Exploring the nature of corporate governance

On St. Vincent and the Grenadines

Within

The private limited Liability Company limited by shares:

1845 - 2013

PhD in Law

Department: Human Rights & Law

University of Essex

5 May 2020

ABSTRACT

This original thesis explored the nature of corporate governance in St. Vincent and the Grenadines within the private limited liability companies limited by shares. These were unlisted companies. The period under review was from 1845 up to and including 2013. The hypothesis questioned whether there was an indication about a small category of these companies that contributed to a new variant of poverty referred to as genteel poverty. The lack, absence or disregard of corporate governance best practices within these companies seemed to have impacted the nation's gross domestic product through a major liquidity crisis from 2009 onwards.

These companies were part of a cross border business network and became embroiled in an unprecedented financial crisis originating in and from a conglomerate headquartered in the neighbouring islands of Trinidad and Tobago. There were existing networks of business relationships between member states within the Caribbean Community (CARICOM) of which St. Vincent was a part. Historical and legislative legacies were not limited to British company laws and the UK Companies Acts but recently to aspects of German corporate law. A combination of at least seven research methods was used to analyse the hypothesis and to provide a further understanding of the hybrid corporate governance system, which currently exists on the island.

The main thesis posited that the admixture of British corporate law, with adaptations from German corporate law, constituted the substantive nature of corporate governance jurisprudence and consequently impacted the financial sector on the island. British Company law recognised two major organs namely, the board of directors and the company itself (shareholder assembly) in meetings. The research discussed these matters further in keeping with national aims and objectives articulated by the Vincentian dichotomous regulators: the Financial Services Authority and the Commercial and Intellectual Property Office. The major recommendation was a Code on corporate governance for all these unlisted companies.

ACKNOWLEDGEMENTS

Deepest appreciation to all those who contributed to the outcome of this thesis such as:
My sons: Mikhail and Chevanev,
Sir Louis Straker – Deputy Prime Minister and his wife Cousin Linda;
My church families in the United Kingdom and the Caribbean,
Dr. Hon. Ralph E. Gonsalves, Honorable Prime Minister for his support and encouragement all through the process; Mrs. Diana Sherma Adams -Thomas, my nephew Anthony Junior, Ms. Wanda Conner, Mr. David Roberts and his wife Carol, Staff of the High Commission for St. Vincent and the Grenadines, The Ministry of Foreign Affairs, Trade and Commerce, the Financial Services Authority, The Commercial and Intellectual Property Office; other departments of government and agencies in St. Vincent, Trinidad and Tobago and the United Kingdom who provided me with relevant information during the period of study.

Mr. Isaac Legair (a past teacher) whose expert advice and knowledge of company law in St. Vincent and the Grenadines contributed significantly to this original thesis presentation. To my many friends, your names are too numerous to mention.

I am deeply indebted to all my Supervisors and staff, but especially Professor Dr. Peter Luther for providing me with much needed guidance and direction that resulted in what you now read as the final outcome. To Ms. Maria Heed, a very special thanks.

Finally, I give praise and thanks to God for the renewing of my strength. My journey has only just begun. With much love and sincere gratitude to all of you who in one way or another encouraged me onwards.

Muchas gracias. Mille mercis. Tusen takk

DEDICATION

Dedicated to Mr. John Horace Bayliss Frederick, Esq.
Attorney-At-Law

My Dad...

Born in Tobago!
Called to service in St. Vincent and the Grenadines
There you go!
To date you are the oldest barrister in our island
You too were educated in the UK
I never knew till months ago.
As passionate as I am about learning the law
Your gift to me, natural, raw!
I was lost in plain sight
To find you was a three - year fight.

Thank you for accepting me into your life.

Paternity DNA results – 2 July 2019

DECLARATION OF AUTHENTICITY

I, the undersigned Doris Debra Williams Charles declare that this is my original work, gathered and utilized especially to fulfil the purposes and objectives of this study, and it has not been previously submitted to any other university for a higher degree. I also declare that the publications cited in this work have been personally consulted.

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Signature

DORIS DEBRA CHARLES

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Name in Block Letters

5 May 2020

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PREFACE

In this original thesis the research topic was engaging. Coincidentally, there was an evolving debate about corporate governance within the private limited liability companies limited by shares. Within the Caribbean these were some key institutions within the financial sector. The principal objective was to present a unique perspective about this phenomenon but for the period 1845 to 2013. There were no known monographs specific to St. Vincent about this actual nature of corporate governance within this category of private companies for this period under study. These companies were originally conceived as family oriented businesses with emphases on meeting the needs of a stakeholder community within a post colonial emerging economy.

As information was released for public consumption, stakeholders within the regional grouping in the Caribbean geopolitical landscape were brought to accept that a major liquidity crisis had occurred. Initially the facts were blurred. These private companies were part of a network with complexities in management and business models. They were spread across porous borders. In St. Vincent and the Grenadines, the British American Insurance Company was the identified insurance company. While it was a single entity, its capacity to be the channel of an unprecedented financial contagion was beyond its singleness. Attention was drawn to its affiliation to the conglomerate CL Financial Limited with headquarters in Trinidad and Tobago.

The nature of corporate governance within private companies on St. Vincent and the Grenadines was predicated on British company laws and the UK Companies Acts for more than two centuries. There was a radical reshaping that was taking place up to the current time. The response by the local legislature was to borrow aspects of corporate governance practices and procedures from German corporate law. The introduction of a two-tier board to assist with a piecemeal response to corporate governance was phenomenal. This was untried and now formed part of a hybrid. In this context therefore, corporate governance best practices was still about the delivery of accurate information and disclosure within and among economically viable

companies. Corporate governance best practices are evidenced through a sometimes discreet, yet robust, reliable and practical business and fiscal recording system.

There was no doubt that corporate governance best practices had undergone tremendous and radical changes for over two centuries. There were other influences that impacted stakeholders' responses from the Caribbean in the context of the aforementioned crisis. The sovereign nation states of St. Vincent and the Grenadines and Trinidad and Tobago were member states of CARICOM. They were part of the Commonwealth group of nations. There was a real sense that the British jurisprudence was the core of corporate law on these islands as former colonies.

The current debate about corporate governance best practices and corporate governance was critical. It served as the backdrop for the research question. Whether there was some correlation between the lack, disregard or absence of best practices to genteel poverty in an already impoverished nation and if at all, any corresponding negative impact on the gross domestic product of St. Vincent and the Grenadines was positively answered. There were societal complexities and conditions not limited to the post slavery phenomenon of emancipation. These were considered antecedents to the application and interpretation of corporate governance best practices within the identified companies. In this original thesis, respectfully, the aforementioned issues provided some support for contextual analyses of the documented unprecedented crisis that spanned the period 2009 through to 2013.

There was evidence of efforts by several Caribbean governments at seeking redress for the havoc that was wrought on their economies through the phenomenon of the private limited liability company. The financial contagion disrupted lives. The IMF was part of the consultative process. Among local and regional initiatives were corporate refinancing initiatives, judicial management reviews and other analyses. These were distilled and well articulated and communicated through some media houses. The inclusion hereinafter of the two case studies as private limited liability

companies limited by shares was pertinent. St. Vincent was already an impoverished nation and the existence of additional strains on its fiscal budget through an imbalance within its financial sector was unwelcomed news. Trinidad and Tobago, the more economically advanced of the two named countries was also impacted in similar and other varied ways. Through comparative analyses the private limited liability company was a versatile British construct. In the first case study, the private company was used as a multipurpose department store. The second case study was primarily for insurance purposes. Not as an overemphasis, but the resulting modern social conditions within the aforementioned states were shaped by their own political and historical development to a large extent.

There was evidence that pointed generally to the synonymous occurrences of incorporation of the limited liability company with its corporate governance best practices. On the other hand, the fundamental concepts found within best practices had their genesis outside the remit of incorporation. For instance, the matter of fair and square dealing in financial matters was a 'family laden' value. This was well articulated in one of the companies through one of its organs. The two organs of the company are the directors and the company in meeting (shareholder assembly).

As British companies developed so did their best practices as outlined in their Articles of Association, Model Articles and or Table A, the substantive constitution so called. The constitution of the British company has metamorphosed and responded to the prevailing socio economic factors. This bore heavily on the similar construct in St. Vincent and the Grenadines and other former colonies of Great Britain. Private companies were emerged from experiences within common law, from the fundamentals of British partnership law, British company laws, UK Companies Acts, elements of the Deed of Settlement and the Unit Trust. Therefore, the original contributions hereinafter are outlined in this five - chapter monograph.

Beginning with Chapter One and concluding with Chapter Five, this exploration was done and brings to bear a measure of originality in interpretation and application. In Chapter One for instance, the central theme of the thesis, the nature of the study and explanation of terms used throughout the text are presented. Chapter Two provided clarity on the antecedents of the nature of corporate governance within the identified companies evident on the island. Chapter Three provided the first case study and analyses the first house or established company in 1845 on St. Vincent and the Grenadines. This was the John Hazell Sons and Company Limited. There was an attempt to reconcile its claim to establishment in 1845 prior to the emergence of the British legislation on 'private' companies that was enacted in the UK Companies Act 1907.

Chapter Four discussed and analysed the second case study of the British American Insurance Company Limited. It was part of the regional conglomerate CL Financial group. It is to be noted that the British American Insurance Company Limited in its original corporate portfolio was in existence within the Caribbean region for well over (80) eighty years. The final subdivision of this Five - chapter thesis detailed observations, analyses and conclusions. To rate the maturity levels of compliance to corporate governance, an assessment tool was utilised. An observation made was that close to 10,000 private companies were without an autochthonous Code on corporate governance. As such, a Code was advocated and submitted as part of the appendices.

Analyses contained hereinafter are the results obtained from seven research approaches namely: ethnography, doctrinal methodology, narrative, grounded theory, institutional theory, phenomenological and case studies methods. Additionally, through thorough examination of primary and secondary sources, discussions with various stakeholders who worked and lived both in Trinidad and Tobago and St. Vincent as well as visits to the island of St. Vincent and the Grenadines were germane to this original work. A number of other supporting tables, figures and appendices formed part of this submission. Finally, the aspiration herein was to encourage others to continue with the research on corporate governance best practices in the interest of Caribbean corporate law and national and regional corporate development

LIST OF FIGURES

CHAPTER ONE

THE PRIVATE LIMITED LIABILITY COMPANY LIMITED BY SHARES IN SAINT VINCENT

'…Company …a valuable instrument for the promotion and working of new industries, and for the mobilization of national credit…"
Sir William S. Holdsworth, A History of English Law, (2nd edn Methuen & Co Ltd, UK 1925) Vol VIII, 213

1.1 Introduction

This thesis was an original contribution to the themed research about the exploration of the nature of "corporate governance"[1] within the "private company,"[2] more precisely the "private limited liability company limited by shares"[3] from 1845 to 2013 in St. Vincent and the Grenadines. On this English speaking island, this was just "one of a number of private companies by shares"[4] recognisable by the island's legislature. This juridic association was inherited from the British because the island was a former British colony. During the period of this study, it was noted that commercial activities were not just regulated by a copy "of several hundred Acts."[5]

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[1] *International Corporate Global Network: Global Governance Principles* (5th edn International Corporate Governance Network, UK 2017) 4; see also for an additional reference to a historical concept of corporate governance which is still relevant today Gower, L.C.B, *Gower's Principles of Modern Company Law* (5th edn Sweet and Maxwell, UK 1992) 37; and see also Gower, L.C.B, *Gower's Principles of Modern Company Law* (3rd edn Stevens & Sons, UK 1969) 40 - for historical references to the existence of companies in early corporate UK. The private limited liability company also struggled to establish its relevance to economic development and incorporated aspects of the separation of powers, representation and varying forms of enfranchisement.

[2] Kershaw, David, *Company Law in Context: Text and Materials* (2nd edn Oxford University Press, UK 2012) 12

[3] Andenas, Mads, Wooldridge, Frank, *European Comparative Company Law* (Cambridge University Press, UK 2009) 109

[4] From the records at Commercial Intellectual Property Office and the Financial Services Authority up to 2013, approximately 10,000 companies were registered as classified as private limited liability companies limited by shares. These were comprised of domestic companies whose share ownership was among indigenous family members; others were international business companies; international insurance companies; hybrid private companies meaning International Business Companies limited by guarantee (not limited non-profit organisations, clubs, social enterprises, community projects) but has a share capital (for the purpose of fund-raising for instance) although not profit motivated.

[5] Sheppard, Charles, *An historical Account of the island of Saint Vincent and the Grenadines* (Routledge, UK 2013) 204 - 205

The island's corporate laws reflect substantively the British companies' laws and the UK Companies Acts. During the period under review, emphases were placed on a multiplicity of factors that were germane to the functioning of the companies in these sovereign states of "St. Vincent" [6]and to some extent in neighbouring island of "Trinidad and Tobago."[7] The latter was part of the study in so far as references were drawn from one of its companies. This was because both islands developed a network of business relationships using the insurance companies that were a category of the private limited liability companies limited by shares. This was possible given that these islands were member states of "CARICOM"[8] whose emphases remained on regional integration and sustainable economic growth among member states.

The substantive matter of corporate governance did generate active discussions among and within the island's growing intellectual populace in more recent times. These discussions became more widespread within the last decade (2003 – 2013) given that the nation state along with other member states of CARICOM grappled with the consequences of the global financial crisis; some "regional financial crises,"[9] and an "unprecedented financial crisis"[10] caused primarily by insurance companies that reacted within an already destabilised and weakened financial sector within member states of CARICOM in 2009. The small category of companies that were constituents within a conglomerate was the insurance companies. They became central to the debacle predicated on corporate governance best practices.

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[6] St. Vincent gained independence from Great Britain 0n 27 October 1979: See also the St. Vincent and the Grenadines Termination of Association Order 1979: Constitution of St. Vincent and the Grenadines, 1979 - Statutory Instruments No 918, 1979; Statutory Instruments No 916, 1979

[7] Trinidad and Tobago gained independence from Great Britain on 31 August 1962 – See also 10 & 11 Eliz. 2 Ch. 54: Trinidad and Tobago Independence Act, 1962

[8] Berry, David, *Caribbean Integration Law* (Oxford University Press, UK 2014) 107, 171

[9] Fortin, Henri, Barros, Ana Cristina Hirata, *Accounting for Growth in Latin America and the Caribbean: Improving: Improving Corporate Financial Reporting to Support Regional Economic Development* (The International Bank for Reconstruction and Development/The World Bank publication, USA 2010) 129 – 141

[10] Report No 09/175: *IMF Staff Country Report: Eastern Caribbean Currency Union: 2009 Discussion on Common Policies of Member Countries* (International Monetary Fund publication, USA, 2009) 90

These insurance companies were a small category of the private limited liability company limited by shares and were physically located across porous borders within CARICOM. Albeit the corporate governance of the insurance companies outlined among other issues the specific roles and duties of directors who were tasked with among other things, fiduciary obligations to their respective companies. These were best positioned to provide some clarity about the nature of corporate governance within the private limited liability company either on St. Vincent or Trinidad. They were to assess how external and internal factors exerted influences on the formation and functioning of these companies. The defining incident and probably the most catastrophic change within the nature of corporate governance on St. Vincent was due to an unprecedented financial contagion that originated outside of the island, from within similar companies in Trinidad and Tobago.

