary code coupled with compliance to corporate governance principles would prove more effective than a statutory code,²⁴ such as the US’ system of bank corporate governance.

²⁰ Despite being considered a small institutions based on assets size of £324 million, the Belize Bank is the largest bank in Belize with assets accounting for 31% of Belize’s banking sector as at 30 June 2015.

²¹ Tricker (n 2) 20.

²² Brian Finch, *Financial Times Briefings: Corporate Governance* (Pearson Education Limited 2011) 12-14.

²³ Tricker (n 2) 60.

²⁴ Sir Adrian Cadbury, ‘The Financial Aspects of Corporate Governance: A Report of the Committee on Corporate Governance’ (1992) s 1.10 <<https://www.governance.co.uk/resources/item/255-the-cadbury-report>> accessed 10 June 2015. (Cadbury Report)

Additionally, directors use various forms of disclosure mechanisms to give account of their stewardship of the bank to the bank's shareholders. One such form is the annual reports, which serves as one of the cornerstones of corporate governance, since the separation of management and ownership.²⁵

1.2 The Meaning of Corporate Governance

The concept of corporate governance requires that it remains dynamic in order to satisfy the needs of a jurisdiction or an entity. However, the prevailing characteristic is the need to exercise control of power with both transparency and accountability towards all stakeholders. As such an encompassing characterisation of corporate governance is "the system by which companies are directed and controlled."²⁶ Furthermore since this research is a study on the banking sector, it is worth considering the description used by the BIS which subscribes to the OECD's description of corporate governance as follows:

The relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.²⁷

²⁵ Ibid s 5.1.

²⁶ Cadbury Report s 2.5.

²⁷ OECD, 'Experiences from the Regional Corporate Governance Roundtables' (2003) <<http://www.oecd.org/general/searchresults/?q=Experiences%20from%20the%20Regional%20Corporate%20Governance%20Roundtables.%202003&cx=012432601748511391518:xzeadub0b0a&cof=FORID:11&ie=UTF-8>> accessed 24 August 2015.

The standard by which this research has assessed corporate governance is based on the UK's Code and the English company's act which forms the basis by which businesses are conducted. However, in order to objectively assess the adequacy of the corporate governance infrastructure in Belize, Jamaica, and the UK a summation of some essential bank corporate governance characteristics will be highlighted.

1.3 Essential Factors of Corporate Governance²⁸

The determination of the features that should be included in a jurisdiction's development of its corporate governance infrastructure depends heavily on a number of known cultural considerations²⁹ and the objectives to be attained. Consequently, corporate governance principles published are simply guides to assist jurisdictions in the development of their respective codes based on the characteristics of their banking system.³⁰ Moreover, the implementation of any governance code is also dependent on a jurisdiction's legal, regulatory, and institutional frameworks.³¹ Accordingly, effective corporate governance should entail factors that promote the achievement and

²⁸ The references made to the various factors are those contained in both the Cadbury Report and the BIS' *Corporate Governance Principles for Banks* 2015.

²⁹ Some of these cultural considerations include the legal traditions, the company law, the reliability of the judicial system, the expectations of the people, etc. See Tricker (n 2) 25.

³⁰ These characteristics include the size, complexity, structure, economic significance, and risk profile of the bank or its banking group.

³¹ BCBS, *Corporate Governance Principles for Banks* (BIS, July 2015) s 21 <<http://www.bis.org/bcbs/publ/d328.htm>> accessed 10 June 2015. (BCBS 2015)

maintenance of the public's trust and confidence in the banking system, which are vital to the proper functioning of a banking sector and an economy.³²

The Cadbury Report is one of the first such guidelines established to bring clarity to the responsibilities that should be held by directors, shareholders, and auditors. Its obligation under a 'comply or explain' mechanism coupled with disclosure requirements were believed to be more effective than a solitary statutory code which would have establish a minimum standard promoting compliance with the letter of the code as oppose to the spirit of the code.³³ While that report is one of the influential documents to shape many corporate governance regimes throughout the world, it was also heavily mirrored in various revisions to corporate governance guidelines by the BCBS.³⁴

Some of the common factors that may be found in both the documents include the responsibility of the board of directors to ensure that the institution is managed properly according to institution's corporate governance principles, to the jurisdictional legislations in which it operates, and to international best practices. Furthermore, the utilization of non-executive directors is heavily encouraged in order to balance the

³² BCBS, *Principles for Enhancing Corporate Governance* (BIS, October 2010) s 13 <<http://www.bis.org/publ/bcbs176.htm>> accessed 12 June 2015.

³³ The Cadbury Report, s 1.6-1.10.

³⁴ The BCBS issued its first publication of its Principles for Enhancing Corporate Governance in 1999, followed by revisions in 2006, 2010, and 2015. In addition to the mirroring of the principles promoted by the Cadbury Report, it also subscribed to the OECD's Principles of Corporate Governance (2004).

interest of board members with the overall responsibility to the shareholders, the company and other stakeholders.³⁵ The use of non-executive directors who do not necessarily possess in-depth knowledge of the institution and various factors relating to the bank, should be afforded the necessary trainings and reports to increase effectiveness. This should be complimented with the availability of objective professional advice whenever necessary.

In addition, both documents reinstate the fact that the board of directors can also be aided through the appointment of committees to fulfil various roles; however, their functions should be guided by responsible accountability and transparency procedures in order to promote the effective governance of the institution.

In the promotion of accountability and transparency, the Cadbury Report extensively dealt with the expectations of the audit procedures, its relations with the proper functioning of an internal audit committee and the financial reports. These financial reports should be an accurate representation of the performance of the bank from the directors to the shareholders. While the BCBS reiterates the opinions of the Cadbury Report on this matter, it further collaborates the disclosure and transparency aspects of proper financial reporting to a bank's stakeholders. This should effectively promote corporate governance externally through the exercise of market discipline.

³⁵ The interest of both depositors and the economy should take precedence over the interest of shareholders of a bank.

For improve risk management, both documents recognized that is paramount to link directors' obligations to remuneration. Hence, in light of the failures of companies over the last few decades and recently with the 2007 financial crisis, it became more prominent that compensation packages mirror the long-term performance of directors' decisions. While this stance had been promoted twenty-five years prior by the Cadbury Report, it was found deficient in the prevention of unscrupulous decision making in the exercise of a bank's fiduciary duties to stakeholders, such as shareholders, employees, depositors, and taxpayers.

Consequently, the BCBS has gone further to elaborate on risk management given the increasing complexity and opaqueness of some financial instruments, requiring banks to implement appropriate risk controls in relation to their financial instruments. This would aid in the accountability and transparency of board's decisions, including the communication of risk exposures throughout the organization. Due to the complex nature of the financial transactions and global bank ownership structures, the BCBS made proposals on the structuring of bank groups and regulatory supervision to diminish any threat to financial systems.

The recent financial crisis brought supervisory obligations to the forefront once more as regulators were found to have been tolerant of complex and sophisticated financial

instruments which regulators did not fully appreciate.³⁶ Even though some academics/regulators had warned against the built up of risk within the financial system.

With an appreciation of the lessons of the 2007 financial crisis coupled with the necessities of a developing banking sector, both Belize and Jamaica would be prudent to consider legislating effective corporate governance requirements that would limit political and foreign economic influences on their banking sectors.

1.4 Conclusions

Even though a corporate governance framework cannot be entirely immune to failure, the objective should remain on the discouragement of poor governance practices and holding participants in the governance process accountable for violations.

Despite advancements in bank corporate governance, the necessity to establish authoritatively on who is a responsible director remains to be addressed. In order to make this determination, the qualities of such a position would then need to be established under a 'fit and proper' criteria.

Furthermore, the accountability element of directors need to be adequately assessed. In the initial history of the Anglo-American System, directors were accountable to the

³⁶ Tricker (n 2) 18.

bank's shareholders. However, recent various participants of society have directed pressure on the banking players to widen the accountability circle to include the society³⁷ and the environment³⁸ as other stakeholders. Accordingly, legislation developed to require that directors exercise reasonable care, skill, and diligence³⁹ and avert conflict of interest⁴⁰ when satisfying their stewardship responsibilities.

The forgoing are some of the trepidations which corporate governance need to adequately address in order to be relevant and promote financial stability in banking systems.

³⁷ During the 1980s, a number of corporate failures demanded that corporate governance be widened to include other stakeholders that are affected by such collapse. These failures included the Nomura Securities (Japan), Rothwells Limited (Australia), and the Robert Maxwell companies (UK). The more recent scenario is the 2007 financial crisis which saw an estimated billions of taxpayers monies used to recapitalized banks globally, with £1.2 billion in the UK alone. See National Audit Office, 'Taxpayer support for UK banks: FAQs' <<http://www.nao.org.uk/highlights/taxpayer-support-for-uk-banks-faqs/>> accessed 15 September 2015.

³⁸ Jordan Hoffman, 'The Great Invisible review: an eloquent return to Deepwater Horizon' *The Guardian* (London, 30 October 2014) <<http://www.theguardian.com/film/2014/oct/30/the-great-invisible-review-an-eloquent-return-to-deepwater-horizon>> accessed 15 September 2015.

³⁹ The UK's Companies Act 2006, s 174.

⁴⁰ *Ibid* s 175.