As a result, the dynamism of these changes attempted to distort the substantive concept of corporate governance best practices. This was quite remarkable especially since there was a generally accepted notion that corporate governance was synonymous with incorporation.. However, there was also an acknowledgement by some that corporate governance in St. Vincent may have not been statute driven but arise out of family laden values. In one of the case studies to follow, this is looked at in more detail.

On St. Vincent, there was another British construct if only with a similar name to its predecessor the "British American Insurance Company Limited"[11] [BAICO]. This registered company was a branch of one of the private limited liability companies in Trinidad and Tobago. It served as the conveyance for the corporate governance crisis and is detailed in Chapter Four. It was conjoined with another private limited liability company – the Colonial Life Insurance Company [CLICO]. References to BAICO in

[11] St. Vincent Insurance Act 2003; Certificate of Incorporation 119 of 2002 - St. Vincent and the Grenadines, 7 May 2002; See also *The Story of British American Insurance Company* – accessed 6 September 2016 - *https://sites.google.com/site/thestoryofbritishamerican/chapter-6-the-final-years-1989-2012* - where the original British American Insurance Company was "sold to CL Financial in 2009 – under Judicial Management".

this regard were also a reference to CLICO substantively, given the interdependence of both companies and their joint liability to insurance premium holders. To facilitate commercial endeavours within and among these entities, there were legislative provisions that facilitated interdependence. Company law among and between these former colonial countries of Trinidad and Tobago and St. Vincent and the Grenadines was and is applicable.

The research in this area determined that corporate governance within the private limited liability company limited by shares was geared foremost and ultimately towards economic efficiency and bolstering investor confidence. Given the fact that the Caribbean region did encounter several "corporate scandals"[12] over the past decades this research about company law is deemed to be relevant. It was not about the development of a Caribbean perspective on company law *per se*, but it nonetheless provided an insight into corporate governance practices experienced at this level. It was noted that although substantive texts were written about the issues of corporate governance as part of the academic discipline within the wider Caribbean, very little if at all, was mentioned about St. Vincent and the Grenadines specifically.

Notwithstanding this, in this original thesis importance was placed on non-listed companies, which aspire to high standards of "corporate governance practice."[13] The private limited liability companies limited by shares within St. Vincent presumably adhered to international corporate governance standards, those advocated by British company laws and the UK Company Acts in the absence of an autochthonous corporate governance Code. These corporate governance practices within the private

[12] Grosh, Margaret, Bussolo Maurizio, Freije, Samuel, *Understanding the Poverty Impact of the Global Financial Crisis in Latin America and the Caribbean* (Eds) (The World Bank, USA 2014) 1 - 257 Between 1995 and 1998 six commercial banks accounted for roughly 60% of the deposits of the population of nine commercial banks, five life insurance companies, pointed to 90% of the premium business in the business); a further one third of all banks and building societies were reportedly insolvent and were closed eventually. See Bonnick, G., "*Storm in a Teacup: Crisis in Jamaica's Financial Sector*" Adlith Brown Memorial Lecture (Thirtieth Annual Conference of the Caribbean Centre for Monetary Studies, Bahamas (October 1998, final version May 1999)

[13] *Op. cit.* [International Corporate Global Network] fn 1

companies appeared to be workable for well over a century but were subject to legislative amendments.

On the other hand, in the case of Trinidad and Tobago for instance, there was a study conducted by "*Syntegra Change Architects*"[14] in 2011 on corporate governance disclosure and thereafter in 2014, a workshop on implementing best practices. The latter was geared towards improving corporate governance within that state. The private limited liability companies and categorically insurance companies were likely to be in attendance.

1.2 Methodology

The research findings were based on seven major "qualitative research methods:"[15] case study; doctrinal methodology; ethnography with a socio legal bias; phenomenological; grounded theory; institutional theory and narrative. Additionally, a number of legal perspectives on the research topic utilised comparative analyses between "hard law ... black letter law; [and] 'soft law' [that] includes voluntary

[14] Kravatzky, Axel, et al, (Eds) *Corporate Governance Disclosure in Trinidad and Tobago: A case study by Syntegra Change Architects of Trinidad and Tobago,* (Presented to UNCTAD Working Group of Experts on International Standards of Accounting and Reporting (ISAR), Palais des Nations, Geneva, Syntegra Change Architects Ltd, Session 12 – 14 October 2011Although the report no longer was available and downloadable, and was read but not saved to personal files, it did conclude with the following words, " while the sample has relatively high rates of disclosure for a few topics, with most companies exceeding the disclosure requirements of Trinidad and Tobago, the overall level of disclosure remains low compared to other emerging markets. See also "*Improving Corporate Governance in T & T: Implementing Best Practices Workshop*, February 5, 2014 (Project for IADB Project ATN/ME 12783 – TT); see also *www.caribbeangovernance.org/In-The-Press/3159062* - accessed 18 August 2019. While reference was made to a Caribbean Corporate Governance Institute, small island states like St. Vincent and the Grenadines were not necessarily members of this institute as it was developed in Trinidad and Tobago. Members of the Board of Directors represent nation states like Guyana, Barbados and Trinidad and Tobago. It was incorporated in 2012 as a not-for-profit organization "dedicated to advancing principles of corporate governance across the Caribbean…"

[15] Schwartz, Michael Hunter, et. al., *What The Best Law Teachers Do* (Harvard University Press, USA 2013) 11; for additional reading see also Editors and Contributors Severally, *Research Methods in Consumer Law: A Handbook* (Edward Elgar Publishing Ltd., 2018); Wertz, Frederick. J., et al., *Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry* (The Guilford Press, NY 2011) 2-3; 15

sources of corporate governance standards that companies have the freedom to adopt or not;"[16] British company laws and the UK Companies Acts. The recent inclusion of German corporate law provided a further understanding as to how the corporate governance process worked. The admixture of these perspectives provided diverse analyses that were discussed subsequently.

Firstly, the "case study"[17] method was used to present combination of features of actual and at least realistic events, which is to give a more comprehensive understanding of the early corporate life of stakeholders. Among the overall appreciative values were those of corporate social justice, rights of individuals, operation of the rule of law, respect for each individual stakeholder and the diversity of initiatives that pointed to the commitment of and dedication to engagement within the corporate entity. The apparent 'value-laden' procedures articulated by the English company laws and the UK Companies Acts were those that eventually made their way into the centrality of corporate governance best practices. What was deduced was that 'early stakeholders' in post colonial developing states alluded to earlier, made adequate use of the outlined procedures to their benefit and succession planning within their respective companies.

Secondly, the method of "ethnography"[18]with a socio-legal bias gave a purview of the complicated and critical challenges associated with corporate governance best practices within the identified companies in St. Vincent and to a less extent, some analogous comments about the conglomerate in Trinidad and Tobago. The researcher observed and interacted at length with some aspects of the target audiences in 'lived experiences' of the "corporate governance ecosystems". The third technique used a people focussed approach, which was conducted within the environment of corporate

[16] Jacques du Plessis, Jean, Hargovan, Anil, Harris, Jason, *Principles of Contemporary Corporate Governance* (4th edn Cambridge University Press, UK 2018) 138

[17] Yin, Robert, K, *Case Study Research: Design and Methods (4th edn Sage Publication, USA 2009) 3*

[18] *Flood, John, Socio legal Ethnography:www.johnflood.com/pdfs/Socio_Legal_Ethnography_2005.pdf - accessed 12 April 2018*

development through the "phenomenological"[19] research method. In this context, the relevance and significance of corporate governance best practices or their absence, lack or disregard in new and diverse ways gained a new appreciation This method allowed for what 'might be at work or what might be assumed' given the phenomenon of scandals associated with the procedure and practices of corporate governance that impacted St. Vincent and may have been allowable elsewhere within the Caribbean region that contributed to the resulting unprecedented crises. The fourth method borrowed from the "grounded theory".[20] In its originality of presentation, a number of guidelines were adapted and applied to the analyses, given the guidance provided by Melanie Birks et al. For instance, examples were drawn from the health sector in those documented instances, and the theoretical integration processes discussed were useful in their general application, to company law in society. There was urging from other authors to use this method in order to identify as "novice grounded theorists to develop fresh theories …to avoid seeing the world through the lens of extant ideas."[21]

Following the well - constructed and time - tested format within "grounded theory,"[22] this was well articulated and endorsed by Dawn Watkins et al. There was an identification of a core category. It was considered that a core category as a phenomenon during the period 1845 to 2013 was identifiable. This was so through the targeted concept of 'genteel poverty' that negatively impacted the gross domestic product of the already impoverished nation state of St. Vincent and the Grenadines. It was of course channelled through the insurance companies external to the island but none the less an integral part of the nature of corporate governance.

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[19] Vagle, Mark, *Crafting Phenomenological Research* (2nd edn Routledge Publishers*, USA 2018) 10*

[20] Birks, Melanie, Mills, Jane, *Grounded Theory: A Practical Guide* (Sage Publication Ltd*.,* UK) *115 - 123*

[21] Charmaz, Kathy, *Constructing Grounded Theory* (2nd edn Sage Publication Ltd, UK 2014) *8*

[22] Watkins, Dawn, Burton, Mandy (Eds) *Research Methods in Law* (Routledge Publishers, UK 2013) 56 - 59

These companies may have emerged as legal phenomena with their practices, but not necessarily as a response to autochthonous or home - grown statute within their start up phases. Again, analyses were arrived at when this method was combined with the case studies methods of Chapters Three and Four for greater emphases and coherence. Having identified a core category, the next phase according to Birks et al, was to challenge the concept of 'theoretical saturation of major categories'. Here, data collected fell short of adding newer properties and or dimensions to these recognized 'categories under review.' There was a re-examination of some elements of the grounded theory on corporate governance. As such there was further clarity and contextual application of the theory to highlight the early corporate life of St. Vincent as extracted from the John Hazells Sons and Company.

This consolidated the basis of Chapter Three as the first case study of the private limited liability company considered as the first "established"[23] company on the island. Its location was in capital city, Kingstown. The "original site"[24] on which its first headquarters were erected is evident even up to present day. A similar comparative analysis on the British American Insurance Company was done utilising a similar approach. The latter presented with some complexity in its structure as an example of a 'series' of private limited liability companies.

The strength of the grounded theory could not be disputed as being positive and its use as an appropriate application proved that there was some saturation of that theory. No refinements were needed or could be applied to this formulated theory as a pattern emerged while the research was in progress and up to the point of it completion. The analysis did continue but with a theoretical grounding that there was indeed a lack,

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[23] Appendix I (4) - As recorded – Excerpts from the minutes of the company in commemoration of the centenary celebrations: also [Visit to the Coreas Hazell Company Limited in St. Vincent and the Grenadines 2012 and 2013].
See also *www.goddardenterprisesltd.com/in_co__.cfm?com=8* - accessed on 19 June 2019, where mention was made of the company as having been 'established' in 1845 and the 'oldest registered company in St. Vincent and the Grenadines. Goddard Enterprises acquired it in 2001.

[24] Appendix 1(i) – Original site for the first established company in St. Vincent and the Grenadines

disregard or absence of best practices, which resulted in a negative impact on the gross domestic product of countries that were so affected. Here were the linkages between the final theory and the data and or information collected over the specified period of study.

The 'accumulated bank of analytical memos' as posited by Birks et al, was reviewed and sorted at each stage and did provide conclusions germane to the grounded theory. It was reflective of the sum total of the data and or information that was gathered over the period under review (1845 through to 2013). The use of the fifth "narrative"[25]research methodology contributed to analytical discussions about the concepts of corporate governance within the private limited liability companies limited by shares. Of critical relevance was the examination of narrative production deduced from the historical records of companies in meetings and the "imperfect path of the research process."[26] These were inherent especially within and among historical findings. It was a useful method of inquiry into the stories not limited to short stories, minutes of meetings, as was the case in this area of legal research.

In some interesting instances, synoptic views of the narrative method sufficed to lay the foundation of the commonalities of corporate governance as a practice of 'the times.' The objective of the narrative approach did not fall short of exploring the existing phenomena and to propose change. The researcher's narrative was one also that was influenced by 'lived experiences' that were analysed in tandem with existing phenomenon and these, when combined, brought some evaluation of the broader social context of corporate governance best practices; the implications for the identified companies; their relevance to the economic development of the country and the shaping of the corporate governance systems that were emerging. This point also to an process and a hybrid system that was and is evolving.

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[25] Kim, Jeong-Hee, *Understanding Narrative Inquiry: The Crafting and Analysis of Stories as Research* (Sage Publications Inc., USA 2016*) xv;* see also Clandinin, Jean. D*., Engaging in Narrative Inquiry: Developing Qualitative Inquiry* (Routledge, UK 2013) *11*

[26] Halliday, Simon, Schmidt, Patrick, *Conducting Law and Society Research (Cambridge University* Press, UK 2009) 2

As the research developed the narrative method captured concisely that there was an unprecedented corporate governance crisis. The change advocated was that of a Code on corporate governance for unlisted companies. There was none that existed over the period of study as far as was known. The sixth theory was the institutional theory. Although applicable to organisations generally, the view that the "institutional theory"[27]was one that can be used to explain the functioning of the private limited liability company limited by shares. This was especially so given the nature of the commercial sector and the commensurate environment. The application of this theory appears to support the resilience of the social fabric of the identified companies within the context of their corporate governance systems. The theory 'spoke' to the structure and procedure that 'provoked' a collaborative mechanism for the delivery of sustainable services and products to all stakeholders. From the inception of the company on the island and their perpetual existence up to 2013, guidelines for social behaviours within the companies were created.

After careful examination of available records for each company, these corporate governance processes and procedures undoubtedly impacted how, when, where, why and what business activity was conducted and by whom. There was a further explanation as to the synergy within the company that catered to its functionality over time and the factors that restricted the company or those that caused it to remain a viable social and economic entity. Stakeholders were responsible for creating, diffusing, distilling and recreating corporate practices within the internal organisation of the company. The efforts by stakeholders held these processes and practices as influential elements in conducting business amidst the prevailing forces external to the companies.

Borrowing from Greenwood et al, there was that sense of a logical perspective and or balance given the applicability of the institutional theory. There was more than a

[27] Furusten, Staffan, *Institutional Theory and Organizational Change* (Edward Elgar Publishing Limited, UK 2013) vii

suggestion that "institutional logics"[28] are or were "socially constructed, historical patterns of material practices...[that did] provide meaning to their social reality."[29] If indeed companies were also considered social entities then the assumptions about the identified companies were implicit and practicable. It is respectfully contended that, the companies under study are not to be confused necessarily with "social enterprises"[30] and no such challenge should be considered. A combined observable view is taken of the company as a social organism, one that had competing stakeholder interests albeit within an emerging post "emancipation"[31] competitive economy.