Chapter 2: An Analysis of the Financial Markets

Financial sectors are of vital importance to any modern economy, as it allows the transfer of capital from savers/lenders to borrowers. While, there are many participants that constitute the financial landscape in conjunction with the various legislations and standards, the focus of this section will be to briefly provide a backdrop for the ensuing sections with a focus on the banking sector.

2.1 Belize

Belize's financial system is dominated by six banks⁴¹ offering traditional banking services followed by six offshore banks⁴² exclusively serving non-residents, and a building society.⁴³ In addition, there are thirteen credit unions⁴⁴ which continues to play a huge role in financial intermediation having a 67.4% membership rate,⁴⁵ one of the highest in the world. The insurance sector is small at only 4.4% of the financial system's assets despite registering seventeen insurance companies.⁴⁶ The IMF

⁴¹ CBB, 'Licensed Domestic Banks' <<https://www.centralbank.org.bz/financial-system/regulated-institutions/domestic-banks>> accessed 13 August 2015.

⁴² CBB, 'Licensed International Banks' <<https://www.centralbank.org.bz/financial-system/regulated-institutions/international-banks>> accessed 13 August 2015.

⁴³ Development Finance Corporation, 'History' <<http://www.dfcbelize.org/about-dfc/>> accessed 29 August 2015.

⁴⁴ CBB, 'Registered Credit Unions' <<https://www.centralbank.org.bz/financial-system/regulated-institutions/credit-unions>> accessed 13 August 2015.

⁴⁵ WCCU, 'International Credit Union System' <http://www.woccu.org/about/intlucusystem/icus_country?region=LA&c=BZ> accessed 29 August 2015.

⁴⁶ IMF, 'Belize: Selected Issues Paper' (IMF Country Report No 14/281, September 2014) 10 <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=41915.0>> accessed 13 August 2015 (IMF Belize

concluded that the assets of the financial system is large relative to the size of the country's economy; while its commercial banks dominate the financial system it is relatively small by regional standards.⁴⁷

The current payment system is paper based although efforts are being made to modernize the system, develop a credit reporting system, and a collateral registry.⁴⁸

The securities market remain shallow reflecting the limited range of financial instruments available mostly in the form of government's treasury bills and bonds in a few nationalized industries, translating into an environment where there are no active secondary markets for these securities.

As at March 2015, the gross assets of the commercial banks amounted to £1.29 billion⁴⁹ or more than half of the assets of the financial system. A year earlier, commercial banks accounted for 67%, 81%, and 68% of total deposits, loans, and assets respectively of the deposit taking institutions.⁵⁰ This translates into the five of the six commercial

Report); US Bureau of Economic and Business Affairs, '2015 Investment Climate Statement – Belize' (May 2015) accessed < <http://www.state.gov/e/eb/rls/othr/ics/2015/241481.htm> > 25 June 2015.

⁴⁷ IMF Belize Report, 7-8.

⁴⁸ CBB, 'Financial Infrastructure' <<https://www.centralbank.org.bz/financial-system/financial-infrastructure>> accessed 13 August 2015.

⁴⁹ The local currency has been pegged to the US dollar since 1976 at a conversion of BZD 2.00 to USD 1.00. Given the pegged exchange, a conversion rate of BZD 3.00 to GBP 1.00 is used to estimate all monetary figures relating to Belize accounting for the slight variations between the floating exchange rates of the USD with the GBP.

⁵⁰ IMF Belize Report (n 46) 8-9.

banks being considered systemic along with the Holy Redeemer Credit Union Limited.⁵¹ Consequently, the importance of a high level of corporate governance principles is crucial to the stability of Belize's financial system.

The commercial banks that operate within Belize are as follows based on asset size:⁵² the Belize Bank Limited, Scotiabank (Belize) Limited, Atlantic Bank Limited, FirstCaribbean International Bank Limited,⁵³ Heritage Bank Limited, and the National Bank of Belize Limited.⁵⁴

⁵¹ As at March 2015, the credit union's assets totalled £167,000,000 and larger than three of the commercial banks. See CBB, 'Commercial Bank Financials' <<https://www.centralbank.org.bz/publications-research/regulated-institution-financials/commercial-bank-financials>> and 'Credit Union Financials' <<https://www.centralbank.org.bz/publications-research/regulated-institution-financials/credit-union-financials>> both accessed 15 August 2015.

⁵² CBB, 'Commercial Bank Financials' <<https://www.centralbank.org.bz/publications-research/regulated-institution-financials/commercial-bank-financials>> accessed 15 August 2015.

⁵³ The sale of FCIB to Heritage Bank Limited is currently being negotiated with the regulating authority in Belize. See, Adele Ramos, 'FirstCaribbean exits Belize' *Amandalla* (Belize, 4 August 2015) <<http://amandala.com.bz/news/firstcaribbean-exits-belize/>> accessed 1 September 2015.

⁵⁴ National Bank of Belize Limited is a state owned enterprise which commenced operations on 2 September 2013.

2.2 Jamaica

Jamaica's financial system consists of the Jamaica Stock Exchange, six commercial banks,⁵⁵ a merchant bank and finance company,⁵⁶ and three building societies,⁵⁷ thirty-seven credit union,⁵⁸ various money services businesses,⁵⁹ seventeen insurance companies, and forty-seven securities companies.⁶⁰ The country has the 121st largest economy with a GDP of £9.57 billion, nine times larger than Belize's £1.08 billion.⁶¹

Along with its stock market, there are two credit bureaus and a central credit registry which has been established and should aid further in the development of the financial sector with a primary focus on credit market's private sector.⁶²

⁵⁵ BoJ, 'Commercial Banks' < http://www.boj.org.jm/financial_sys/commercialbanks.php > accessed 31 August 2015.

⁵⁶ BoJ, 'Merchant Banks' < http://www.boj.org.jm/financial_sys/merchantbanks.php > accessed 31 August 2015.

⁵⁷ BoJ, 'Building Societies' < http://www.boj.org.jm/financial_sys/buildingsocieties.php > accessed 31 August 2015.

⁵⁸ Jamaica's penetration rate of credit union members to the economically active population is 53%. See WCCU, 'International Credit Union System', <http://www.woccu.org/about/intlcusystem/icus_country?region=CAR&c=JM> accessed 31 August 2015.

⁵⁹ These include a Bureaux de Change, sixty-seven cambios, and 401 different locations of remittances companies. See, BoJ, 'Financial System' < http://www.boj.org.jm/financial_sys/index.php > accessed 31 August 2015.

⁶⁰ Financial Service Commission, 'Regulated Industries' <<http://www.fscjamaica.org/regulated-industries/>> accessed 31 August 2015.

⁶¹ The World Bank, 'World Development Indicators' (GDP Ranking, July 2015) < <http://data.worldbank.org/data-catalog/GDP-ranking-table> > accessed 31 August 2015. (World Bank Indicators)

⁶² IMF, 'Jamaica: 2014 Article IV Consultation and Fourth Review Under the Extended Fund Facility and Request for Modification of Performance Criteria-Staff Report; Press Release; and Statement by the

Despite having a more developed financial sector than Belize's, Jamaica's banking sector is comparable to that of Belize's with commercial banks dominating its deposit taking sector with a 75.9% market share, followed distantly by building societies at 21.3%.⁶³ However, the commercial banks assets amount to £4.93 billion, with building societies following with £1.38 billion, and credit unions with £0.49 billion.⁶⁴ This translates to the commercial banking sector being 382.3% larger than Belize's and supporting the view that the banks have a crucial role to fulfil in the Jamaican society given both the magnitude of its statement of financial position and the domination of the market share.

The commercial banks that have operations in Jamaica are National Commercial Bank Jamaica Limited, Citibank, First Global Bank Limited, Sagicor Bank Jamaica Limited, Bank of Nova Scotia Jamaica Limited, and FirstCaribbean International Bank (Jamaica) Limited.

Executive Director for Jamaica' (IMF Country Report No 14/169, June 2014) 121 <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=41670.0>> accessed 31 August 2015.

⁶³ BoJ, '2014 Annual Report' <http://www.boj.org.jm/publications/publications_show.php?publication_id=4> accessed 10 August 2015. (BoJ 2014 Annual Report)

⁶⁴ The asset figures reported in the BOJ's 2014 Annual Report was analyzed using the 2014 annual average exchange rate to the USD. See BOJ, 'Annual Average Exchange Rate' <http://www.boj.org.jm/foreign_exchange/fx_rates_annual.php> accessed 31 August 2015. For comparative purposes, the results were then converted using the same assumed conversion of BZD 3.00 to GBP 1.00.

2.3 The UK

The UK's financial system is one of the most developed in the world with London being considered one of the world's leading financial centres hosting and being home location for large international and domestic financial institutions. Its market participants operate under some of the most current legislations in the world given the impact of its financial institutions on the global arena with the BoE playing a crucial role in influencing the evolving landscape of global financial regulation.

As of 31 July 2015, there are 311 banks,⁶⁵ thirty building societies,⁶⁶ 365 credit unions,⁶⁷ 1,298 insurance companies⁶⁸ holding £2.7 trillion in assets,⁶⁹ and a number of other non-bank financial institutions such as investment funds, finance companies, money market funds, and hedge funds. The banking sector's assets amounted to £9.13

⁶⁵ There are 156 locally incorporated banks, eighty-one banks incorporated outside the European Economic Area and seventy-four banks incorporated within.

⁶⁶ PRA, 'Banks & building societies lists' (BoE, 31 July 2015) <<http://www.bankofengland.co.uk/pr/Pages/authorisations/banksbuildingsocietieslist.aspx>> accessed 1 September 2015.

⁶⁷ The WCCU also notes that the UK has a low penetration rate of 3% <http://www.woccu.org/about/intlcusystem/icus_country?region=EU&c=GB> accessed 1 September 2015. This penetration rate is slightly above the European average of 3.4%. See, WCCU, '2014 Statistical Report' (December 2014) <<http://www.woccu.org/publications/statreport>> accessed 1 September 2015.

⁶⁸ Based on the Association of British Insurers, there are 911 authorized general and 387 life insurance companies operating in 2014. This makes the UK the third largest insurance industry in the world behind the US and Japan. See, Association of British Insurers, 'UK Insurance Key Facts 2014' <<https://www.abi.org.uk/Insurance-and-savings/Industry-data/Key-Facts-2014>> accessed 2 September 2015.

⁶⁹ BoE, 'Credit union quarterly statistics - March 2015' (28 August 2015) <<http://www.bankofengland.co.uk/pr/Pages/regulatorydata/cu/2015/mar.aspx>> accessed 3 September 2015.

trillion with 66.4% attributed to five major UK owned banks, the largest foreign-owned bank subsidiary and the largest building society.⁷⁰ While, the financial sector's total assets is assessed to amount in excess of £20 trillion.⁷¹

Given that the UK's financial sector is a significant global player, it continues to be moulded to adjust to global demands and concerns. As the financial crisis uncovered the shortcomings of the Financial Supervisory Authority (FSA), changes were made from the previous tripartite system of regulation which was shared between the BoE, the Treasury, and the FSA.⁷² The macro-prudential recommendations in the Turner Review led to the revision of the regulatory system under the Supervisory Enhancement Programme. This programme resulted in the establishment of the Financial Policy Committee and the 'twin-peak' regulatory approach between the Financial Conduct and Prudential Regulation Authorities.⁷³ The new regulatory structure's ability to deliver a

⁷⁰ These major institutions are Barclays Bank Plc, Hong Kong and Shanghai Banking Corporation Limited, Lloyds Banking Group, Nationwide, Royal Bank of Scotland, Santander UK, and Standard Chartered Bank. See IMF, 'UK: Financial System Stability Assessment' (IMF Country Report No 11/222, July 2011) 11 <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=25111.0>> accessed 31 August 2015. On another note, Scotiabank Limited is not ranked among the larger institutions in the UK; however, it does have a presence within both Belize and Jamaica as well which is the only institution to be present in all of the countries included within this research.

⁷¹ Oliver Burrows, Katie Low, and Fergus Cumming, 'Mapping the UK financial system' (BoE's Quarterly Bulletin 2015: Quarter 2) <<https://www.youtube.com/watch?v=Jlq5hm7oSew>> accessed 13 September 2015.

⁷² Under the tripartite system the FSA was the single body responsible for regulation of the financial sector. See, Stuart Bazley, 'The Financial Services Authority, risk-based regulation, principles based rules and accountability' (2010) JIBLR 422; IMF, 'UK 2013 Article IV Consultation' (IMF Country Report No 13/210, July 2013) 33 <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=40785.0>> accessed 1 September 2015.

⁷³ CII Policy and Public Affairs Chartered Insurance Institute, 'Towards Twin Peaks: The UK's Emerging Regulatory Landscape (January 2013 Update)' <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.cii.co.uk%2Fmedia%2F4119720%2Fregulatory_landscape_dec_2012_20_dec_

more resilient financial system⁷⁴ that serves the world's fifth largest economy⁷⁵ is yet to be determined.

The importance of the proper functioning of the banking sector will remain a priority point for regulators and stakeholders in the UK, where banks account for nearly a tenth of GDP.⁷⁶ Therefore, corporate governance can be expected to be continuously assessed for the benefit of both the UK's economy and the world's.

[pdf&ei=QGNjVdZPidftBoWkgtAG&usg=AFQjCNGTU42bMcAINc9PtI5jB4GmaEw_ow&sig2=XO_uHe9ERQSbahhImYAkDg](#)> accessed 22 May 2015.

⁷⁴ IMF, 'United Kingdom: 2014 Article IV Consultation-Staff Report; Press Release; and Statement by the Executive Director for the United Kingdom' (IMF Country Report No 14/233, July 2014) 19 <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=41794.0>> accessed 31 August 2015.

⁷⁵ World Bank Indicators (n 46).

⁷⁶ Kokkinis (n 17) 10-11.

Chapter 3: Objectives of Banking Industry and Corporate Governance

3.1 Introduction

Financial sectors have an important financial intermediation role to fulfil in an economy between savers and borrowers of those funds. This is even more pronounced in the case of small developing states such as Belize and Jamaica. Subsequently, in order to stimulate the development of economies, the objective of profit maximization for banks must be achieved jointly with the promotion of corporate governance standards.

Given the high level of sensitivity to risk or perception of risk by market participants, banks need to carefully strategize their operations in order to satisfy corporate governance mandates while generating wealth for its shareholders.⁷⁷ The ultimate responsibility to deliver on these expectations is laid upon the board of directors, who have the oversight responsibility to act in the best interest of shareholders over the management and direction of the bank.

In this section, the influences of colonization on the development of the legal infrastructure of colonies will be explored as former colonial states, such as England, established the legal governance landscape by which both Belize and Jamaica would

⁷⁷ Banks are always under pressure to increase profits at the expense of prudent decisions which contributed to the 2007 financial crisis. See, The Economist, 'The origins of the financial crisis' (7 September 2013) <<http://www.economist.com/news/schoolsbrief/21584534-effects-financial-crisis-are-still-being-felt-five-years-article>> accessed 10 September 2015.

develop their financial (banking) sectors. Consequently, it then becomes necessary to analyse some critical elements of corporate governance and the banking sector.

3.2 Adverse Effect of Colonization

While there have been many benefits gained from colonization,⁷⁸ this research explores some of the possible downsides from this period of European expansion for academic purposes. From the 15th to the 20th centuries, European countries colonized states across the globe to develop trade routes,⁷⁹ access natural resources,⁸⁰ and expand their influence. Whereas there have been numerous colonies of the British Empire, we shall consider the influences it had on Belize and Jamaica, whose political institutions and cultures were modelled on the English system.⁸¹

The Westminster model of government influenced both Jamaica and Belize in its legal structure, such as the application of the civil legal jurisprudence. The adoption of

⁷⁸ Some of these benefits includes cultural exchanges and introduction of advance equipment.

⁷⁹ The European countries involved were Portugal, Spain, Great Britain, France, and Netherlands. See Essential Humanities, 'European Colonialism' <<http://www.essential-humanities.net/history-supplementary/european-colonialism/>> accessed 7 August 2015.

⁸⁰ Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (George Routledge and Sons Limited 1890) 428-436; Lakshmi Iyer, 'The Long-term Impact of Colonial Rule: Evidence from India' (October 2004) <http://www.people.hbs.edu/liyer/iyer_colonial_oct2004.pdf> accessed 7 August 2015.

⁸¹ Kate Quinn and others, 'Westminster in the Caribbean: History, Legacies, Challenges' <<https://www.ucl.ac.uk/americas/caribbean-studies/Networks/westminster-in-the-caribbean>> accessed 7 August 2015.

customs and laws based on the legal structure of England were more practical, during that period of colonization, as these states were governed by English representatives who were familiar with the English legal system. Hence, this aided the administering of English economic and political objectives.

However, as these states became self-ruling or gained independence, more should have been done to reflect the historical development of these states and the cultural heritage of their native people. Instead the legal system remained unchanged as it allowed for an easier means of continuing the economic development using a system that has formed the foundation of business interactions. A crucial law that should have been given more consideration is the English Companies Act, whose formation was the result of centuries of historical and cultural influences in England.⁸² While the English Companies Act (2006) is more appropriate to serve the business climate of England, the economic structure and business ethics differs slightly in Belize and Jamaica due to their own distinctive features and characteristics, a similar recognition by Milhaupt and Pistor that law changes over time and differs among countries even those that use the same legal system.⁸³

⁸² Dine and Koutsias (n 3) 155-238.

⁸³ Curtis J Milhaupt and Katharina Pistor, *Law and Capitalism: What Corporate Crises Reveal about Legal Systems and Economic Development around the World* (The University of Chicago Press 2008) 27-31. (Milhaupt and Pistor)

The method that greatly supports colonization is also the most lingering characteristic that remains with Belize and Jamaica as is depicted in its divide and conquer mentality. A characteristic that is paramount to the political landscape of these societies today because it serves the objective of the political elite but to the demise of the masses of uneducated and disadvantaged citizens. While the fault cannot be entirely placed with the former colonial rulers, the system should be analysed by the current authorities who continues to maintain and benefit from this system.