The research sought to explain further, the nature of the corporate governance within these types of companies given their assumed duality of purpose. This was coupled with hybrid views of their responsibilities to loyal stakeholders that spanned centuries; their permanence as evolutionary creatures of the law and their relevance to economic development and social order if but as contributory to a small degree of the latter. An important point is that of the essential element of the institutional theory of law itself. The theoretical framework proposes and contends that, institutional theory characterised corporate governance best practices and may be explained if only at certain perceived levels.

Company law in post emancipation West Indian societies cannot be understood unless attention is paid to relationships between and among contemporaneous legal forms

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[28] Thornton, Patricia, H, Ocasio, William, Lounsbury, Michael, *The Institutional Logics Perspective: A New Approach to Culture, Structure and Process* (Oxford University Press, USA 2012) 20

[29] Greenwood, Royston, Oliver, Christine, Lawrence, Thomas, Meyer, Renate. E., (Eds) *The SAGE Handbook of Organizational Institutionalism* (2nd edn SAGE Publications Limited, UK 2017) 136

[30] Frankel, Carl, Bromberger, Allen, *The Art of Social Enterprise: Business as if People Mattered* (New Society Publishers, Canada 2013) 20

[31] See Appendix 2(2) – Article on Sugar Slavery and Emancipation in St. Vincent – Newspaper article, July 2010, August 2010, by Dr. Adrian Fraser, Retired Resident Tutor – University of the West Indies Open Campus/UWIDITE

and all other evolving forms of life and livelihood in a "democratic society"[32] co called. There could be no 'short-circuiting' of a definition on the historical context and British legacies inherited by small island states with these institutions that were and are channels of the ideals of democracy.

While the term democracy was understood to mean that it constitutes all those processes reflective of "responsiveness to the will of the people,"[33] at times of course it became questionable as to its workability. Whether this was within the island or observable within the companies on the island, such a parallel existed and still exists up to the time of researching this thesis. One important question to be asked was whether corporate governance best practices were appreciated, conveyed or understood within this non-dichotomous paradigm.

It is rhetorical though, in that whatever the theoretical framework, corporate governance practices were identifiable by many stakeholders as having elements of democracy in terms of contributory to leadership and decision making within the institution of the private company. Last but by no means least was the "doctrinal "[34] or black letter research methodology. This was achieved through re-examination of case – law, statutes and other legal sources. In this method, the analysis of the law was preferred to analysis of the effect of the law on society or on organisations. The rest of this chapter was divided according to the following sub categories: the central theme of the thesis; the nature of the study, major objectives; justification for corporate governance; the early corporate governance focus; the hypothesis; the problem; explanation of terms; the island as an incubator for corporate governance and the conclusions.

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[32] Isakhan, Benjamin, Stockwell, Stephen (Eds) *The Secret History of Democracy* (Palgrave Macmillan, UK 2011) 2

[33] *Op. cit*. [Frasier, Adrian – Appendix 2(2) fn 31

[34] Watkins, Dawn, Burton, Mandy (Eds) *Research Methods in Law* (Routledge, UK 2013) 7 - 8

1.3 Central theme of the thesis

The discussions turn on the importance of the central theme of the thesis. It posits that UK Companies Acts and British Company laws, with adaptations from German company law specific to the GmbH, (the Gesellschaft mit beschrankter Haftung – the private company with limited liability) constituted the current nature of corporate governance best practices within the private limited liability companies limited by shares on St. Vincent. The underlying arguments and analyses were best understood within this context.

The information contained in this thesis in its originality demonstrated that there were indeed negative implications generated by corporate governance. This was as a result of procedures and practices crystallising within the classic case of an unprecedented financial crisis within and among Caribbean companies. The crisis originated from the sub category of private limited liability companies limited by shares. This was in contrast to the reality of corporate best practices operative in other successful private limited liability companies limited by shares especially on St. Vincent and elsewhere in the Caribbean.

Those who generally had the power to execute corporate governance best practices and who held the factors of production in their hands were generally responsible persons. The crisis unfolded and stakeholders were currently experiencing its consequences and other stakeholders were likely to be 'held' accountable to the company in meetings. In the main none of these categories of stakeholders were seen as exploiters of others for maximum economic gains.

It became intuitively clear as the study progressed that there were poor levels of interconnectedness within and among identified companies that were at the heart of the contagion. This significantly facilitated any transmission of shock throughout the islands and within the regional financial groupings. It became clear that there was a

likelihood that a lack, disregard and absence of corporate governance best practices significantly increased the magnitude of losses experienced by all stakeholders. The consequence of this in St. Vincent was a new variant of poverty called genteel poverty. This term is explained subsequently. When genteel poverty became a prominent feature within an already impoverished state, there was a commensurate negative impact on the nation's gross domestic product.

This deplorable condition led to the destabilising of an entire financial sector. Several attempts were made to bolster the confidence of investors and other stakeholders who were domiciled on the island and overseas. The philosophy of corporate governance best practices inherent in the UK Companies Acts and the British company laws was well positioned to counter most if not all of the effects of the financial contagion. Also, there were precedents for dealing with other financial chaos that were well documented but the current situation was unparalleled in the history of the Caribbean region.

This presents a new level contagion that destroyed the lives and livelihood of many. It offered a diversity of challenges to corporate governance practitioners, stakeholders, technocrats and others that followed the British company corporate governance practices. Arguably, this must have been a manifestation of a corporate governance phenomenon that was in stark contrast to the perception of the versatile private limited liability company limited by shares that was seen as a 'panacea' to alleviate poverty and assist with economic development goals of post - colonial states. The discussions now turned on the particulars of the study; the research question; the hypothesis and objectives of the study.

The study was about exploring the nature of corporate governance within the private limited liability company on St. Vincent and the Grenadines over the period 1845 through to 2013. Corporate governance was presumed to have best practices given that its constituents were consistent with the model and system laid down in British

company laws and utilised by the UK Companies Acts. These elements were drawn from the "deed of settlement;"[35] "the unit trust,"[36] examples of "common law"[37] practices; the influences of voluntary " large partnerships"[38] and the "struggle"[39] for

[35] Kan, Sin Fan, *The Legal Nature of the Unit Trust* (Clarendon Press, Oxford UK, 1997) 13 - 19 for an exhaustive historical introduction to what constitutes a deed of settlement company, the use to which the business man put it, how the courts viewed such a company and its impact on company law as it developed in modern corporate society. 'The deed of settlement was the progenitor of the articles of association' as known today. These articles formed part of the constitution of modern day companies and were captured under the default rubric 'Table A' in the *UK Companies Acts* since the 1800s. This deed of settlement [Company] was deemed - "a new business vehicle' as opposed to the companies that were practically outlawed with the passage of the *Bubbles Act 1720*.'The deed of settlement [Company]…was the offspring of the joint stock company and the trust. It was noted that the deed of settlement and the unit trust have the commonality of being contractual in nature. A company emerged in the Vincentian society that could only bear the exact replica that existed in Great Britain at such times. The treatment of directors and shareholders were the same in the colony as it was in Great Britain and this major fact laid the premise on which the treatment of directors and shareholders were viewed generally.

[36] Duncan, W. D., (Ed), *Joint Ventures Law in Australia,* (2nd edn The Federation Press, Sydney, Australia) 152; Hudson, Alastair, Understanding *Equity and Trusts* (4th edn Routledge, UK 2013) 15 - 17 - the unit trust being the oldest form of collective investment scheme under English law.

[37] *Van Sandan v Moore (1826) 1 Russ Ch 441*, Lord Eldon appeared to think the joint stock associations were illegal at common law. He said that they could not "effectively demand what they had a right to demand or be effectually sued for that for which they were liable." This was so because the partners were numerous and as a result the courts were unable to attend to all the necessary parties in a suit. Six years later in 1832, Lord Brougham dictum in *Walburn v Ingilby (1832) 1 Myl & K 61 – 77,* was the opposite, "to hold such a company illegal would be to say every stock company not incorporated by charter or Act of Parliament is unlawful, and indeed, indictable as a nuisance and to decide this for the first time, no authority of a decided case being produced for such a doctrine. The clause intimating that each subscriber is only to be liable to the extent of his share is not enough to make the association illegal…" see also *Garrard v Hardey (1843) 5 Man. & GR 471* where Tyndale, CJ dictum – "the raising and transferring of stock in a company cannot be held in itself, an offense at common law; such species of property was altogether unknown to the law in ancient times; nor indeed was it in usage and practise until a short period antecedent to the passing of the statute (Bubble Act) as is evident from the preamble to the eighteenth section which recites that it is notorious that these projects and undertakings, which it is the object of the clause to put down, had been contrived and practiced within the kingdom since the 24th June 1718, evidently showing that the act was looking to some grievance of late introduction."

[38] Wen, Shuangge, *Shareholder Primacy and Corporate Governance: Legal Aspects, Practice and Future Directions* (Routledge, UK 2013) 194 - quoting Harris, Ron, *Industrialising English law: entrepreneurship and business organization 1720-1844* (Cambridge University Press, 2000) as historical reference and consolidation of what constitutes the common practice of large partnerships.

[39] Bloomberg, Philip et al., *Bloomberg on Corporate Groups* (2nd edn Aspen Publishers, USA 2009) 16; Davies, L. P. *Gower's Principles of Modern Company Law* (6th edn Sweet & Maxwell, London 1997) 40 – 46 on the struggle for limited liability in the UK in greater detail. This was a type of contest between and among those entities that were aware of the

limited liability itself. Over time it was observable that the fundamentals on corporate governance best practices were enshrined within British jurisprudence on the development of the company. It was not merely a matter to follow blindly, but there was an established template. There were certainly major differences of application of these fundamental principles and the levels of qualitative and quantitative strategies used by stakeholders within emerging economies of Small Island developing states.

Research question

It follows therefore that the research question asked whether there was any correlation between a lack, disregard or absence of corporate governance best practices to genteel poverty within an already impoverished nation and if so, to what extent did this negatively impact the nation's gross domestic product over time.

Justification

This thesis has a practical and legal relevance to the existing debate on corporate governance in its original historical context. There is no known monograph on corporate governance within the legal phenomenon of the private limited liability companies limited by shares on St. Vincent and the Grenadines over the specified period of study. This research represents a positive contribution to the existing debate

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privilege extended to all types of businesses on one hand, and to those that were in opposition to any grant of the said privilege unless the entity was of somewhat public in nature, like a railroad or a canal. Individual grants of limited liability as per royal charter or special *Acts of Parliament* were already discussed elsewhere in this chapter to verify the point. The *Bubbles Act 1720* did make it a criminal offence for any unincorporated company with the presumption that they so act as any such corporation. In 1825 an Act to repeal the Bubbles Act, did gave the king such legislative power to grant charters to corporations, which Parliament thought he did not possess. The dual nature of this was that it denied the corporation the privileges of limited liability. The *Joint Stock Companies Registration and Regulation Act of 1844* required registration of all partnerships that possessed transferable shares and a membership in excess of 25, and when registered they then were conferred with corporate privileges except the privilege of limited liability. Not until the *Companies Act 1855* was limited liability granted to registered companies. No such struggle nor indeed need of it, in the commercial sector in the then colony since prevailing law of Great Britain was the law of the colony.

about corporate governance on the island generally and further will add to the accessibility and availability of written material.

Further, this original thesis should augment a progressive search for an understanding of the current milieu about the nature of such corporate governance on the island and to some extent within the wider Caribbean region. It will therefore fill such a gap in legal research on the topic. Hopefully it will assist with developing associated 'research and scholarship' rich curriculum. The practical relevance of this original thesis can be seen through its pages of information that quantifies the importance of shareholders and other stakeholders. Their significance of roles in the development of corporate governance could not be discounted. All such stakeholders benefitted in knowledge and skills from increased and varied approaches taken towards corporate governance over time.

To further highlight their dynamism, private limited liability companies limited by shares did not have the benefit of an autochthonous Code of corporate governance. However, the British company laws and the UK Companies Acts as well as adherence to international best practices, were historical legacies that underpin existing legislation on companies in the island. By extension, this was the same across the Caribbean region that encompassed other islands as well as the islands of St. Vincent and Trinidad and Tobago. Nothing outside of this remit could have served as preparation for a crisis of this magnitude.

This available plethora of corporate governance material support, which was in practice and well documented did augment the private companies' functioning for centuries. There was a real sense that British laws and the UK Companies Acts pointed to homogeneity in the corporate governance agenda and philosophy. If the hypothesis can be supported, and eventually it was, there was no doubt that the answer to the research question was demonstrated in its practical relevance and application.

Shareholders and other stakeholders had more knowledge on how to appreciate corporate governance best practices. They were guided or had book knowledge as to how to serve the wider stakeholder community. The available guidance even if but for limited application should have served as signposts or navigation on the paths towards corporate governance as well as corporate social responsibility for many if not all private companies. In so doing, the ultimate goal would have been a greater appreciation for corporate governance best practices and their ultimate and wider impact on the economic growth of small island states or their stagnation.

In further contemplation of the research question, other considerations come to mind. To begin with, one of the issues was whether corporate governance best practices in all Caribbean territories were about the delivery of accurate information and disclosure within and among the identified companies. If so, then this would be reflected in the outcomes. The latter would have been identifiable in the choices made by many stakeholders, which would have assisted them with making informed decisions. All of this is in light of the financial contagion currently being experienced.

Also, if it were about proper disclosure with and among identified companies, then stakeholders would have been presented with documentation that had a bearing on the nature of all transactions. The media houses across the region, premium holders, institutional stakeholders and others testified that the considerations articulated herein were not documented in any way judgmental or as prejudicial in intent or design. These were live examples of functioning of aspects of company law in society. To aid with the process of communication about corporate governance, documentation was not limited to written information on paper, but was found among electronic messaging that utilised social media and other associated gadgets.

There were some aspects of documentation that evolved over time but stakeholders more so, directors and other categories of staff 'grew' with the times. For instance, some directors were attracted to the identified companies and were drawn from a pool of professionals that were skilled and educated to use electronic devices to transmit information commensurate with the developing and evolving nature of corporate governance best practices. Their ability to communicate effectively across geographic landscape and in cyberspace was of great significance to corporate governance within the Caribbean region. This remains largely unchanged in an advancing technological age.

1.4 Research hypothesis

The thesis explored and proved that there was a relationship between the lack, disregard or absence of corporate governance best practices within the private limited liability companies limited by shares to "genteel poverty"[40] that negatively impacted the gross domestic product of the nation state of St. Vincent and the Grenadines for a segment within the period of study. The empirical hypothesis was proved correct that there was that direct correlation between the "lack, absence or disregard of corporate governance best practices"[41] within a small number of private limited liability companies limited by shares. It was identifiable as having had a causal link to genteel poverty that adversely impacted the "gross domestic product"[42] of St. Vincent and the Grenadines.