Additionally, the concealed mind-set from the colonization process is responsible for fostering an inferior mentality that foreign is superior to anything local.⁸⁴ This inferior mentality extends to both tangible and intangible products, inclusive of ideas that form legislations. Although it may be argued that some held beliefs may prove beneficial by allowing less developed states to learn from the experiences of more developed states, some legislation and codes⁸⁵ sometimes serves the objectives of developed states more so than developing countries due to the differences between such economies. Moreover, even though there may be reasons for the adoption of certain legislation or codes, the reality is that most of these states are unable to exert economic influence on their own⁸⁶

⁸⁴ Norman Girvan, 'Colonialism and Neo-colonialism in the Caribbean: An Overview' (Prepared For IV International Seminar Africa, The Caribbean And Latin America, St Vincent and the Grenadines, November 2012) 9-10 <<http://webcache.googleusercontent.com/search?q=cache:cW9E-QSOG1cJ:www.normangirvan.info/wp-content/uploads/2013/01/Girvan-St-Vincent-paper.pdf+&cd=1&hl=en&ct=clnk&gl=uk>> accessed 7 August 2015.

⁸⁵ One such instance is the adoption of the Basel 1 Accords which was established for the G-10 countries. Regardless, some states such as Belize and Jamaica sought to implement such requirements into their banking requirements by imposing capital requirements.

⁸⁶ Norman Girvan, 'Colonialism and Neo-colonialism in the Caribbean: An Overview' (Prepared For IV International Seminar Africa, The Caribbean and Latin America, St Vincent and the Grenadines,

and so must adhere to the demand of the international community, particularly those countries with enormous economic and political influence. Thus, financial colonization⁸⁷ has combined with the effects of political colonization in the continued supremacy over economically dependent states through limited liability companies.

As political and social pressures are expressed in developed economies to reallocate expenses⁸⁸ and protect the welfare of their citizens,⁸⁹ politicians and financial institutions in those jurisdictions are required to translate these domestic demands upon the smaller financial institutions in developing states such as Belize and Jamaica. As a result of these pressures less economically viable states and institutions will be compelled to conform to the demands under the “new colonial system” in an effort to survive in the international financial system.

The creation of limited liability companies allowed rich investors to hide behind the veil of companies to reap profits while claiming to stand on the moral high ground and

November 2012) 16-17 <http://webcache.googleusercontent.com/search?q=cache:cW9E-QSOG1cJ:www.normangirvan.info/wp-content/uploads/2013/01/Girvan-St-Vincent-paper.pdf+&cd=1&hl=en&ct=clnk&gl=uk> accessed 7 August 2015.

⁸⁷ Emphasis added.

⁸⁸ One such situation is the tax evasion prohibition on US nationals which affects the structure of financial sectors in offshore jurisdictions such as the Caribbean. See James Ball, ‘US tax inspector targets Caribbean bank’ *The Guardian* (27 May 2013) < <http://www.theguardian.com/business/2013/may/27/us-tax-inspector-caribbean-bank>> accessed 15 September 2015.

⁸⁹ Sometimes policies used to protect one state affects the functioning of other state’s financial sector. See, Great Belize Productions Limited, ‘Atlantic Bank International Booted by Bank of America’ (Belize, 30 July 2015) < <http://edition.channel5belize.com/archives/116896>> accessed 30 July 2015.

defend the needs and sufferings caused by companies in the exploitation process to maximize profits. This is captured by Dine and Koutsias as:

...companies are designed by societies and their profits underpin much of our wealth. So when they strike bargains with evil regimes, repatriate profits and sell us goods produced at low prices of sweated or slave labour, this is not because of the inherent evil of the people that work in corporations but as a direct result of the legal design of corporations and the operation of the international legal system which provides them with many opportunities yet fails to regulate.⁹⁰

However, despite the recognized variances that exists among states and their rational behind either the promotion or adoption of certain standards, stakeholders can appreciate having a comparable standard of corporate governance across financial systems. This is ever more valued given the interconnectedness of financial markets, diverse and remote shareholders, and the catastrophic effect that a banking failure in a distant economy can have on financially related economies. Therefore the ultimate objective would be to customize governance requirements to reflect the characteristics of developing states such as Belize and Jamaica, a recognition which is gradually being acknowledged.

⁹⁰ Dine and Koutsias (n 3) 332.

3.3 Banking Sector and Corporate Governance

The importance of corporate governance to the banking sector cannot be over emphasized as it is the essence and foundation upon which an effective banking sector and in extension a financial industry is built upon. The demand for improved corporate governance coupled with the internationalization of banking institutions are a couple of the major trends influencing banks; however, the situation is complicated given that the permissible activities of banks could vary according to states whose bank organizational structures vary even within the same state.⁹¹ Consequently, the OECD recognized that corporate governance regimes vary from country to country based on their historical development, legislation, regulation, voluntary codes, etc. with the purpose of promoting the requisite foundation upon which participants within the market can reliably depend to establish private contractual agreements.⁹²

Those requirements along with an independent judiciary, sound accounting standards, an effective legal framework, including a framework of business laws that institutions and individuals can rely on to protect their rights, and a supervisory process that operates with integrity. These elements can be viewed as pre-conditions for banks' sound corporate governance; in the same way as they are pre-conditions for the Basel Committee's Core Principles for Effective Banking Supervision. Weaknesses in the

⁹¹ Gup (n 14) 18.

⁹² OECD, 'OECD Principles of Corporate Governance' (2004) 19 <<http://www.oecd.org/daf/ca/principles-corporate-governance.htm>> accessed 7 August 2015.

governance framework can present significant challenges to improving corporate governance.⁹³

While there are many focuses on individual aspects of the bank corporate governance framework such as non-executive director, board compensation, sub-committees, board composition, no single component of the system can guarantee good governance. However, board compensation is a crucial aspect as the recent crisis revealed board's compensation was not linked sufficiently to the long term performance of the banks which resulted in the assumption of greater risk and the unfolding effects.⁹⁴

Another characteristic that need to be explored further is the institutionalization of dissent within the board through the appointment of a "devil's advocate".⁹⁵ Under this categorization, the authors promote opposition to the CEO and the board with the hope to stimulate sufficient ventilation of an issue but not to undermine the CEO or for decisions to be implemented half-heartedly especially after discussions and a democratic approval process. The institutionalization of such a role could encourage diversification of opinions in small states like Jamaica and especially Belize, where the number of individuals who may be suitable for such a role can be exhaustive. Also,

⁹³ Financial Stability Institute, 'Corporate Governance' (FSI Connect Tutorial) <http://www.fsiconnect.org/Tutorial_Details.aspx?SID=35&CID=2&SCID=90&ID=FSI_lo_1215> accessed 22 May 2015.

⁹⁴ Charles Ferguson, 'Inside Job' (Documentary Film, 2010) <<https://www.youtube.com/watch?v=T7WY8BZZiQc>> accessed 15 July 2015.

⁹⁵ F Scott Kieff and Troy A Paredes, 'The CEO and the Board: On CEO Overconfidence and Institutionalizing Dissent in Firms' in *Perspectives on Corporate Governance* (CUP 2010) 107-112.

since anyone can be appointed on a rotational basis depending upon the decision to be made, it could serve as an important component where independent non-executive directors becomes a scare commodity. However, the implementation of such a component to support better bank corporate governance should be tailored to the needs of a bank because like other matters pertaining to banking, a one-size-fits-all does not hold.

Chapter 4: A Comparative Study: The Regulatory Framework

4.1 Corporate Governance Infrastructure

The corporate governance infrastructure is paramount to promoting a healthy financial system. A significance which is reinforced by the prominence of banks within financial sectors such as Belize, Jamaica and the UK. While there are a number of other elements to the corporate governance infrastructure such as the special role of non-executive directors and audit committees, this research will be focusing on the underpinnings of the corporate governance systems in the three countries, as well as focusing on the appointment and duties of board of directors.

4.1.1 Belize

Currently the supervision of the financial sector is shared among several supervisory bodies with the CBB having the mandate to supervise and regulate both domestic and international banks, credit unions, and building societies in order to promote stability within the financial sector.⁹⁶ While, the Supervisor of Insurance oversees domestic insurance companies, and the International Financial Services Commission is

⁹⁶ DBFIA s 5(3).

responsible for non-bank offshore activities, such as international business companies, international mutual funds, among others.⁹⁷

In April 2015, Belize implemented the *Practice Direction No 6: Corporate Governance* (Belize Code), which incorporates both a mandatory element⁹⁸ and a flexibility approach to corporate governance. The flexibility approach is promoted through the allowance for banks to adjust its corporate governance framework based on the profile of the institution in conjunction with a flexible disclosure regime.⁹⁹

Prior to the passing of this regulation, the central bank exercised considerable influence over banks' corporate governance matters through the provisions of the DBFIA¹⁰⁰ and its predecessor the Banks and Financial Institutions Act.¹⁰¹ Consequently, the implementation of this directive is to provide banks with the regulator's minimum

⁹⁷ IMF, 'Belize: Assessment of the Supervision and Regulation of the Financial Sector – Review of Financial Sector Regulation and Supervision' (IMF Country Report No 04/373 November 2004) 16-18 <<http://www.imf.org/external/pubs/cat/longres.aspx?sk=17863.0>> accessed 25 March 2015.

⁹⁸ The passage of Statutory Instrument No 16 of 2012 effectively allowed for directions (specifically Practice Directions) issued by the CBB to be legally binding as contained in the DBFIA s 9.

⁹⁹ S 13.3 <<https://www.centralbank.org.bz/laws-regulations/domestic-banks-financial-institutions-act>> accessed 5 June 2015.