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[40] The word "gentile" and "genteel" were generally used interchangeably but referred to the same concept when describing levels of poverty experienced by persons who were not necessarily within the category as indigent poor or dispossessed. This state of poverty was a new phenomenon and could not be a feature in the Country Poverty Assessments in 2007/2008

[41] Layne, William, *Permanent Secretary (ret.), Recent Financial Failures In The Caribbean - What Were The Causes And What Lessons Can Be Learnt?* (The Ministry of Finance – Barbados) *www.da-academy.org/Financial_Crisis_in_the_Caribbean.pdf*, 6, para 2 - 3 - accessed in 17 April, 2019

[42] Gonsalves, Ralph. E, *Budget Speech 2010: Economic and Financial Stability, Social Cohesion and Fiscal Consolidation at a time of Global Recession and Uneven Recovery* (St. Vincent 2010) 1

The hypotheses provided the researcher with the theoretical framework on gathering materials needed to explore further the actual nature of such corporate governance on the island during the period of study from 1845 to 2013. The subcategory of insurance companies was located off island, which was highlighted as the 'incubators of an unprecedented crisis'. The contagion was possible given that it infiltrated porous borders within and among all CARICOM states. An insurance company on St. Vincent was affected which served as the catalyst for other institutional investors and shareholders who were part of the fragile financial sector on the island. Although all associated states within the Caribbean region were affected, there was a natural limitation placed on the scope of this research in its originality.

Only two such states (St. Vincent and the Grenadines and Trinidad and Tobago) were either referenced and or had aspects of their affected insurance companies examined. On St. Vincent it was the British American Insurance Company as part of the CL Financial Holdings that was in question. This private limited liability company held such a pivotal role so as to provide a magnification of the contagion within the wider region among so many companies of a similar corporate governance constitution. As such the nature of "corporate governance"[43] within the private limited liability companies on St. Vincent by extension was re-shaped by the adverse impact of "genteel poverty, which was a variant of "poverty." [44] Notwithstanding this, "poverty"[45] in St. Vincent was a critical factor and remained so to date.

Major research objectives of the study

The overarching research objective sought to explore and did explore the nature of corporate governance best practices within the private limited liability company

[43] Worthington, Sarah, *Gower, L.C.B, Gower's Principles of Modern Company Law* (5th edn Sweet and Maxwell, UK 1992) 37; see also Gower, L.C.B, *Gower's Principles of Modern Company Law* (3rd edn Stevens and Sons, UK1969) 40 for historical context and application.
[44] *Poverty Assessment Report Vol II* (Kairi Consultants Limited, Trinidad and Tobago 2007 – 2008) 4 – 7; *National Report St. Vincent and the Grenadines: Third International Conference on Small Island Developing States – National Report* (Ministry of Health Wellness and the Environment, July 2013) 5
[45] *Ibid*

limited by shares for the period 1845 to 2013. The exploration sought to identify best practices as a natural consequence of company law in motion. Additionally, the research sought to isolate and or specify whether there were conjoining factors that influenced or negative corporate governance best practices; whether these were to be evidenced in all private limited liability companies and were all part of the financial sector within the post colonial emerging economy of St. Vincent and the Grenadines.

Another objective was to satisfy to some extent the claims made by the statement that, "there is a growing recognition that economic performance is closely associated with the quality of underlying institutions…and practices that determines how a society functions and is organized."[46]Having analysed the nature of corporate governance best practices within the aforementioned context, another major objective of the study was to provide corporate governance policy makers with a corporate governance Code for unlisted companies in St. Vincent and the Grenadines..

1.5 Why corporate governance?

Moreover, when the question was asked in keeping with the current debate on "corporate governance"[47] within St. Vincent and the Grenadines, two major concepts were borrowed from the famous "Cadbury Report."[48] Firstly, that, " Corporate governance is the system by which businesses are directed and controlled;"[49] and secondly from the Organisation for Economic Co-operation and Development (OECD) in that,

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[46] DaCosta, Michael, *Colonial Origins, Institutions and Economic Performance in the Caribbean: Guyana and Barbados* (International Monetary Fund Publication, USA 2017) 3

[47] *www.iod.com/MainWebsite/Resources/Document/policy_article_corp_gov_unlisted_companies_eu.pdf,* 11 - accessed 27 May 2017

[48] *The Cadbury Report: Financial Aspects of Corporate Governance* (Gee & Co Ltd, UK 1992) - accessed 12 January 2019

[49] *Ibid*

" Corporate governance is one key element in improving economic efficiency and growth as well as enhancing investor confidence. Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined. Good corporate governance should provide proper incentives for the board and management to pursue objectives that are in the interests of the company and its shareholders and should facilitate effective monitoring."[50].

Therefore, the answer to the 'why' of corporate governance was that it was an imperative within any system that was operative and functional through its financial and commercial sector. It was a given that corporate governance did exist through the private limited liability companies under study. They had to be directed and controlled efficiently. The compulsory result had to be efficiency and corporate and financial growth once all things were being executed and regulated properly. The determinants of such execution and regulation were deemed necessary for a balanced approach to the delivery of goods and services to the beneficiary stakeholders. The relationships between the management of the private company and its board and shareholders and other stakeholders were huge. The prescription for corporate governance best practices or end results was critical to the success of the private company. The anticipated mutual benefits were favourable at best.

By way of clarity on the 'how' of corporate governance, some argued, that, "governance of corporations began with the charters for early commercial voyages."[51] Therefore, corporate governance in St. Vincent was largely according to British jurisprudence. It was to its advantage that corporate governance practitioner draw lessons from the well articulated historical and time-tested premise. Corporate

[50] *www.iod.com/services/information-and-advice/resources-and-factsheets/details/UK-Corporate-Governance-Code-July-2018,* accessed 17 January, 2019

[51] Davies, Adrian, *Best Practise in Corporate Governance: Building Reputation and Sustainable Success* (Gower Publishing Limited, London 2006) 3

governance best practices were never done in isolation or hidden from view within the 'world of company law' per se. According to Monk et al, corporate governance detailed how a special relationship among various participants existed in determining the direction and performance of corporations (private companies included).

The primary participants were "(1) the shareholders, (2) the management (led by the chief executive officer) and (3) the board of directors, all internal and structural."[52] Consequently, from their appearance on the corporate landscape of this post colonial emerging island state, the private limited liability companies limited by shares were endowed with some (if not all) of the identifiable and critical components of aforementioned constituents. This however presupposed that corporate governance arises only upon incorporation. There was that subtle notion within St. Vincent and the Grenadines that there may have been another factor or factors that led to a departure from the generally accepted belief about 'corporate governance initiation' so called on St. Vincent. Respectfully, this is explored in Chapter Three.

Early Corporate governance focus in St. Vincent

From the pages of its own history, Saint Vincent (St. Vincent) appeared to have wrestled with such a 'corporate construct', the company known as 'one of the "greatest inventions of all time.'"[53] There were the early forms of partnerships that transitioned to the private limited liability company. Subsequent discussions explained this occurrence. This was post World War 1 and thereafter the corporate landscape in St. Vincent was reshaped through the influences of many other external forces. The aim undoubtedly was good so as to facilitate economy expediency, efficiency and to cater to the needs of stakeholders that sought varying means of 'financial depository and corporate governance enhancements'.

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[52] Keay, Andrew, *The Enlightened Shareholder Value Principle and Corporate Governance* (Routledge, UK) 7 reflecting similar sentiments - Monks, Robert, Minnows, Nell, *Corporate Governance* (5th edn TJ International, Cornwall UK 2011) 4 – posited that interaction between and among key constituents aid functioning of the company.

[53] Horrigan, Bryan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (Edward Elgar Publishing Ltd, UK 2010) 5

Having had imposed British dominance since 1763, the island had to navigate several stages of colonial status prior to its independence. The island of St. Vincent and the Grenadines became an independent state in 1979. There was 'sameness' in the companies both in Britain and in the island. In this instance, reference it to the private company that retained its corporate governance structures and procedures. On the island, the private company remained the same juridic construct for well over two centuries. Successive governments since "Statehood"[54] adhered to the concept of moving the company with its commensurate corporate governance best practices to the forefront of the nation's economic development. It took many years post Statehood to amend British company laws in guided responses to economic and financial diversification.

1.6 A company: social organism and or a nexus of contracts

An incorporeal concept but nonetheless a very real and functioning company limited by shares, is described by many corporate governance practitioners and literature on company as a corporate entity. It has evolved to having possesses limited liability and does so upon incorporation. It is a "separate legal person from its controlling shareholder."[55]The "economic theory's notion described"[56] the firm or the company as a "nexus of contracts."[57] The company within the Caribbean islands was not just an entity that operated as a bundle of contractual obligations between people. The company blundered about on the Caribbean economic landscape as an unruly beast.

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[54] *Government Gazette, Vol 102 No 8,* St. Vincent and the Grenadines, Tuesday 23 December 1969

[55] Reisberg, Arad, Donovan, Anna, *Pettet, Lowry and Reisberg's Company Law* (5th edn Pearson Education Limited, UK 2018) 36

[56] Druta, Diana, *The Company Law in the European dimension: Freedom of establishment, competition between jurisdiction, protection of creditors* (Diana Druta [Commercial Law Work Paper] 2014) 16; see also Bratton, William. W., *The Nexus Of Contracts Corporation: A Critical Appraisal*, 74 Cornell L. Rev. 407 (1989) 409

[57] Dine, Janet, Koutsias, Marios, *Company Law* (8th edn Palgrave McMillan Publishers, UK 2014) 18; Griffiths, Andrew, *Contracting With Companies Contemporary Studies in Corporate Law* (Hart Publishing, USA 2005) 46

The evidences were seen in classic examples of "scandals, crises and corporate failures"[58] that were well documented. These were fine examples that tested the fundamental tenets of the "law of contract."[59] Nonetheless, the activities within a private company could be explained as those originating from a mere entity classified as a singular example characterised by the 'economic theory' or having merely 'nexus of contracts'.

The private company expedites contracts and contractual obligations, as it does exist for the purpose of economic gain. However, it is also about a community of people. The company is an entity with relationships and communication processes that proved effective in the ways in which all businesses was conducted. In this context, corporate governance best practices (processes and procedures) facilitated such economic pragmatism. The nexus of contracts theory served to explain the company's value within the cycle of economic production. On the other hand, the private company elucidated how, as a "social organism of people,"[60] it served the purpose of transmitting "human values"[61] hinged on a company's corporate social responsibility and practices at optimum levels.

The "most critical actors in national economic activity are creatures of the law - juridical entities, like the corporation, the limited liability company and the firm."[62] While its primary focus was to engage in productive economic enterprises, the company was seen as a conjoined entity for both the nexus of contracts and as a social

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[58] Persaud, Wilberne, *Jamaica Meltdown: Indigenous Financial Sector Crash* (Universe, Inc., USA 2006) 7 – 21 – the book serves as good reading for greater understanding of the crisis and the role of the private limited liability company

[59] O'Sullivan, Janet, Hilliard, Jonathan, *The Law of Contract* (7th edn Oxford University Press, UK 2014) 1 - 7

[60] Bounfour, Ahmed, *Organisational Capital: Modelling, measuring and contextualising* (Routledge, USA 2009) 9 – 11; See also Cohen, Don, Prusack, Lawrence, *In Good Company: How Social Capitalism Makes Social Organizations Work* (Harvard University School Press, USA 2001) 17; Bell, Geoffrey, *The Competitive Enterprise: 10 Principles of Business Excellence for Increased Market Share* (McGraw Hill Australia Pty Ltd, Australia 2002) 237

[61] Zukauskas, Pranas, Vveinhardt, Jolita, Andriukaitiene, Regina, *Management Culture and Corporate Social Responsibility* (IntechOpen, UK 2018) 107 - 109

[62] Pollard, Duke, *The Caribbean Court of Justice: Closing the Circle of Independence* (The Caribbean Law Publishing Company Ltd, Jamaica 2004) 106

organism. The company remained an ill-disciplined and amoral beast that lacked the capacity to think and reason but none the less a juristic person. The regulatory regimes of company law remained tied to centuries' old debates that emanated from the UK Parliament and posits itself on post colonial states like St. Vincent and the Grenadines, Trinidad and Tobago and other nation states that followed the British legal tradition.

The company was a "robotic person that has the capacity to function (independent of its members)...being owned by its shareholders, recognized by the law as being capable ...to own and run a business."[63] It is maintained that as that as "a new person...a 'limited company' has that day come into being"[64] upon its incorporation. Respectfully, the "company"[65]however cannot be divorced from its role as a social organism or be isolated as a mere nexus of contracts. There is a historical and causal link that pervades the private company.

The ingenuity of corporation lawyers as seen in the UK Bubbles Act between 1720 and 1825 must be referenced. The legislative procedure and practices of corporate governance was conceptualised as visionary hallmarks of this nexus of contracts and enabled through the mechanism within this social organism. It is this same subcategory of the private company that became operational in St. Vincent and Trinidad and Tobago and other former colonies that were adherents to British company laws and the UK Companies Acts for more than two centuries.

A company may be formed for general and several purposes. The private limited liability company limited by shares was one that remained as versatile as when it was conceived. St. Vincent and the Grenadines as well as other former colonies of Great

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[63] Hicks, Andrew, Goo, H.S., *Cases and Materials on Company Law* (6th edn Oxford University Press Inc., USA 2008) 1; 5

[64] Ibid

[65] Sealy, Len, Worthington, Sarah, *Sealy and Worthington's Cases and Materials in Company Law* (10th edn Oxford University Press, UK 2013) 5 - 7

Britain boasted of having such phenomena. It was Sealy who opined that within this same construct of the "company"[66] it had its own "internal organization."[67] It was to that internal organization that corporate governance remained pivotal.

Classification of companies in St. Vincent and the Grenadines (Private limited liability)

From 1845 to 2013 on St. Vincent, there were approximately 10,000 companies (see Figure 1(1) below) that were considered private limited liability companies limited by shares.

Figure (1)

Number of companies classified as private limited liability companies limited by shares: 1845 – 2013

Years	Companies within the Financial Sector on St. Vincent and the Grenadines				
	Domestic Sector	International Sector			
1845 - 2013		Limited Liability Companies	International Insurance Companies	International Business Companies	Totals
	2000 approximately	18	5	7728	9, 751 *(10,000)

*A more realistic figure given that some historical records were in a state of disuse/wet/crumbled documents/barely decipherable at the time of examination of records (CIPO – SVG)

Source: Compiled by researcher - 2019

[66] Sealy, Len, Worthington, Sarah, *Cases and Materials in Company Law* (8th edn Oxford University Press Inc., USA 2008) 510; See also *Foss v Harbottle* (1843) 67 ER 189, that any wrong done to the company, that the claimant is the company – a distinct legal entity

[67] *Ibid*

Each company provided for their own individual interpretation of its corporate governance best practices with the aid of a default set of bylaws inherited from Great Britain. With amendments to that codified procedure, private companies were able to outline what they considered best practices and whether they wished to abide by the existing version of Table A borrowed from the English company laws and the UK Company Acts. For nearly two centuries of corporate governance best practices experienced on the island of St. Vincent, this remained largely unchanged to its predecessor legislated creature – the British company.