¹⁰⁰ Some section of the act particularly relates to the board and specific governance matters such as being fit and proper (s 5), duties of directors (Part V), transactions with related parties (Part VI), and transparency matters (Part VIII).

¹⁰¹ The CBB has the legal power to establish regulations as it pertains to corporate governance as allowed under DBFIA s 7(1)(n) which also provided prescribed penalties for any violation of those regulations by individuals or the entity in s 7(3).

expectation for Belize as it relates to international best practices on corporate governance within the context of each bank's profile.¹⁰² Furthermore, Belize's companies act¹⁰³ mandates requirements on director's qualification¹⁰⁴ and delinquency,¹⁰⁵ the publishing of annual statements,¹⁰⁶ and matters relating to auditors.¹⁰⁷

Given that the UK's companies act has influenced laws relating to companies in other states, inclusive of Belize, it is important to highlight that the DBFIA legislative requirements has placed it above the country's Company Act should there be any insufficiencies¹⁰⁸ as it pertains to its banking sector.¹⁰⁹

¹⁰² Belize's Code s 3.5-3.7.

¹⁰³ Belize defines a company as "a company formed and registered under this Act or an existing company", which means "a company formed and registered under any previous Act or Ordinance providing for the incorporation, management and winding up of trading companies and other associations" in The Companies Act CAP 250 Revised Edition 2000 (Belize's Companies Act) s 2(1).

¹⁰⁴ Belize's Companies Act s 75.

¹⁰⁵ Ibid s 208.

¹⁰⁶ Ibid s 109.

¹⁰⁷ Ibid s 113.

¹⁰⁸ Some inadequacies include the stipulation on the qualification and minimum number of directors in the Companies Act 2000, s 75 and 116.

¹⁰⁹ DBFIA, s 141(2).

4.1.2 Jamaica

Jamaica's corporate governance infrastructure is guided by supervision of deposit taking institutions under the BOJ, and oversight of non-deposit taking institutions within the securities, private pension, and insurance industries by Financial Services Commission. During 2014, the country's financial sector saw major enhancements with the passage of the BSA which both amalgamated and replaced three deposit taking statutes, namely The Bank of Jamaica (Building Societies) Regulations, The Financial Institutions Act, and The Banking Act which encompasses the legal infrastructure for prudential supervision within the system.¹¹⁰ The corporate governance infrastructure of Jamaica banks is encompassed within the binding regulations of the BSA and the 2004 Companies Act which are further elaborated upon through the non-binding corporate governance standards in the *Standard of Best Practice for Effective Corporate Governance of Deposit-Taking Entities* (Jamaica's Code).¹¹¹ These recommendations are the minimum expectations of what banks should have established within their respective governance framework.

The corporate governance infrastructure in Jamaica is complemented with a number of standards of best practices which details the various criteria which are considered under

¹¹⁰ BOJ, 'Legislation' < http://www.boj.org.jm/financial_sys/supervised_legislation.php > accessed 7 September 2015.

¹¹¹ BOJ, 'Jamaica's Code' <<http://www.boj.org.jm/pdf/Corporate%20Governance%20Standard%20July%202008.pdf>> accessed 12 August 2015.

the 'fit and proper' requirements,¹¹² internal controls expectations of board and management,¹¹³ and various risk controls which have been encompassed in Jamaica's recommendations on bank governance. These standards combined with the BSA and Companies Act 2004, provides for a robust governance framework within which the banking sector functions. The BSA which came after Jamaica's Code made some modifications to the corporate governance framework which includes autonomy for the Supervisory Committee,¹¹⁴ the establishment of an independent Supervisory Appeals Board,¹¹⁵ and the empowerment of the Supervisory Authority to set binding prudential regulations to promote financial stability within the economy.¹¹⁶ Although the guidelines does not speak on directors duties towards the bank's shareholders, those expectations are outlined within Jamaica's Companies Act along with guidelines of other institutions such as for listed companies on the country's stock exchange. This allows for the duties to be tailored to what is expected within those bodies to promote effective governance and transparency which remains pivotal to Jamaica's growing economy.

¹¹² BOJ, 'Standard of Sound Business Practice: SSBP No 11 Guidelines to Fit and Proper Assessments' (updated August 2014) 7 <http://www.boj.org.jm/pdf/Fit_and_Proper_Guidelines.pdf> accessed 9 September 2015.

¹¹³ BOJ, 'Standard of Sound Business Practice: Internal Control' (March 1996) 19-20 <<http://www.boj.org.jm/pdf/Standard-Internal%20Control.pdf>> accessed 9 September 2015.

¹¹⁴ BSA, s 6(2).

¹¹⁵ BSA, s 27.

¹¹⁶ BoJ 2014 Annual Report (n 63) 64.

While Belize mandates that its banks comply with its governance code, Jamaica does not utilize this approach. Instead it recommends that certain disclosures be made to both the public¹¹⁷ and to the regulator which should allow for an assessment of bank's corporate governance infrastructure.¹¹⁸ This method is employed with the belief that if done appropriately it would facilitate market discipline leading to the promotion of good governance within the banks. If proper disclosure is made through the issuance of annual reports and other financials then shareholders and other stakeholders would be able to hold directors accountable for the decisions made within Jamaica's financial sector.

Although Jamaica's Code does not have the force of law,¹¹⁹ it is supported by legislations in both the BSA¹²⁰ and in Jamaica's Companies Act 2004 which strives to promote high bank corporate governance in its growing financial sector.¹²¹

¹¹⁷ Jamaica's Governance Code, s 72(c).

¹¹⁸ Ibid s 73-75.

¹¹⁹ BoJ, 'Standard of Best Practice for Effective Corporate Governance of Deposit-Taking Institution' (July 2008) 6 <[www.boj.org.jm/pdf/Corporate Governance Standard July 2008.pdf](http://www.boj.org.jm/pdf/Corporate_Governance_Standard_July_2008.pdf)> accessed 12 August 2015. (Jamaica's Governance Code)

¹²⁰ The corporate governance guidelines makes reference to the repealed statute that the BSA has replaced.

¹²¹ Some soft-laws can prove to be more influential than legislations because of market expectations. See, Eilis Ferran and Kern Alexander, 'Can Soft Law Bodies be Effective? Soft Systemic Risk Oversight Bodies and the Special Case of the European Systemic Risk Board' (2010) University of Cambridge Faculty of Law Legal Studies PAPER NO 36/2011, 3 <<http://ssrn.com/abstract=1676140>> accessed 30 July 2015.

4.1.3 *The UK*

In the UK, companies must be incorporated under the Companies Act at the national level and are subject to a comprehensive corporate governance system. This system of governance within banks have certain legislated requirements on the performance of board's duties¹²² but remains a 'comply or explain' infrastructure.¹²³ The flexibility of this mechanism allows banks to adapt the requirements to their specific circumstances; however, this is not always the result as the recent financial crisis indicated.

After the identification of the causes of the 2007 financial crisis inclusive of corporate governance failings,¹²⁴ the efforts to enhance bank corporate governance convergence did not have much of an influence on the UK's system of bank governance because most of the requirements were already implemented following the Walker Review Recommendations and the corporate governance guidelines.¹²⁵ However, the introduction of the CRD IV altered certain requirements from being merely a soft-law approach under the 'comply or explain' mechanism to a regulatory requirement. A

¹²² UK's Companies Act 2006, s 170-177.

¹²³ Financial Reporting Council, 'UK Corporate Governance Code' (September 2014) 4 <<https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>> accessed 5 June 2015. (UK Code)

¹²⁴ The de Larosière Group, 'de Larosière Report' (February 2009) 8-11 <http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf> accessed 20 May 2015.

¹²⁵ Kokkinis (n 17) 32.

crucial aspect of this regulation is the prohibition of combining the roles of CEO and chairman of the board, without regulatory approval.¹²⁶

An integral criteria to assess a governance infrastructure is the disclosure of information about the entities that operate within the system. Given the realization of this aspect, the UK mandates the disclosure requirements of corporate governance in accordance with the FCA's Disclosure and Transparency Rules,¹²⁷ its Listing Rules,¹²⁸ the FSMA,¹²⁹ and the UK Code which provides specific aspects on bank's disclosures. When proper disclosures are made it creates the atmosphere for a healthy discourse between the board and shareholders, and for an easier acceptance of deviations from a recommended governance provision by stakeholders. Furthermore, if it is done effectively this should promote a comply and explain mechanism as an alternative to the rules-based system of bank governance.

The compliance to the UK Code is the responsibility of the FSA through the issuance of its Listing Rules for banks which are on the London Stock Exchange. The Listing Rules gives force to the recommendations within the UK Code by requiring companies

¹²⁶ *ibid* 33-34.

¹²⁷ Specific requirements are needed in order to comply with the issuance of corporate governance compliance statements in the director's reports. See, FCA, 'DTR 7.2 corporate governance statements' (FCA Handbook) < <https://www.handbook.fca.org.uk/handbook/DTR/7/2.html> > accessed 20 August 2015.

¹²⁸ *Ibid* LR 9.8.

¹²⁹ S 80-82.

to explain in their annual reports how they have applied the principles and if these principles have been applied throughout the entire reporting period.¹³⁰

4.2 Systems of Appointing Boards of Directors

A bank's board of directors is entrusted with the oversight of the institution and a mandate to implement the objectives of its shareholders¹³¹ while being cognizant and responsible to all stakeholders of the bank. In the promotion of this responsibility, the board structure takes the form of either a one-tier¹³² or two-tier system¹³³, or some other variation,¹³⁴ depending upon the legislative and regulatory framework of the jurisdiction in which operations is conducted/registered or on the objectives of the bank.¹³⁵ While good corporate governance depends heavily upon the board, there is no clear evidence to support one form of board structure over another. Instead it is the

¹³⁰ Out-Law, 'The reach of the UK Corporate Governance Code' (Out-Law is part of Pinsent Mason, an international law firm) < <http://www.out-law.com/en/topics/corporate/company-law-and-corporate-governance/the-reach-of-the-uk-corporate-governance-code/>> accessed 11 September 2015.

¹³¹ Shareholders objective remains profit maximization.

¹³² Under a one-tier structure, the board of directors comprises of both executive and non-executive members.

¹³³ The use of a two-tier board structure involves two bodies of oversight. Under this system, the oversight function is done by an entity referred to as the supervisory body comprising of only non-executive members, and a management board, comprising of executives.

¹³⁴ BCBS 2015 (n 31) s 18.

¹³⁵ The US, the UK, and Australia among others employ a one-tier system; while, countries such as Germany, China, and Spain use the two-tier system. Furthermore, there are other countries, such as France, Switzerland, Finland and Bulgaria, where both forms of the board structures are permitted. See Gup (n 14) 31-32.

adherence to corporate governance principles which is important given the diversity of banking structures.

This Section looks at the board structures in Belize, Jamaica, and the UK, followed by the appointment and duties of boards of directors.

4.2.1 Belize

Even though banks in Belize have different ownership being either state or private owned, there is no structured requirement that mandates a specific board type. Instead the decision to implement a certain board structure is left to the discretion of the institution. However, the CBB requires that a bank must have at least five board members with the majority being non-executive members¹³⁶ in conjunction with the adherence to certain control mechanism prescribed by the regulator.¹³⁷ Within the context of the preceding requirement and based on both the chosen board structure and the policies of the institution, the central bank conducts regular risk assessments to determine the suitability of the implemented structure to safeguard the bank against risk through the promotion of applicable corporate governance principles.

¹³⁶ DBFIA, s 43; Belize's Code, s 6.2.3.

¹³⁷ Some of the control mechanisms regulated by the CBB includes limits on board members' term, restriction on holding responsibility in more than one bank, and a respectable financial history as contained in the DBFIA, s 42. Moreover, a non-executive is required to be an independent individual as per DBFIA, s 45(8)(c).

The board structures that are currently utilized by banks in Belize follow the one-tier system. Of the six banks, both FirstCaribbean International Bank Limited (FCIB)¹³⁸ and Scotiabank Belize Limited¹³⁹ oversight function is centralized where material decisions are made in regards to its structure and daily operations. Consequently, the corporate governance guidelines are stipulated by their parent companies in order to preserve their respective reputational capital given the international presence that these institutions possess. On the contrary, the remaining banks' board decisions are made locally despite being foreign owned.¹⁴⁰ The reason for the decisions to be made locally is because these institutions do not have a global or regional presence nor a foreign headquarters.

The appointment or replacement of members to the board of directors are subject to the regulator's ultimate approval under the fit-and-proper regime.¹⁴¹ This function of the regulator effectively means that regulators have an important responsibility to ensure that able individuals are allowed to serve on boards even though the subsequent actions of an individual cannot be controlled. Therefore it is crucial that the shareholders

¹³⁸ FCIB, 'Board of Directors' <<https://www.cibcfib.com/fcib/about-us/board-of-directors.html>> accessed 15 September 2015.

¹³⁹ Scotiabank Limited, 'Board of Directors' <<http://www.scotiabank.com/ca/en/0.,468,00.html>> accessed 15 September 2015.

¹⁴⁰ The state owned, National Bank of Belize Limited (NBBL), is including in this group whose decisions are made locally.

¹⁴¹ DBFIA, s 5; Belize Code, s 6.2.6.

remain ultimately responsible for the identification and selection of individuals who both possess the requisite knowledge and dedication to satisfy the duties of being a member of the board of the bank. Furthermore, board members must possess the knowledge, have the time, and be trained in order to remain qualified members to serve on a bank's board.¹⁴²

Although Jamaica's determination of a qualified person and the appointment process are both satisfactory according to international best practices, the allowance for non-executive directors to possess 4.99% share holdings¹⁴³ can bring into debate the true independence in such an appointment. Therefore, the regulator for both Belize and Jamaica, which also allows non-executive share holdings,¹⁴⁴ should give more consideration during its review process to the decisions made by such an individual in order to assess his or her independence.

¹⁴² Belize's Code, s 6.2.

¹⁴³ DBFIA, s 45(8)(c)(i).

¹⁴⁴ BSA, s 2; Jamaica's Code, s 69.

4.2.2 *Jamaica*

The current governance framework in Jamaica does not specify which board structure to practise; however, it does speak on certain aspects as it relates to the appointment and composition of its members, among other requirements such as directors' duties, which will be discussed in the ensuing section.

Although the Companies Act requires at least three directors of which two must be non-executives,¹⁴⁵ Jamaica's Governance Code recommends at least five members with two-thirds being non-executive members in accordance with international best practices.¹⁴⁶ Whereas, the BSA sets the minimum number of directors at five while legislating a one-third membership of non-executives¹⁴⁷ which falls below the suggested international standard as promoted in Jamaica's Governance Code; this is evidence of the soft-law approach of Jamaica's Governance Code even though there are legislations which provide a certain level of mandatory compliance.

Jamaica's guidelines further speaks on the appointment, evaluation, and removal of board members which should undergo a rigorous and transparent process in accordance with its *Fit and Proper Guidelines* and subject to the approval of the regulator.¹⁴⁸

¹⁴⁵ S 172(1).

¹⁴⁶ Jamaica's Code, s 18(a).

¹⁴⁷ BSA, s 32(1) and 34.

¹⁴⁸ BSA, s 3(2).

Additionally, suggestion is made to the provision of a letter of appointment to directors which stipulates expectations at the individual level and collectively as a board.¹⁴⁹ Such a provision enables the directors to be held accountable for their decisions both individually and collectively by shareholders, regulators, and other stakeholders. Within the context of such provisions, directors are unable to claim ignorance of fiduciary duties or an inability to perform their dictated responsibilities. This places much responsibility upon each director to effectively perform within their expected capacity to safeguard the bank's and the shareholders' interests via their exercise of duty of loyalty and care.

While Belize's legislations does not require the separation of the posts of chairman of the board and the chief executive officer (CEO) of a bank, the BSA requires that the chairman and CEO be two separate persons¹⁵⁰ and that the chairman cannot be an employee of the bank.¹⁵¹ This provides for better decision especially when approval for a matter is sought by the same person who is proposing the matter. Otherwise, the process could be subjective as oppose to receiving an independent assessment in the exercise of proper duty of care towards the bank and the relevant stakeholders. This form of control could be considered for incorporation into Belize's corporate governance system.

¹⁴⁹ Jamaica Code, s 20(c).

¹⁵⁰ S 35.

¹⁵¹ S 32(4).

4.2.3 *The UK*

The appointment to the board of directors is legislated under the UK Companies Act¹⁵² and the UK Code.¹⁵³ Although there is no requirement for a specific board size, recommendations are made in regards to ensuring that at least half of the board members are non-executive and independent directors. Furthermore, banks are required to be cognizant of replacement of board members after serving for six years or an allowed number of years¹⁵⁴ in order to ensure that these individuals do not become too familiar with the bank and its personnel which could jeopardize objectivity and call into question their independence. Another important requirement concerning non-executive directors is the need to publish particulars about each individual in the public domain which should serve as means of market assessment as well. Before an individual can be appointed to the board, he or she must satisfy the ‘fit and proper’ requirements¹⁵⁵ for those who hold ‘controlled functions’ within the bank,¹⁵⁶ which is a process supervised by the PRA.

Although the inclusion of women on boards does not necessarily guarantee better decision making, the UK Code does recommend that banks in the promotion of

¹⁵² S 157-160.

¹⁵³ S B.2

¹⁵⁴ UK Code, s B.2.3.

¹⁵⁵ FSMA 2000, s 61.

¹⁵⁶ Ibid s 59.

diversity does give consideration to gender diversity.¹⁵⁷ This is not mentioned in the governance codes of neither Belize nor Jamaica but due to the general suggestion by their respective regulators to give consideration to international best practices it may eventually be included in their codes. Perhaps a double rationale for the explicit exclusion of this clause is the fact that both these countries are categorized as developing unlike the UK where the promotion of equality is enforced.

4.3 Directors' Duties

The general duties of boards of directors is related to the board's overall responsibility to direct and supervise. Consequently, their duties would be a reflection of the necessary requirements to ensure that the bank under their purview fulfils its obligations to its shareholders, the company, and the stakeholders which is inclusive of depositors, employees, and other market participants.

Even though the board holds ultimate responsibility for the bank through the approval process of policies, procedures, strategic direction, and for the supervision of the institution, it is permissible to delegate certain responsibilities to board subcommittees in order to improve efficiency and effectiveness in fulfilling its stewardship duties.

¹⁵⁷ S B.2.

This research will now consider the duties of directors in Belize, Jamaica, and the UK to determine its adequacy within their respective banking sectors.