Policy makers had a vision of what the versatile private limited liability company could accomplish as a statute driven phenomenon. The intention by successive governments was probably part political meddling or part legislative provision for rebalancing the economic wealth of the nation. If both, then, the company remained a product of corporate restructuring to the benefit of investors and other stakeholders both domicile in St. Vincent and overseas. It was this same construct, the juridical body that was referenced earlier as a custodian of its nexus of contracts and an adherent to its claim as a social organism. There is a point of almost legislative departure as to the 'appearance' of the private company presumably in 1845 on the island of St. Vincent. Its origin was shrouded in some controversy. In Chapter Three, a case study highlighted some important aspects of this phenomenon. While concentration was on the genesis of the company in St. Vincent and the actual nature of its corporate governance, periodic references were made and will continue to be made to Trinidad and Tobago.

In the latter island, the significance of similar private limited liability companies is discussed. This highlights the nature of corporate governance within the private limited liability companies limited by shares in St. Vincent and the Grenadines and is extrapolated in Chapter Four. There can be no discussion about the nature of corporate governance within the identified subcategory of companies in St. Vincent

without the case study in Chapter Four. The corporate governance procedure and practices were those that followed along similar lines. Both countries were among CARICOM states that encouraged cross border networks of businesses. Private companies on both islands were predominantly the repositories of British made corporate governance practices and procedure. In the case of companies on St. Vincent however, the more recent addition of aspects of German corporate law and other influences proved that a hybrid corporate governance system existed on the island up to present time.

1.7 The sociology of law and sociological jurisprudence

Greater insight into this rich diversity of corporate governance best practices under review in St. Vincent was arrived at, given a nexus between "sociological jurisprudence"[68] and the "sociology of law itself."[69] Reza Banakar was credited with the aforementioned nexus. The claim was that "the sociology of law and sociology jurisprudence are influenced primarily by mainstream sociology, Law and Society…[that] Socio-Legal Studies and policy research are influenced by both sociology and other social science disciplines."[70]

The said author made significant distinctions between "Socio-Legal and socio-legal"[71] so as to highlight the scientific studies within the field of law. As much as it cloaked 'legal persona', respectfully, the focus was also on the socio-legal perspective of the same juridical construct – the company. It was undeniably a social institution. As was mentioned previously, the dictates of social dynamism as contributory to an institution as the private company and its corporate governance practices cannot be divorced and isolated in any on-going discussion. Borrowing from the current

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[68] Cotterrell, Roger*, What is Sociological Jurisprudence: Juristic Thought and Social Inquiry (*Routledge Publishers, UK 2018*) 1 - 5*

[69] Wacks, Raymond*, Understanding Jurisprudence: An Introduction to Legal Theory (*4th edn. Oxford University Press, UK 2015*) 187*

[70] Banakar, Reza, *Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity* (Springer International Publishing, Switzerland 2015) 42 - 44

[71] *Ibid*

scholarship on the sociology of law and sociological jurisprudence, the researcher utilised diverse methods that would hopefully and positively "challenge and stimulate"[72] practitioners and scholars within the field of company law towards a renewed thinking about the company.

The researcher recognised the usefulness of an admixture of methodology in studying corporate governance best practices critical to exploring this historical and legislative phenomenon. With its legacy of a jurisprudence that was shaped by debates pre and post - financial crises; here was the possibility of placing an accent on theories and methodologies already in use in mainstream social sciences. The findings hereinafter recorded, illustrates how company law was constrained by and researched from a socio-legal perspective. This "empirical" exposition was a 'systematic' collection of information that could not stray from established company law but utilised a combination of methods alluded to earlier. This formed the basis of the originality of this thesis.

Limitations of study

Finally, a more scientific robust and quantitative testing of the hypothesis was not possible but respectfully, was not deemed to have placed significant limitations on this thesis in its originality. This was due primarily to the lack of or scope of substantive data in circulation. These limitations were recognized. There was the absence of some presumed recorded historical data and some statistical analyses had to be premised on well-calculated realistic assumptions. The interaction of law and society was the phenomenon that provided the greatest non-scientific basics for some of the legal arguments when comparative analyses were made to existing primary and secondary sources. The process was time consuming but effective.

[72] Cane, Peter, Kritzer, Herbert, (Eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press, UK 2010*) 3 - 5*

There was validity and reliability even as the island grappled with the reality of "genteel poverty." It was another observable characteristic where law met society in motion. These actions created a corporate governance dissonance and a paradigm shift for the better understanding of corporate governance practices. The situation was not static or 'an established state of the corporate governance related law'. The other issue was that two types of companies were contrasted in the format of case studies. Their choice had more to do with being the best representatives of the whole spectrum of the phenomenon of corporate governance 'best' practices.

This turned on the substantive matter that one company represented as an established company and called itself the First House on the island. The other was one of the largest private conglomerates in the Caribbean region with a branch on the island and a conduit of the greatest financial contagion to disrupt economic development. This remained the largest negative economic and financial 'weight' in the history of the island of St. Vincent and the Grenadines.

The issue of quantitative data had to be "gleaned" from historical records that were evidently in great disrepair. Reliance was placed on discussions and experiences of some generational stakeholders, the sifting of information within the public domain (printed and electronic), and the assessments made as to the validity of the news medium were among some challenges. Having said that, the findings expressed in this original thesis contribution were substantiated and corroborated by valid legal sources external to but relevant to the vagaries of financial contagion and the conclusions drawn about the nature of corporate governance generally. These could not detract from the conclusions of the hypotheses

The Problem

The problem that was discussed in this study centered on the symbiotic relationship between the lack, disregard or absence of corporate governance best practices in the

private limited liability company limited by shares to genteel poverty on St Vincent and its impact on the Gross Domestic Product of the country. The country by and large was recognized "internationally"[73] as an impoverished nation. This was documented and well articulated. This constitutes part of the overall nature of corporate governance. The other issue was that a small breach so called, came through a branch of the private companies. This was an insurance company on the island with the magnitude of the small breach in practices was dependent on the factors originated within the holding company. The British American Insurance Company Limited registered on St. Vincent could not be divorced from the phenomenon in the conglomerate on Trinidad and Tobago – the CL Financial Limited and more specifically the Colonial Life Insurance Company of the same entity.

Besides these issues such as other international financial crisis within the global economy that impacted the region, there were major downturns in the "mono-crop economy"[74] of St. Vincent, which exerted significant pressure on the economic growth of the nation and the quality of life for its people. The private limited liability company was one avenue for a perceived sustained economic progression for many stakeholders. Sugar cane, "bananas, ... arrowroot and sea island cotton"[75] were among those crops planted as cash crops at one period or another throughout the history of the island. The companies responsible for cultivation and harvesting were external to the island. In other words, commensurate with the days of colonialism and slavery, it will not be strange to the truth that corporate governance best practices were initially externally driven and not necessarily in the interest of domestic stakeholders.

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[73] See Appendix 2 (1) Table showing membership of international organisations to which the island belongs.

[74] *www.IPBUS.COM - St. Vincent and The Grenadines: Doing Business, Investing in St. Vincent Guide - Vol 1: Strategic, Practical Information, Regulations, Contacts* (International Business Publications, USA 2019) 65

[75] Gonsalves, Ralph. E, *The Political Economy of the Labour Movement in St. Vincent and the Grenadines* (Independently Published, USA 2019) 26 – 97; see also Grossman, Lawrence. S., *The Political Ecology of Bananas: Contract Farming, Peasant and Agrarian Change in the Eastern Caribbean* (The University of North Carolina Press, USA 1998) 91 – 92, 102

There were additional phases of negative growth with the resultant poverty caused by the shifts in the mono crop economy over the period of study. The importance of one crop to another did very little else than to trigger additional phases of a spiralling downturn in economic growth. Throughout its historical development, and through incremental reform of its legislation on companies, the policy in St. Vincent was to encourage foreign direct investments to boost its economic growth and progress by placing private limited liability companies at the "forefront of national"[76] change. It took more than three decades to reform company legislation on private companies from the time of Statehood in 1969 to 2008. Up to 2013 another reform was on going in light of the more recent financial contagion. The process was piecemeal.

Only one subcategory of private limited liability companies limited by shares was being held responsible for the current state of compounded poverty. There was no challenge of positioning the created status of genteel poverty as being part of the nature of corporate governance given the history of corporate governance within the private limited liability company limited by shares on the island. The subcategory of the private limited liability company (the insurance companies) was deemed as unfortunate repositories of genteel poverty in this instance. Whether genteel poverty could occur as a separate and distinct phenomenon outside the remit of the private limited liability company (the insurance companies) limited by shares was for another debate beyond the remit of this study.

Genteel poverty if it did exist prior to the history of corporate governance on the island, was not a phenomenon that was experienced in the way or ways that it was manifested up to and including the year 2013. As the discussion develops, the roles played by the regulatory authorities namely, the "Commercial and Intellectual

[76] *Government Gazette, Vol 102 No 8, St. Vincent and the Grenadines*, Tuesday 23 December 1969 – This concept of companies being moved to the forefront of the economy could be seen in practice with its inclusion in policy decisions and a plethora of laws to strengthen and regulate the financial sector and documented: www.svgfsa.com and www.cipo.gov.vc - accessed 10 January 2020

Property Office"[77] and the "Financial Services Authority"[78] cannot be overlooked. Both of these emerged as establishments that were post the first company on the island with its unique mechanism for the genesis of corporate governance on the island.

Explanation of Terms

The explanation of terms used in this original thesis contribution seeks to provide a greater context for an appreciation of the substantive subject matter being discussed hereinafter. It was understood that St. Vincent, Trinidad and Tobago or any other territory differ in their own local corporate governance traditions. The formation of any company is influenced by the prevailing social, political and economic factors within the individual state. As such these factors not only help to shape the corporate governance system, but they impact the affairs of the company, shareholders and stakeholders alike. Each listed term that follows was used in greater detail elsewhere in the text. There are three major Caribbean associations or unions that were pivotal to the understanding of the existing networks of the private limited liability companies limited by shares. They are CARICOM, the OECS and the ECCU.

Corporate governance

The question is whether corporate governance was a relatively new concept or whether it was one that was a recognizable concept even in early corporate St. Vincent. Corporate governance as a practice is said to be "as old as trade"[79] began within civilisation. The terms governance and management were used

[77] Figure 5(1) – Organisational structure of the regulator the Commercial and Intellectual Property Office – its establishment mentioned elsewhere in the text and the comparison to its counterpart. This may be an indication of the scope of the work to be undertaken by its assigned officers to regulate corporate bodies/domestic companies included as part of the financial sector.

[78] *Figure 5(2)* – Organisational structure of the regulator Financial Services Authority of this regulatory body and again one is given a view of the number of employees that may be tasked with assigned duties within the international/financial sector.

[79] Tricker, Robert Ian, *Corporate Governance: Principles, Policies and Practices* (3rd edn Oxford University Press, UK 2012) 4 - 7

interchangeably but an outright definition was elusive at best. The closest definition was credited to R. I. (Bob) Tricker who opined that, "corporate governance is different from management." [80] Tricker draws a line of distinction in that, "management is responsible for running the enterprise, but the governing body ensures that it was running in the right direction and being run well."[81]In other words, in their recent blog posts, the expressed thoughts again pinpointed that, "if management and governance are used interchangeably, the fundamental distinction between the two is lost."[82] Whether there was an organisation within the wider community that was used for private members or one that was a company, it needed governance.

In the situation of a company, the board of directors was that body charged with the responsibility of governance. To try and incorporate this distinction between management and corporate governance with another, the Cadbury Report gives a sharp focus where, "Corporate governance is the system by which companies are directed and controlled."[83]Both statements from Sir Cadbury and Bob Tricker agree that the role of the board of directors is crucial in that they have the responsibility for the governance of their respective companies. The strategic alignment of shareholders, board of directors and the management of the company can also be seen in diagrammatic format below.

Figure 1(2)

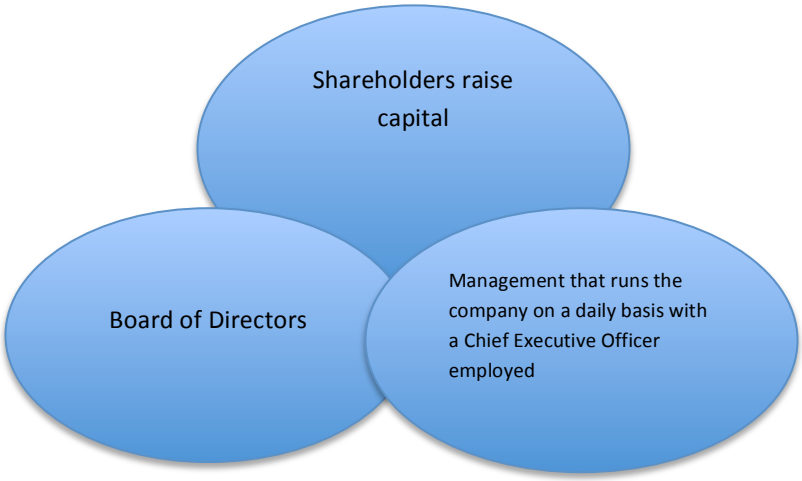
See overleaf

[80] Tricker, Bob, *Corporate Governance: Principles, Policies and Practices* (3rd edn Oxford University Press, UK 2015) 4
[81] *Ibid*
[82] www.corporategovernanceoup.wordpress.com/2017/03/27/corporate-governance-is-not-management/ - accessed on 12 March, 2018
[83] *Report of The Committee on the Financial Aspects of Corporate Governance* (Gee and Company Ltd., 1992 UK) s.2.5

Figure 1 (2)

The constituents of the corporate governance system:

Direction and control of a private limited liability company limited by shares



Source: Compilation by researcher - 2019

Each globe represents a critical component of the system of directing and controlling of the company and are interdependent. Management 'manages' the capital raised by the shareholders. The latter as entrepreneurs raised the capital for starting the business, which evolves as the company. The board of directors and the management staff are not necessarily the same persons. In some instances, management were paid to 'manage' the company. Management reports to the board of directors on a regular basis and implements the strategy that is developed by the board and they in turn see to it that management functions effectively. The directors are charged with the responsibility to guide the processes on decision - making and supervises the management of the company. The board on the other hand is the representative of the