4.3.1 Belize

While the companies' act of Belize speaks generally about the duties of directors, it was enhanced under the DBFIA which spoke on specific requirements which was further elaborated upon in the Belize Code. Both the DBFIA and the corporate governance code details the minimum obligations of the board of directors in order to allow banks to have flexibility to adjust to circumstances and their institutional profiles. Most importantly is that the DBFIA makes it mandatory for boards of directors to put the interest of the bank before its shareholders and other stakeholders.¹⁵⁸

Prior to the passage of the Belize Code in April 2015, the DBFIA stipulated a wide range of directors' duties inclusive of the required number of meetings, the avoidance of conflict of interest, credit exposures monitoring, internal controls, risk management, and the issuance of false statements which can misdirect shareholders, stakeholders, and the regulators in their exercise of sound judgement.¹⁵⁹ However, this proved insufficient given the complexity of banks, the changing nature of their operations in

¹⁵⁸ DBFIA, s 47(a).

¹⁵⁹ Part V.

conjunction with economic developments in Belize, and the alleged violations of proper controls by some boards of directors.¹⁶⁰

Thus the Belize Code introduction further reinforce the corporate governance framework within the system. It incorporated various international standards, such as those prescribed by the BCBS and the OECD, and also regional practices from various countries within the Caribbean Community principally Trinidad and Tobago. Some of the additional matters that were included in the development of the governance code include the board's compensation and an annual certification of adherence to the corporate governance requirements, as discussed previously.

The inclusion of provisions on board's compensation is the result of international developments which prove that some of the bank failures during the 2007 crisis was the result of poor board decisions which could have possibly been avoided if board's functions were properly aligned to compensation incentives. While mention is made of international events, it does not exclude the likelihood that parallel judgements were not made on a reduced scale with corresponding ramifications on Belize's financial sector.

¹⁶⁰ Such violations occur even in smaller banks. See, Channel 7 News, 'London Court Dismisses Belize Bank Appeal' (Belize, 17 August 2009) <<http://www.7newsbelize.com/sstory.php?nid=14786&frmsrch=1>> accessed 7 August 2015.

4.3.2 *Jamaica*

The duties of a bank's board of directors in Jamaica are comparable to Belize's legislated fiduciary expectations. The similarities also includes the requirement that a board must place the interest of the bank before the interest of its shareholders and those of any other stakeholder.¹⁶¹ Although an argument may exist for directors to be responsible to the shareholders who appointed them and so have a contractual duty to the promotion of the owners' interest of profit maximization.

Even though the preceding may hold true under contractual obligations between the owners/shareholders and boards of directors, a director's performance is heavily influenced by social pressures to fulfil additional duties to the bank, its employees, and other stakeholders. The aforementioned combined with the inclusion of a caution article against political influences on board's decisions,¹⁶² collectively provides an environment where banks operating in Jamaica places the interest of the bank and other stakeholders before its shareholders.

The legislated mandate to guard the bank against political influences and putting the bank's interest before shareholders' are essential in a developing state as is the case for both Jamaica and Belize. As these countries endeavour to entice foreign investments

¹⁶¹ Jamaica's Companies Act, s 174; BSA, s 36(a).

¹⁶² Jamaica's Code, s 19.

in order to foster socioeconomic development, precautionary steps must be legally enshrined into their governance infrastructure to avoid being influenced by economically powerful investors who may attempt directly or indirectly via pressures on governments to put the interest of profit maximization before the welfare of the state and its citizens.

The fiduciary duties of all boards, as in the case of Jamaica, requires that board members operate with duty of loyalty¹⁶³ and care to the bank.¹⁶⁴ These descriptions further elaborate and support the requirement that board members operate from an informed basis while placing the needs of that bank and its depositors before the needs of the banking group, a situation which is prevalent with large international banking structures today such as Scotiabank Limited and FirstCaribbean International Bank Limited which both operates in Belize and Jamaica.

4.3.3 The UK

The duties of boards of directors are given much attention because of the need to control the agents of shareholders given the dilemma that agents and principals will always try to act in their best interest. Moreover, any issue regarding the manner in which boards exercise their decision making or matters relating to governance do not always go

¹⁶³ 2004 Companies Act, s 174.

¹⁶⁴ BSA, s 36.

before the courts given that boards can retroactively approve such decisions.¹⁶⁵ Therefore, the UK Companies Act,¹⁶⁶ the FSMA, the UK Code, among other institutional and select bodies' corporate governance codes all aim to influence as much as possible by providing expected guidance on the duties of the board.

Given that the duties of the directors are comparable to those of Belize and Jamaica, because both have utilized international best practices and have modelled their company laws after the UK's, the similarities will not be repeated but rather some key observations will be discussed. Accordingly, an important highlight is the requirement for boards to put the company, bank in this case, before other interests.¹⁶⁷ This is an important element to all three jurisdictions' company law as it legislates for directors to consider more than just the profit requirement of shareholders in the decision making process. However, directors hold certain responsibility in the promotion of shareholders' interest especially through disclosure procedures which if not done properly allows for a director to be held responsible.¹⁶⁸

¹⁶⁵ Edward Walker-Arnott, 'Corporate Governance and Banks: The Role and Composition of the Board' in Iris H-Y Chiu, *The Law of Corporate Governance in Banks* (Edward Elgar Publishing Limited 2015) 43.

¹⁶⁶ S 171-177.

¹⁶⁷ UK Company Law, s 172.

¹⁶⁸ Andrew Stafford and Stuart Ritchie, *Fiduciary Duties: Directors and Employees* (Jordan Publishing Limited 2008) 69-71.

On the matter of collective responsibility of the boards, an aspect ascribed to by both Belize and Jamaica as well, there is not a statute regarding such collective responsibility; however, it is recognized as critical to the promotion of corporate governance. Consequently, collective responsibility for an action will not be accepted in the courts but rather board members can be individually accountable for their respective actions taken at the group level.¹⁶⁹ Furthermore, the holding of boards responsible is more difficult with investors who can easily dispose of their shareholdings in a bank, when the institution is a public company, thereby forgoing on an important aspect of corporate governance and that is the responsibility of shareholders to hold boards responsible for their decisions.¹⁷⁰

4.4 Conclusion

The above assessments supports the supposition that the governance infrastructure in both Belize and Jamaica are promoting corporate governance within their jurisdiction but not at its optimal level if the welfare of the state, further expansion of the economy, and strengthening of the financial system are to be achieved. While, England's robust infrastructure cannot be concluded to be at its perfect state given the changing nature

¹⁶⁹ Edward Walker-Arnott, 'Corporate Governance and Banks: The Role and Composition of the Board' in Iris H-Y Chiu, *The Law of Corporate Governance in Banks* (Edward Elgar Publishing Limited 2015) 44.

¹⁷⁰ Dine and Koutsias (n 3) 325.

of corporate governance, it is undoubtedly one of the most complete in the promotion of bank governance.

A key aspect to the UK model of corporate governance is the utilization of other bodies and not mere legislation within the framework which promotes governance, such as the Institute of Directors and the Confederation of British Industries which both provide a listing of companies allowing for the exertion of market pressure on banks to fulfil governance principles in order to increase their rank position among competitors. Furthermore, there is a high level of awareness among the populace which aids in both market discipline and political pressure for banks to comply with governance principles.

In respect to Belize, the financial infrastructure is encompassing of both internal standards and guidelines in conjunction with a 'comply or explain' mechanism allowing it to be tailored to banks' specifications while establishing a minimum standard within its financial sector. The inclusion of a long-term compensation outlook for directors coupled with an annual certification process further enhances the framework within Belize. The annual certification is the CBB's promotion of a 'comply or explain' mechanism which allows for flexibility by the implementing institution while holding them accountable to certain expectations. This process may be best suited for Belize given that it is a developing economy, which needs a financial sector that is able to adjust quickly in order to promote development for both the country and the bank.

While the corporate governance infrastructure in Belize is sufficiently addressing its current objectives, the determination of its true robustness will be determined by on-site inspections conducted by the regulators and the banks' auditors. This should be collaborated by the compliance statement from banks which becomes officially due 2016 depending upon the various financial year of the banks.

Another aspect that needs to be given careful attention is that that national banks could have different governance systems and concerns than those of private banks,¹⁷¹ special attention needs to be directed to NBBL to ensure that it does not become influenced by political agendas at the expense of corporate governance obligations to its shareholders (Belizeans) and other stakeholders. The difference among bank governance structures worldwide¹⁷² is further collaborated by the notion that there is not a single one-size fits all form of corporate governance framework but rather it must be customized to the specific needs of the institution in order to fulfil its objectives while maintaining utmost transparency and accountability to all stakeholders.

In regards to Jamaica, an important aspect of its governance code is the recommendations to guard against the influence of political interest on a decision of the

¹⁷¹ Gup (n 14) 20-21.

¹⁷² Spong and Sullivan (n 18) 55.

board.¹⁷³ While this may appear to be an obvious statement and which all banks should be fully compliant with, the context in which banks operate in developing nations can be exposed to influential political agendas. This is particularly the case where banks are alleged to be supportive of political parties or in the case of banks owned by the state.

In order for both Belize and Jamaica to build upon their governance infrastructures, the regulators and the government need to give further consideration to their unique situation while maintaining a balance in regards to international pressures. Hence, the passing of legislations and the education of its populace should be the focus in order to enhance the financial awareness of its people and promote societal market discipline through organizations such as the Confederation of British Industries.