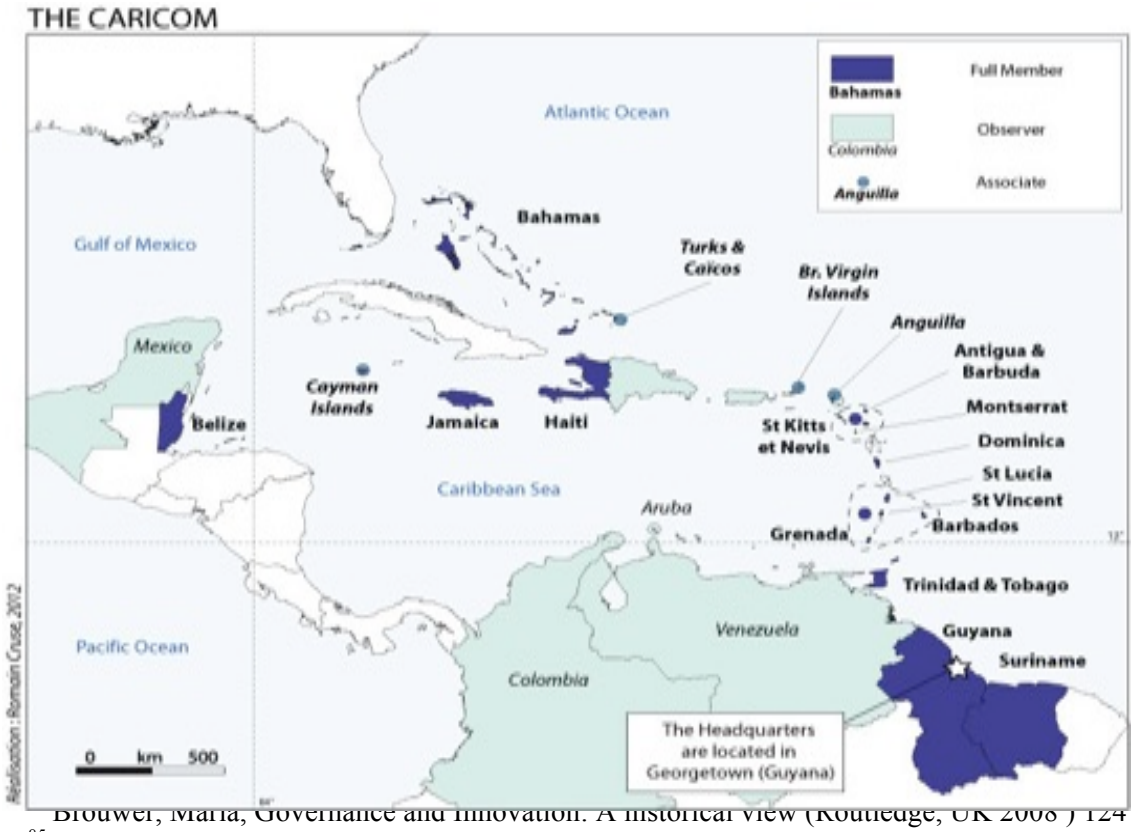
shareholders and report to them through the company in meetings. The shareholders can elect and "dismiss the members of the board"[84] according to legislation.

CARICOM – the Caribbean Community

Reference was made to a number of islands within Caribbean region. Fifteen states are comprised this community. They belong to a grouping referenced as CARICOM established by the "Treaty of Chaguaramas"[85] In alphabetical order they are listed as "Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Haiti, Jamaica, Grenada, Guyana, Montserrat, St. Lucia, Suriname, St. Kitts and Nevis, St. Vincent and the Grenadines and Trinidad and Tobago."[86]

Figure 1 (3)

The CARICOM region



Brouwer, Maria, Governance and Innovation: A historical view (Routledge, UK 2008) 124

[85] *Caribbean Community and Common Market Business Law Handbook, Vol 1* (International Business Publications, USA 2011) 8-10, *www.caricom.org/.../caribbean.../caribbean_corporate_governance_f...* – accessed 18 July 2019

[86] *www.iccnow.org/?mod=caricom* - accessed 5 March 2019

Source: www.caribbean-atlas.com

The aforementioned has to be positioned against the backdrop that, "there is a growing recognition that economic performance was closely associated with the quality of underlying institutions…and practices that determines how a society functions and is organized."[87] The objectives of CARICOM are outlined which include but were not limited to "improve standards of living and work…coordinated and sustained economic development and convergence…and enhanced functional cooperation."[88] In this thesis presentation, mention was made mostly of "St. Vincent and the Grenadines"[89] and "Trinidad and Tobago,"[90] as they formed part of a business network within the wider grouping of islands. The objective of CARICOM with regards to enhanced functional cooperation can probably best be exemplified through one of its legislative constructs - the private limited liability company limited by shares.

This was as much a CARICOM institution as it can be found within St. Vincent and Trinidad. Within the private limited liability company limited by shares, aspects of the 'mission' of CARICOM was to "systematically reduce poverty, unemployment and social exclusion and their impacts…and to increase savings and the flow of

[87] *Op. cit.* [DaCosta, Michael, *Colonial Origins, Institutions and Economic Performance in the Caribbean: Guyana and Barbados*] 3
[88] *Ibid*
[89] Martin, Cathy & Toy, Mike, *St. Vincent and the Grenadines* (Macmillan Publishers Ltd., UK 2003) 5 – 6; *St. Vincent and the Grenadines: Statistical Appendix - Staff Country Report* (International Monetary Fund, USA 2003); Shephard, Charles, *An Historical Account of the island of St. Vincent* (Routledge Publishers, UK 2013) 1 -18; Pinnock, William, *A Comprehensive grammar of modern geography and history, For the use of Schools and for Private Tuition* (2nd edn Holdsworth & Ball, Paternoster Row, UK 1834) 296
[90] Hobbs, Joseph. J., *World Regional Geography* (6th edn Cengage Learning Inc., Canada 2009) 570; Brereton, Bridget, *An Introduction to the History of Trinidad and Tobago* (Heinemann Educational Publishers, UK 1996) 114; MacDonald, Scott, *Trinidad and Tobago: Democracy and Development in the Caribbean* (Praeger Publishers, USA1986) 1 - 42

investment within the Community."[91]This was attempted through the private limited liability companies limited by shares that spread throughout and across the said Caribbean region.

The Organisation of Eastern Caribbean States – OECS

Another union of states within the Caribbean was that of the Organisation of Eastern Caribbean States where a number of private limited liability companies limited by shares could be found. This OECS was an associate institution of CARICOM. St. Vincent was part of this grouping. Among other objectives, the OECS focuses on greater integration within and among the Eastern Caribbean States. It was because of this focus that the private limited liability company limited by shares found great resonance. There were repeated attempts at a harmonised approach towards reform on company laws but this was a process in motion.

The organisation was "an International Inter-governmental Organisation dedicated to economic harmonisation and integration, protection of human and legal rights…in the Eastern Caribbean."[92]This was why there was a concerted response by governments within this grouping to the contagion effect of the recent financial crisis. Respective governments spoke with one voice in an attempt to restore confidence within the regional financial sector so vital to the economic and social fabric of the affected stakeholder society.

Eastern Caribbean Currency Union – ECCU

The "ECCU"[93] was a monetary union of states within the Caribbean region for the purpose of fund consolidation within those member states that contribute to the fund.

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[91] *www.caricom.org/about-caricom/who-we-are/vision-mission-and-core-values/* - accessed 21 March 2018

[92] *www.oecs.org/homepage/about-us* - accessed on 21 March 2019

[93] Beek, Van Frits, et al, *The Eastern Caribbean Currency Union: Institutions, Performance and Policy Issues* (International Monetary Fund Publication, Washington, 2000) 1

There was a broad arrangement since 1983 such that the union provides for financial stability and economic development within the Caribbean. Up to 2013 within this union, the Eastern Caribbean Central Bank "provides support and actively monitors developments primarily in the credit unions and insurance sectors."[94] This does not negate the fact that insurance companies were supervised by the regulatory regime (FSA and CIPO) in St. Vincent and the Grenadines and similar regulatory units perform similar tasks in Trinidad and Tobago.

For instance, the insurance company of British American Insurance Company and Colonial Life Insurance Company were companies registered on the records at the Central Bank in Trinidad and Tobago. While supervised by other regulatory authorities, according to the Insurance Act, the Central Bank in Trinidad and Tobago, were authorised to exercise its rights "at any tine [to] intervene in the affairs of a company registered under this Act to carry on insurance business."[95] The private limited liability companies limited by shares "(insurance companies)"[96] and other juridical bodies comprise the financial system in Trinidad and Tobago. St. Vincent was part of the ECCU and remains up to the time of writing this thesis.

As far as was known, both countries remained part of their respective currency unions and the insurance companies stayed within their respective remits. The regulatory authorities in both countries, Trinidad and Tobago in particular were urged to continue to be vigilant and improve their "supervisory regimes"[97] to combat financial fraud and improve risk management even before the financial crisis of 2009. The latter issue was one that fell within the remit of corporate governance. While risk management may be an area that received great attention "from reports to the

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[94] *www.eccb-centralbank.org/p/financial-system-of-the-eccu* - accessed on 22 May, 2019

[95] *www.central-bank.org.tt/core-functions/supervision/insurance-sector* - accessed on 29 September 2014 and 21 March, 2018; *Trinidad and Tobago Insurance Act 1980*; *Trinidad and Tobago Insurance Act (amended) 2009, s 65 ss.1; s. 65 ss. 2*

[96] Ellis, Jason, (Ed) *Business and Company Legislation 2018/2019* (University of Law, UK 2018); Burling, Julian, Lazarus, Kevin, (Eds) Research Handbook on International Insurance Law and Regulation (Edward Elgar Publishing, USA 2011) 3 – 18; *Ibid*

[97] *Reform of the Financial System of Trinidad and Tobago – A White paper, Ministry of Finance* (Government of Trinidad and Tobago 2004) 11

OECD,"[98] especially about listed companies, all unlisted companies face risk. This substantive matter was a board practice. An "assessment tool"[99] created by OECD was adapted to rate the level of maturity of compliance on corporate governance in St. Vincent. The discussion turns on the explanation of this expression of corporate governance.

Organs of the private limited liability company

The two major organs of the company were its directors and the company in organizational meetings. "They share between them the most important corporate functions, and (except in the case of the single member company, the wholly owned subsidiary or the company with only one director) each organ normally, historically, acted by decisions (resolutions) taken at meetings." [100]The "board of directors,"[101] the board or commonly referred to as "Directors"[102] do not necessarily form the management teams of the company but exercises its responsibility of supervising the management of the company. These persons in turn manage the capital on behalf of its shareholders that contributed such capital in the first instance.

There was really no director of directors or head of directors. Both non-executive and executive are very important within this remit. However, it was the executive directors that were tasked with managerial roles while simultaneously carrying out their responsibilities as directors of the company. These lines were blurred during the

[98] *Risk Management and Corporate Governance* (OECD Publications, 2014) 11-*www.dx.doi.org/10.1787/9789264208636-en* - accessed on 27 February 2017

[99] Appendix 1(5A) – Assessment Tool; also Appendix 5 Section B was instructive at general guidance and interpretation of stakeholders views on corporate governance generally

[100] *Op. cit*. [Sealy, Len, Worthington, *Sealy and Worthin*gton – *Cases and Materials in Company Law*] 179

[101] St. Vincent Companies Acts No 8 of 1994;s. 58, s. 52; Trinidad Companies Act No 35 of 1995, ss. 60 - 92

[102] *Ibid*, See also Mangal, Rambarran, *An Introduction to Company Law in the Commonwealth Caribbean* (Canoe Press, UWI, Kingston, Jamaica, 1995) when he spoke of, "Every registered company must have a board of directors." - 68; see also *Howard Smith Ltd. V Ampol Petroleum Ltd* [1974] AC 821, Lord Wilberforce, it is established that directors within their management powers, may take decisions against the wishes of the majority of shareholders and indeed the majority of shareholders cannot control them in the exercise of these powers while they remain in office"

early establishment of 'corporate St. Vincent' where "shareholders"[103] in some instances served simultaneously as directors especially in the early life cycle of some companies. Legislation provided for this phenomenon. Yet the developmental stages and reform of company law provided for specified functions and a distinction and separation on management, the board of directors and shareholders is mandated.

The board of Directors

One of the fundamental institutions or organs of the company was its "board of directors"[104] that comprised of its directors. Historically, the powers of the directors derived from "shareholders." [105] For successful perpetuation, the company in meetings, held the board of directors accountable. Its responsibility and power cannot be delegated at will as the modern operation dictated, "directors' powers derive from the company itself."[106] Continuing in the tradition of the UK "boards are subject to law."[107]

Board members generally need a sufficiency of skills and understanding to review and challenge management and to "safeguard long term interests of the company"[108]. The OECD "outlined a number of principles"[109] for the boards of directors as they were to act in an ethical manner with good faith, care, due diligence and in the best interest of the company. These principles were codified in "the model by-laws."[110] Board were tasked with "reviewing and guiding [of] corporate strategy,"[111] "annual

[103] *Ibid*, [Companies Act Trinidad and Tobago, ss. 107 – 115]
[104] Appendix 1 (8) - Model By-Law for Companies in St. Vincent, for meaning and role of directors – Art 4 - 10
[105] Dine, Janet, *The Governance of Corporate Groups* (Cambridge University Press, UK 2004) 35
[106] *Ibid*
[107] [Companies Act 1994 (SVG)] s. 65; s 141; see fn 78 [Model By Law 1 Art. 4]; Dine, J., Koutsias, Marios, *The Nature of Corporate Governance* (Edward Elgar Publishing, UK 2013) 142
[108] *www.oecd.org/daf/ca/49081438.pdf* - accessed 30 June 2019
[109] *www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf*, p. 24 -25 - accessed 1 April 2019
[110] Companies Act 1994 (SVG) [*Model By-Law No.1*] Art. 4 - 11
[111] *Ibid*

returns; and annual reports;"[112] the acceptance of "special resolutions;"[113] and to discuss matters that allowed for accountability and transparency within the company.

Shareholders

The private limited liability company limited by shares is one type of company registered in St. Vincent and other former colonies of Great Britain. Much has been written about the company as a separate juristic entity. Ordinarily the creation and incorporation of a company was when the prescribed set of documents has been lodged with the Registrar of Companies. The "shareholders"[114] are persons who raise capital to finance the activities of the company and legally own one or more of the shares of a company. Shareholders are also classified as members of the company. The names of the shareholders are written in a register held by the company. In St. Vincent and Trinidad, a "shareholder"[115] is subject to applicable company laws and has a number of rights outlined in the law. The situation is similar under "company laws for the UK."[116]

The company in Meetings (Shareholder Assembly)

The other major organ was the shareholder assembly or the company in meeting. There are a number of "meetings"[117] that the company can engage in during its life cycle such as general meetings and special meetings to name a few. The company in

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[112] Companies Act 1995 (TT) s. 151 - 156; s. 157
[113] Companies Act 1994 (SVG) s. 98
[114] Berle, Adolf A., Gardiner, Means C., *The Modern Corporation and Private Property* (10th edn. Transactions Publishers, UK 2009) xv; Wright, Mike, Siegel, Donald S., Keasey, Kevin & Filatotchev, *The Oxford Handbook of Corporate Governance* (Oxford University Press, UK 2013) 491
[115] Trinidad and Tobago Companies Act 1995, s 107 - 126. ; St. Vincent Companies Act 1994, s. 105 - 123
[116] UK Companies Act 2006
[117] Dignam, Alan J & Hicks, Andrew, *Hicks & Goo's Cases and Materials on Company Law* (Oxford University Press, UK 2011) 424; *Op. cit.* [St. Vincent Companies Act] ss. 78; 399; 440 & [*Companies Act Trinidad and Tobago*] ss. 67; 109; 114 as examples of the private limited liability company limited by shares in meetings

general "meetings"[118] is a vibrant organ. This has not changed in St. Vincent or other former colonies for over two and a half centuries according to English company laws and the UK Company Acts. It is a phenomenon that is archaic but it works.