¹⁷³ Jamaica's Code, s 19.

Chapter 5: A Further Comparative Study

5.1 Introduction

Much consideration has been provided by academics on the characteristics of board of directors because those are the individuals who are responsible to both set the policies and ensure that those policies are being complied with by the bank. However, there are a number of other components that constitute a successful governance framework inclusive of employees' participation, a democratic functioning bank, active and fair regulators, and applicable legislations coupled with an independent judiciary.

These following subsections will briefly delve into the minimal expectations of both central banks as regulators and the government's role in the promotion of a sound corporate governance regime.

5.2 The Role of Central Banks as Regulators

While the development and implementation of specific corporate governance frameworks remain the duty of board of directors for each bank, the role of the regulators remain paramount in an age where financial ingenuity is eminent. And like the customization process that banks must conduct in order to make international best practices applicable to their special situations and challenges, similarly central banks or regulatory bodies should give consideration based on promoted expectations of the regulators.

While, there may be the perceived notion that banks are well governed given that regulators have oversight and conduct regular assessments, there are evidence that during the bank failures of the 1980s regulators fail to provide enhanced supervisory attention towards banks just prior to their failures.¹⁷⁴ Consequently, an important yet sometimes overlooked requirement is for regulators to act before it is too late. While, it is not the role of the regulator to prevent a bank failure¹⁷⁵, it is their responsibility to curtail the losses and protect depositors and other stakeholders in the event of a bank collapse.

Some of the fundamental responsibilities of the regulator is captured in the *BCBS's 2010 Principles for enhancing corporate governance* in which the primary responsibility is the promotion and assessment of the corporate governance frameworks in banks.¹⁷⁶ The forgoing in conjunction with the individual realities of any jurisdiction should form the building blocks upon which certain ideas are incorporated, others ignored for lack of applicability, or simply the promotion of unconventional practices in regards to bank corporate governance.

¹⁷⁴ Gup (n 14) 26-27.

¹⁷⁵ It is expected that in the normal operations of an economy, an efficient managed company will survive while those which are not efficiently managed will eventually fail. This expectation remains the same for financial institutions otherwise a risk of moral hazard can be created.

¹⁷⁶ BCBS, *Principles for Enhancing Corporate Governance* (BIS, October 2010) 30-34.

One such customization is the need of the regulators to educate its citizenry on governance matters in states where governments' attention is focused on other social needs or lack sufficient resource to extend sufficiently to the financial sector. As financial awareness is developed in a society, it should be expected to increase market discipline. The role of market discipline through the adherence to accounting standards, transparency of financial statements, external audits among others can greatly improve the governance infrastructure¹⁷⁷ given that on a number of occasions regulators actions have been found to be insufficient. However, even if an education campaign is pursued, one must recognize that the citizenry or retail depositors may not be fully capable of providing the level of monitoring that would be required on banks. Hence, the supervisory obligations of the regulators is not to be replaced. This incapability includes the lack of financial expertise of both retail and corporate depositors, who may not possess the aptitude to assess a bank. Also, smaller depositors may not be able to negotiate interest rates based on the riskiness of a bank or market conditions; however, this may not hold for institutional investors or large depositors who may be able to negotiate a better rate of return.¹⁷⁸

¹⁷⁷ James R Barth and others, 'A cross-country analysis of bank performance: the role of external governance' in Benton E Gup (ed), *Corporate Governance in Banking: A Global Perspective* (Edward Elgar Publishing Limited 2007) 154-159.

¹⁷⁸ The determination of the level of influence that can be exerted depends heavily upon the liquidity requirements of a bank.

Another important limitation is the presence of deposit insurance¹⁷⁹ which could create a disincentive especially where the analyzing of bank data is time consuming and costly for even interested stakeholders.¹⁸⁰ Consequently, while depositors may be protected through the use of deposit insurance, the financial cost of a bank failure could be borne by taxpayers.¹⁸¹ Despite the forgoing limitation on effective monitoring, there should still be a campaign to continuously educate the populace. This would garner public support in appreciating tough decisions, if taken, by regulators and governments.

Furthermore, an educated populace would expect that regulators prioritize the stability of the financial sector over that of shareholder's profits given the potentially resulting effect on taxpayers, national debt, and economic development just to name a few. Consequently, the utilization of a regulatory approach over a soft-law mechanism in the promotion of bank corporate governance would effectively be putting the public interest over private interest.¹⁸² Furthermore, within a context of financial distress on economies caused by bank related problems, it would be expected that governments would seek to provide this public good and build their political capital which would not only be beneficial to the governments of Belize and Jamaica but primarily to the UK,

¹⁷⁹ Even though deposit insurance schemes are funded by banks, the full costs needs to be considered in the prevention of a bank failure; however, this may not be a priority of depositors who may be contented that their monies remain secured. Nevertheless, one should just consider the recent financial distress in Greece to understand that while deposits are secured it may still prove challenging accessing one's deposits during a financial distress.

¹⁸⁰ Kokkinis (n 17) 28-30.

¹⁸¹ *ibid* 30.

¹⁸² *Ibid* 36.

where taxes, insufficient social projects, and the national debt remain prevailing concerns.

5.3 The Role of Governments

The primary responsibility of governments is to pass legislations that promote public and investor confidence which inevitably is a prerequisite for financial markets to develop.¹⁸³ The need to establish balanced legislations is paramount to protect various stakeholders such as depositors and employees, while allowing for financial innovation. Consequently, governments must toil in unison with regulators, who should better understand the intricacies of banks and the financial markets, to provide relevant legislation and guides to foster an efficient banking sector.

In conjunction with the regulators, a country's government has the responsibility to promote an environment that is conducive to an efficient economy where efficient companies thrive and inefficient ones are allowed to fail. Accordingly, the concept of Too-Big-To-Fail¹⁸⁴ must be managed in such a manner as to protect depositors, tax payers, other stakeholders, and the credibility of the regulator and the government by

¹⁸³ Giles Proctor and Lilian Miles, *Corporate Governance* (Cavendish Publishing Limited 2002) 80-81.

¹⁸⁴ This expression was termed by Todd Conover, Controller of the Currency in the US, when he testified in 1984 that eleven banks were Too-Big-To-Fail due to the negative repercussions it would have on the economy and payment system. However, the concept has been exercised in other industries prior to that, including the Lockheed Aircraft in the 1970s in the US and the Japanese bailout of its banks in the 1990s. See Gup (n 14) 27.

not rescuing banks that have been poorly managed. Supporting the notion of Too-Big-To-Fail directly impacts taxpayers and the national debt which can have grave long-term consequence on an economy.

While it would undoubtedly be a balancing act for governments in the maintenance of political capital to decide between allowing a bank to fail or the usage of taxpayers' monies, which could have been directed at various social projects.

Another critical element of the development of any corporate governance framework is to recognize that the laws and codes that accompany it should be a direct reflection of the national experience and the needs of the state. In the case of developing countries, but is also applicable to developed economies, there is the need to legislate the requirements to have companies adhere to their social responsibilities based on their respective profile and environment.

Therefore, regulators and governments are crucial participants to the governance within the banking sector of their economies. However, one should not deduce that governments and regulators in developed economies have a reduced role to play comparatively to those in developing countries, rather their duties are even more vital given the global ramifications of decisions made that affect G-SIBs.

Conclusion:

Based on the research conducted, the observations indicate that bank corporate governance can be achieved in the English speaking Caribbean countries of Belize and Jamaica. However, to achieve an applicable structure to promote governance, regulators and governments must consider some fundamentals to correspondent to their country profiles.

One such is the institutionalization of employee participation at the board level, possibly through the utilization of union representatives.¹⁸⁵ However, for this to achieve increased corporate governance within the institution, the representative must be democratically elected by the employees and remain objective and transparent throughout the appointment period. Furthermore, corporate entities should encourage airing of bad news, establish realistic goals, and encourage an environment of protection for whistle-blowers.¹⁸⁶ These would contribute towards the incorporation of employees in the governance process.

While it is necessary to tailor a country's governance system to reflect its history and its needs, developing countries can utilize some of the governance principles that have

¹⁸⁵ The Franco-German model of corporate governance incorporates the interests of employees and shareholders. See, Gup (n 14) 19.

¹⁸⁶ Brian Finch, 150-157.

worked in other developed states such as the UK. These insights must be combined with the appropriate policies to reflect the reality of the economies in which these banks operate. Consequently, governments need to pass the appropriate legislations that would be most applicable to their jurisdictions without excessive reliance on the foreign legislations and governance frameworks. In order to raise the applicability of a legislation, governments could involve the relevant parties that would be affected by the law or who may be responsible for its implementation.¹⁸⁷ But the two major components that is most needed is the enforcement of legislations along with an independent judiciary. These factors can be heavily influenced by the governments of Belize and Jamaica as they both aim to increase their commitment to sound corporate governance.

This research also highlighted that bank corporate governance remains an area that needs further analysis to develop for the Caribbean. An important step in this process, which was a challenge in this assessment, is for countries to make available key information in order for a proper analysis to be conducted on their experiences in the establishment of bank corporate governance systems.

¹⁸⁷ Milhaupt and Pistor (n 83) 27-31.

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