Shares

The private limited liability company limited by "shares"[119] was provided for by UK Companies Act 1908 where the word 'private' was first used to refer to such companies. Prior to this, companies were public companies as investment was drawn from the public. In the case of private companies, these were in keeping with private investors and became as the most popular and versatile in corporate history. St. Vincent Company Law 1994 recognises the private company limited by shares as one of the categories of its companies.

A "share"[120] denotes a unit of measurement or of an account for multiple investments. It was used to identify a quantity or portion of the assets of a company. Those who purchased shares were part of the ownership of such units of accounts in a company. It was a monetary unit of measure or currency to denote the real worth or cost of the commercial item. In the instance in St. Vincent and Trinidad, the plural form – "shares"[121] – were purchased by investors, entrepreneurs and others in the insurance companies. The items of monetary value were insurance policies or pledged accrued income or assets. A share therefore was a unit of measurement that was purchased by individuals (shareholders) when the company needed to raise its share capital.

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[118] *Ibid*

[119] *Op. cit.* [Worthington, Sarah, *Sealy and Worthington's Text, Cases, and Materials in Company Law*]

[120] *Halsbury's Laws of England*, Vol X1V 2009, para. 1 - 692; Vol XV 2009, para. 693 - 1841; p. 1042

[121] St. Vincent Company Act 1994 – s. 33; s. 36; s. 45; s. 46; s. 213; s. 236; s. 241 – for legislative provisions about shares within the company

The owner of a share holds as a representative, an equal portion of the company's funds or capital. The holder of such a share or shares was a shareholder and he or she was entitled to a claim on the company's profits. That claim is equal to the assigned value agreed. Not only an equitable claim on the profit of the company but a shareholder has an obligation for the company's liabilities. In British laws and UK Company Acts applicable to Caribbean states under review in this text, two types of shares are mentioned. A number of shares are discussed in the legislation. A shareholder 'holds' a share and may be an individual or an institution. See Figure 1(4) for a diagrammatic view as to where shareholders are likely to be identified.

Figure 1(4)

Composite Of Corporate Sector Showing:

Stakeholders Of Private Limited Liability Companies generally from Multiple Corporate entities and individuals

Source: Compiled by Researcher - 2019

Contagion

In this instance, the word was used to describe and analyse a financial crisis with unprecedented effects upon all private limited liability companies within the Caribbean region and beyond. As a result of such a "contagion"[122] resulting from an unprecedented financial crisis that engulfed the named category of companies, it was more specific to the insurance companies within the CL Financials Limited holding company with its negative impact on the islands Gross Domestic Product. All these islands were among others that suffered financial distress and "genteel poverty". The named islands were part of the grouping of former colonies either as the OECS and or belonging to the CARICOM. The analyses of the insurance companies and their lack,

[122] *Trinidad and Tobago: Selected Issues* (International Monetary Fund Publications, USA 2011) 3

disregard or absence of corporate governance best practices formed the basis of this text.

Use of the term 'St. Vincent' interchangeably with 'St. Vincent and the Grenadines'

'St. Vincent' and 'St. Vincent and the Grenadines' are used interchangeably to differentiate between the main island and those smaller islands in the Grenadines that are its dependencies. There were times however, when the word 'St. Vincent' or and "St. Vincent and the Grenadines" was used interchangeably with the same effect.

Poverty

Here was a condition that was said to be "fundamentally about deprivation and can be defined as any situation in which an individual, a group, or community possesses less than some standard of living that is deemed generally as acceptable."[123] Further, "Poverty in St. Vincent is measured in terms of income and consumption levels... affecting with particular severity children, women and the elderly who together account for a significant per cent of the estimated population."[124] "St. Vincent and the Grenadines was assessed as a country that was gradually emerging from baseline poverty."[125]

Over the years, several "poverty assessments"[126] were done. The idea was to guide government in their policy decisions to alleviate conditions that pre-dispose individuals to poverty or the onset of poverty. The indigent poor (dirt poor) were also

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[123] *www.cepal.org/portofspain/noticias/paginas/0/40340/4_CPA_SVG_CPA__FINAL_REPORT__Vol_1__Revised.pdf,* - p. xv - accessed 27 June 2012

[124] *ST. VINCENT AND THE GRENADINES Interim Poverty Reduction Strategy Paper - Prepared by The Poverty Reduction Task Force (PRTF) Of The National Economic and Social Development Council (NESDC)* Final Revision, June 2003, 13

[125] *Ibid,* 4

[126] *Poverty Assessment report Vol II* - (Kairi Consultants Limited, Trinidad and Tobago 2007 – 2008) 4 – 7; *National Report St. Vincent and the Grenadines: Third International Conference on Small Island Developing States – National Report* – (Ministry of Health Wellness and the Environment – July 2013) 5

those within the vulnerable category of poverty that are found within the developing island state.

Genteel poverty

Sometimes mistakenly referred to as "gentile poverty"[127], the words "genteel poverty" refer to a coined term that was marked by a false 'delicacy, prudery or affectation' and was genteel on the surface of the matter, but there was a hard core of poverty underneath. This was not about pleading poverty when someone was not poor. The condition exists when money had run out and an organization or person tries to keep up appearances, deceiving others into thinking that money exists when there really was none. Genteel poverty is that variant of "poverty"[128] within an already impoverished state according to "poverty assessment reports."[129]

Genteel poverty exacerbated these conditions some of which were still being felt up to the time of writing this thesis. Irrespective of initiatives aimed at eradication of poverty over the years. Within the last decade, the indication was that a small percentage of these companies, namely the insurance companies; contributed to the existing state of "poverty;"[130] "a new species,"[131] called "genteel poverty."[132] This

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[127] *www.jamaica-gleaner.com/gleaner/20120229/business/business7.html* - accessed on18 February, 2019

[128] *Poverty Assessment report Vol II* - (Kairi Consultants Limited, Trinidad and Tobago 2007 – 2008) 4 – 7; *National Report St. Vincent and the Grenadines: Third International Conference on Small Island Developing States – National Report* – (Ministry of Health Wellness and the Environment – July 2013) 5

[129] *Ibid*

[130] *Word Investments* [*Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204; 251 ALR 206; [2008] HCA 55 @38; *Int. J. Law Context, 7, 2 p. 139 –179 (2011) @145*

[131] See *fn* 127

[132] *Ibid* – the word 'gentile' and 'genteel' are generally used interchangeably but refers to the same concept when describing levels of poverty experienced by persons who are not necessarily within the category as indigent poor or dispossessed. This state of poverty is so unique in that it was not featured in the Country Poverty Assessments to which the island was subjected.

"lack, absence or disregard of corporate governance best practices"[133] was central to the process of corporate stability within the identified companies.

Additionally, the members from the general public constitute the category of stakeholder within these companies. The resulting financial crisis originating from similar private limited liability company limited by shares located in Trinidad and Tobago are held as contributors to the current situation. The hypothesis provided proof of the magnitude of a corporate contagion that negatively impacted the "gross domestic product"[134] of St. Vincent and the Grenadines. Private limited liability companies limited by shares affected the gross domestic product of member states of CARICOM.

The private limited liability company

This type of business known as a "company"[135] was one that was privately owned as opposed to being owned by the public. In St. Vincent as well as in Trinidad and Tobago, the private company limited by shares as well as the "GmbH in Germany"[136] were among some of the companies considered as private liability company. Take for instance the GmbH bore similar characteristics to a corporation and a sort of limited partnership. The GmbH with its emphasis on supervisory boards is likely to have inspired the hybrid of the proposed corporate governance practices proposed here in St. Vincent. The characteristic features of its private limited liability companies are all enshrined in the Vincentian company law.

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[133] Layne, William, Permanent Secretary (ret.) RECENT FINANCIAL FAILURES IN THE CARIBBEAN - WHAT WERE THE CAUSES AND WHAT LESSONS CAN BE LEARNT? The Ministry of Finance - Barbados 6, para. 2. 3 – *www.da-academy.org/Financial_Crisis_in_the_Caribbean.pdf* - accessed on 12 August 2019

[134] Gonsalves, Ralph. E, *Budget Speech 2010: Economic and Financial Stability, Social Cohesion and Fiscal Consolidation at a time of Global Recession and Uneven Recovery* (St. Vincent 2010) 1

[135] *Re a Company (No 00709 of 1992), O'Neill v Phillips* [1999] 2 All ER 961 at 966, [1999] 1 WLR 1092 @ 1098, HL, per Lord Hoffmann

[136] See Appendix 1(7) – explanation about the GmbH and mention of its supervisory board

One major identifying marks of the private company was its "separate legal personality"[137] and with this its capacity to be legal owner of property. Property does not belong to a director or shareholder or members. Prior to the House of Lords decision where a company has its own legal personality under "English law in Salomon's case," [138] the company had been a partnership between the "shareholders"[139] (members) of the company and any property for the company was held on trust for the shareholders as beneficiaries. The situation today was that a company was now the legal owner of its own property and that the members (shareholders) have "merely rights against the company but no title in any of the company's property only until that company was wound up."[140]

The GmbH in Germany

This company was considered the equivalent to the private limited liability company within the British jurisprudence on company. The GmbH (Gesellschaft mit beschrankter Haftung) as a German private company was a company with limited liability. The aforementioned suffix when used after the name indicated what type of company and differentiated it from one that was a public company. Aspects of its board structure was used to inform the new 'thinking' on the direction and control of private limited liability companies in St. Vincent in the aftermath of the financial crisis referred to earlier. The Financial Services Authority put legislation in place beginning in 2011 as it " expects that institutions will adopt the two-tier model in structuring their boards."[141] An expectation was not a direct appeal to companies to adopt such a measure provided for under the law.

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[137] Anderson, Helen, Directors' Personal Liability For Corporate Fault: A Comparative Fault (Kluwer Law International, The Netherlands, 2008) 139

[138] *Saloman v A. Saloman & Co Ltd* [1897] AC 22

[139] When companies first became incorporated by registration in the UK as a result of enactment of the Joint Stock Companies Act 1844 one of the definitions in s 3 was: "The word 'Shareholder' bore the meaning that any person entitled to a Share in a Company, and who has executed the Deed of Settlement."

[140] Hudson, Alistair, *Understanding Equity and Trusts* (4th edn Routledge, UK 2013) 163 - 192

[141] Directors of domestic regulated financial institutions - (with particular reference to insurance companies and credit unions) - minimum requirements for approval and continued approval by the authority (effective 15 May 2013) - Statement from the Financial Services

Historically, for reasons of comparison, in British law as opposed to German law, there is not much on exactly how corporations are to be organized, namely the division of functions between shareholders and the boards. While this may be so, "the equivalent rules for British companies ...are located in the company's own constitution or even in rules made by the board itself."[142] The distinction is significant in that Germany as with most of continental Europe has separate laws for public and private companies while the UK has a single Act to regulate all companies.

Many analyses exist about the corporation, and one such is the contract analysis, which says that the corporation and the things they do were "regarded as a private phenomena."[143] It is cautiously advocated that the analysis claimed to be a significant advantage over others, in that it shed light on the 'internal operation of the firm.' The direction and control of the firm therefore were restricted to boards of directors and shareholders or owners. The claim made was that control and direction of the corporation or company had less to do with the influence by the legislative dictates of the state.

West Indian islands, West Indies, Caribbean islands

The terminologies ‘West Indies’ and or ‘West Indian islands’ and Caribbean islands were in keeping with historical literature but used interchangeably as expressions that

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Authority as per *Financial Services Authority Act 2011 of St. Vincent and the Grenadines*. See also Appendix 2 (11); see also the ‘financial sector’ as at the 28th February 2013 in St. Vincent and the Grenadines comprised the domestic and the international financial sectors. The domestic sector consisted of six banks; one building society; nine credit unions; thirteen ‘motor and general insurance’ companies (four local and nine CARICOM) and nine long term and life insurance companies (all CARICOM). The international financial sector consisted of five banks; two international insurance companies; one international insurance broker; one insurance manager; one hundred and thirty trusts; 7728 IBS's; five hundred and sixty five CTD's; eighteen LLC's; one hundred and twenty seven Mutual funds - Public/Private/Accredited Managers and seventeen Registered Agents

[142] Davies, L. Paul, *Introduction to Company Law* (2nd edn Oxford University Press, UK 2010) 107

[143] Bottomley, Stephen, *The constitutional Corporation: Rethinking Corporate Governance* (Ashgate Publishing Ltd., UK 2007) 33

convey the same meaning to ‘Caribbean islands’. St. Vincent and the Grenadines as well as Trinidad and Tobago are part of these islands. In some specific instances clarity was added to individual countries within that grouping but the meaning and or references was to the same group of islands.

1.8 Conclusion

Arguably, the real reason behind corporate governance in a private limited liability company limited by shares was to place a limit on who holds the greater power. The companies possessed a separate personality from its shareholders. A balance on that power was created when legislation mandated how such power was to be distributed between the two major organs, which were the board of directors, and the members of the company (the company in meetings). Although the company was versatile, once there was a lack, disregard or absence of corporate governance best practices this inevitably become clear to all stakeholders. Those main organs operated in such ways that were in proportion to interests shared among stakeholders.

The board had delegated authority and used this for the success of the company and the benefit of its members who are entrepreneurs or investors. The existing legislation up to 2012 detailed that corporate governance practices best practices be exhibited through a one-tier board structure inherent in the British company laws and the UK companies Acts.

These versatile private limited liability companies were spread across the platform for domestic stakeholders and external investors. An unprecedented corporate crisis was further exacerbated by an international recession that was evidenced within the period. As the study revealed “genteel poverty” remained a real phenomenon that impacted the gross domestic product of an already impoverished state and other states within CARICOM.

Arguably, governments within these West Indian islands came to recognise that there was a flawed business model instigated within the conglomerate CL Financial

Limited. The next chapter gives greater understanding as to the contextual phenomenon and other constituents of the nature of corporate governance within the private limited liability companies limited by shares on St. Vincent and the Grenadines.

CHAPTER TWO

CONTEXTUAL PHENOMENON FOR CORPORATE GOVERNANCE WITHIN THE PRIVATE LIMITED LIABLITY COMPANY LIMITED BY SHARES ON ST. VINCENT AND THE GRENADINES

"... Worse, democratic pressures may force governments to shackle corporations, limiting their independence and regulating the smallest details of their operations. And we shall all be the losers.

" Charles Handy, What's a business for? Harvard Law Review, 2002

2.1 Introduction

Chapter Two was included as part of this original thesis contribution to "corporate governance"[144] within the private limited liability companies on St. Vincent. The chapter provided some contextual analyses and advanced the arguments that indeed there were antecedents to corporate governance practices on the island of St. Vincent within the category of companies under review. Similar companies on the sister island of Trinidad and Tobago were referenced periodically. The significance of this was mentioned previously in Chapter One so that there were corporate governance commonalities within practices. The intent was that they served to augment and solidify business arrangements that would be efficient, effective and exemplify the tenets of codified procedures within British rule bound company law.

This study could have been constrained by the parameters of an exercise in political economy. However, on a much smaller scale, similar analyses are made here between individuals (stakeholders) and the society. Some reference was made to the money markets especially within Trinidad and Tobago. There was a borrowing from other disciplines to gain a broader perspective about the nature of corporate governance of the private company. The disciplines of economics, political science and sociology lent a measure of support to the derivative conclusions. The nature of corporate governance within the private limited liability companies was complex. This exercise exemplified "researching law in society" [145] where the aspects of corporate governance were in motion. Whether such motion within the wider society exerted pressures on the government of the day to place shackles on Companies was a matter of opinion.

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[144] Chapter One (fn 1); see also Appendix 1(1) about the *Principles* fundamental to corporate governance that made their way into the genesis of the practices within early corporate St. Vincent

[145] Vago, Stephen, *Law and Society* (Routledge, UK 2016) 415 - 419

Without substantial primary and secondary sources, the arguments hereinafter were constrained significantly. The use of some aspects of qualitative research methods, assessments and analyses, some insights were arrived at so as to gain a better understanding of corporate governance practices. These were identifiable and distinguishable over the years. The islands remained within the same CARICOM region, with similar elements of a political agenda and a focus on economic development and financial stability. These were post emancipation societies that provided enabling legislative environments for the development of company law.

However, there was an imperative imposed externally on Small Island developing states as they sought to manoeuvre their way into sub regional and extra regional money markets. Governments here were required naturally to respond to the growing needs of their stakeholder societies. Companies having been placed at the forefront of economic development were well positioned to lobby government to provide safeguards as they sought to collaborate within business networks across borders.

This was in keeping with changes within the wider commercial sectors and a development agenda for the financial sectors. This 'naturally occurring environment' impacted corporate governance practices to the extent that comprehensive overhaul of existing legislation on company became imperative. This was further redefined by a politico-economic national agenda on development. At other times corporate development was hampered by "natural disasters" [146] and other vulnerabilities endemic to small open economies. The aspiration for companies within CARICOM at the very basic levels may have been an attempt at integration. This was problematic at best. The prevailing sentiments by some were that "the natural state of our Caribbean is fragmentation."[147] Nonetheless, the subcategory of private companies under review maintained a somewhat closed perspective on their inherent corporate governance structures. They relied on their own application of a substantive legislative

[146] Drexl, Josef, Fox, Eleanor, M., et al. *Competition Policy and Regional Integration in Developing Countries* (Edward Elgar Publishing Limited, UK 2012) *170*
[147] *Ibid*

phenomenon to the growing needs of individual stakeholders, institutional stakeholders as well as the general public.

Notwithstanding this, there were 'internal codes or business practices' within the Vincentian and Trinidadian context especially among the financial sector that gave rise to the following observable practices:

- Companies were encouraged to ensure the safety and delivery of services in a timely and efficient manner. They were further advised to test capacity and capability of services in co-operation with regulatory regimes.
- Some companies raised the bar on transparency through a thorough analysis of their own corporate governance agenda especially in public offerings and or sale of premiums to stakeholders so that there was a minimization of incentives for corruption. Corruption was hard to prove in many instances if at all it existed.
- Companies were encouraged to pay their workers according to wages that positively impact life and livelihood.
- The practice of any form of discrimination was discouraged as companies sought to give equal remuneration for equal work.
- Companies were persuaded to minimize damage to the environment from the activities they were engaged with. A regular report on any progress was a mandate by management. There was a disconnect between companies and government that refused to support the aforementioned ethical principles

Several areas were considered with regards to the private limited liability companies on St. Vincent such as:

- The physical composition of stakeholder communities
- Effects of slavery on the development of institutions
- Theories of corporate governance
- Rationale for a dichotomy in regulation
- Phases of corporate governance development in St. Vincent
- Conclusion

The chapter closed with a synoptic view on all facets of the aforementioned factors. The discussion now turns on the composition of the stakeholder community and proceeds along chronological order as aforementioned.

2.2 Physical composition of the stakeholder communities

Along with eight other "OECS territories"[148], St. Vincent and the Grenadines formed part of the Windward Islands and was located at the lower end of the Caribbean archipelago. Due to its size St. Vincent was also generally referenced as the Gem of the Antilles. The main land is 133 square miles (344 square km) and the other islands of the "Grenadines"[149] comprised of seventeen square miles (44 square km). The cluster of these gems of thirty-two islands covers 150 square miles (388 square km) in size. The largest island of the Grenadines was Bequia - 7 square miles; Mustique 1.9 square miles; Canouan 3 square miles with Mayreau and Union Island of 3.5 square miles and 5.5 square miles respectively. The majority of the other islands were largely uninhabited but were home to unique coral reefs and breeding grounds for a variety of sea life.

St. Vincent was situated between Grenada 75 (120 km) miles to the south, St. Lucia 24 miles (43 km) to the north and Barbados 150 miles (160 km) to the east. The islands were well within the Atlantic Standard Time Zone; one hour ahead of Eastern Standard Time and four hours behind Greenwich Mean Time. Private limited liability companies were scattered across this landscape catering to a variety of causes and needs.

Figure 1 (5)

Map showing of greatest concentration of private companies in St. Vincent and the Grenadines

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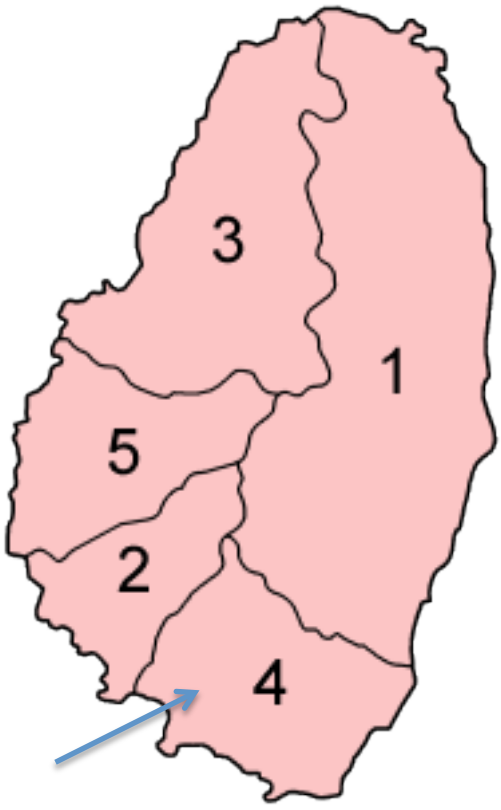
[148] www.oecs.org/about-the-oecs/who-we-are/about-oecs - accessed 8 December 2014 and 12 April 2018

[149] Cameron, Sarah, *Focus Caribbean: Grenada, St. Vincent and the Grenadines* (Thompson Press Ltd, India 2014) 100; Kaufman, Will & Macpherson, Heidi S., (Eds) *Britain and the Americas: Culture, Politics and History* (ABC - CLIO, USA 2005) 29



Key: Where arrow points to 4 – Location of capital city – Kingstown, St. Vincent and the Grenadines – 1845 to present

- Greatest concentration of private companies is located/Regulators (Register of Companies) are also located here so that registration of all companies remained centralized for more than a century.

Source: Adapted by Researcher from public domain for 'free use and to share' used according to conditions specified.

The historical analyses pointed to Arawak Amerindians that migrated from South America and inhabited the island of "Saint Vincent"[150] and the Caribs who were also another Amerindian tribe later subdued them. Some early inhabitants of the island were "Black Caribs did like the French, establish small farms where they grew cotton,

[150] Adolphus, John, *The Political state of the British Empire, Vol IV* (A. Strahan, Printers Street, London, 1818) -The name St. Vincent was bestowed upon it by the Spaniards.

indigo and tobacco which they traded with the French for arms, ammunitions, tools and ornaments."[151] Commercial activities generated by the private limited liability companies on the island or within the Caribbean region were not well documented in the format as was so ably done by the British.

Indigenous peoples and their intermixture had more to do with subsistence farming and fishing. They also resented the idea of a 'new order' to their way of life. Subsequently they were deemed by some historians to have engaged in "guerrilla warfare"[152] tactics to preserve their way of life and their livelihood. A little over four hundred years would elapse before British "legislation on company law"[153]would become the prevailing law about companies in St. Vincent.

These early inhabitants were on the island when "Christopher Columbus"[154] arrived on 22 January 1498. The nation was one of the last of the West Indian islands to be settled. The island was taken formally from France by Britain in 1763. During the period 1779 to 1783 the island reverted to France. However in 1793, the British regained control of the island through the Treaty of Paris. There was a rebellion against the British in 1795 aided by the French.

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[151] Kirby, I.E, Martin, C.I, *The Rise and Fall of the Black Caribs of St. Vincent* (Kingstown, St. Vincent, 1972) 18

[152] *Op. cit*. [Kirby, I.E, Martin, C.I, *The Rise and Fall of the Black Caribs*] 14

[153] St. Vincent and the Grenadines - *Consolidated Index of Statutes and Subsidiary Legislation 1981* edition for discussion on references to statutes as Ordinances and Acts, all of which were directly from the UK, 22 - 23

[154] Sullivan, Lyn, *Adventure Guide to Grenada, St. Vincent and the Grenadines* (Hunter Publishing, Canada, 2003) 1 - Columbus thought he had discovered St. Vincent but there were people living on the island believed to have been the Ciboney Indians who arrived some 5000BC. They were followed by the Arawaks (from South America) and later the Caribs. See also KIM, Julie Chun. "*The Caribs of St. Vincent and Indigenous Resistance during the Age of Revolutions." Early American Studies,* vol. 11, no. 1, 2013, pp. 117–132. JSTOR, www.jstor.org/stable/23546705; See also Suchlicki, Jaime, *From Columbus to Castro and Beyond* (Potomac Books,Washington, USA 2002) - Further discussions on Columbus' arrival to the West Indies where he met people occupying the land- Hansen, Valerie, Curtis, Kenneth, *Voyages in World History Vol 1* (Cengage Learning Publication USA, 2010)437

In 1776, the island had a representative assembly. In 1877 a Crown Colony government was instituted. In 1925, a legislative council was created and in 1951 it was granted universal adult suffrage. The island advanced to being "recognised internationally"[155] having attained membership of several international organisations in keeping with the status of an independent sovereign state. Figure 1(6) gives a diagrammatic view as to where St. Vincent is located in relation to the rest of the islands in the region.

Figure 1 (6)

Map of St. Vincent and the Grenadines

Source: www:uk.images.search.yahoo.com/search/images

A correlation existed between revenue earning on one hand and the alleviation of economic burdens across the rural urban divide though lines of demarcation on this 'divide' were invariably blurred. This was precisely one of the outcomes created by the mechanism of the private limited liability Company limited by shares, one that manifested itself through the balance created within the company in meetings.

[155] Appendix 2(1) Table showing membership of international organisations to which the island belong.

Mention is made of similar private limited liability company limited by shares that are located within "the Companies Act"[156]of Trinidad and Tobago and other member states of CARICOM with shared legislative legacy and jurisprudence on UK Companies Acts and the British company laws. There were some differences among the individual states with regards to this same juridical construct. Some provisions were dictated by the individual domestic policies on investments and categories of use.

Trinidad and Tobago

The insurance company being a representative part of the private limited liability company limited by shares on the islands of Trinidad and Tobago was a constituent part of the exploratory process in this thesis. These islands were referred to as the twin island states; Trinidad and Tobago rests at the south eastern part of the West Indies. These islands were part of the Caribbean chain of islands. Close to the continent of South America, the islands were also north east of Venezuela and North west of Guyana. Trinidad was the larger of the two islands with an area of about 1,850 square miles. See Figure 1(7) for a map of Trinidad and Tobago as per discussions.

Figure 1 (7):

Map of Trinidad and Tobago

See overleaf

Figure 1 (7)

[156] *Trinidad and Tobago Companies Act* 1995

Map of Trinidad and Tobago

Source: Encyclopedia Britannica, Inc.

The factors such as population, size, race, ethnicity and class on St. Vincent were considered if only as supporting an infrastructure that somehow assisted with the formation of the acceptance of what else constituted the nature of corporate governance and the development of company law. Critical to the discussion is that there is an underlying notion that the Caribbean has an identity that is vigorous at times and at other times it may seem unambiguous. Yet this same identity is exclusive to each island but couched in terms that allow these islands within the specified region to grow together in their separateness. This phenomenon does have some relevance.

The Caribbean identity is diverse and unique. Irrespective of a shared historical and legislative legacy it is influenced largely by colonialism. Each island has its own set of beliefs, mannerisms and philosophical views on race, ethnicity, religion and linguistics. This geopolitical space has its cultural identities that shape island identity and "culture" [157] in their individualistic fashion. These factors are important considerations when defining the antecedents to corporate governance. These also underpin the business and trade agreements through one of the facilitating mechanisms called CSME but also every facet of life deemed "authentically Caribbean."

As an economic bloc with its private companies, it is anticipated that it is to be strengthened by shareholders and stakeholders with a common identity. A disconnect comes when there is insistence on the shareholder primacy concerns within the Caribbean company. The company directors have a mandate on duty of care but only to the extent of shareholders and employees. The stakeholders who are generally in the greater proportion experience a sense of almost ostracism. The law is clear on the fiduciary obligation by directors in dispensing that duty of care and to whom.

Generally, the lives of the people are reflective of corporate interests. As in St. Vincent and the region, there is a reinterpretation of the role of the company as it responds to the needs of the wider stakeholder community. Stakeholders see themselves as holding as much interest in the company as do shareholders who provide capital for start up. Each individual with this Caribbean identity and culture within a restricted space seeks relevance and recognition for their contribution to the private company. A mutually benefitting private company that can respond to the needs of people is of critical importance. There are legislative guidelines, reform on company laws but its corporate governance procedure has to be understood within the context of cultural identities that co-exist in individual states as well as in the wider region of CARICOM.

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[157]Minahan, James, *Ethnic Groups of the Americas: An Encyclopaedia* (ABC-CLO LLC, USA, 2013) 370

The company transcends the common legacy of slavery, colonialism and the emergence of globalisation. The various norms and values commensurate with plantation society brought with them a common inheritance that should not destroy corporate governance. Finally on this point, there are noticeable family norms that are related to hospitality that support the idea of having a 'fair and square dealing' between stakeholder and shareholder. However, "centrifugal tendencies"[158]amidst the ubiquitous "state policies"[159]about foreign direct investments have to be balanced against these matters. Put another way, centrifugal forces have to exist along side "ideals on one hand, while individual beliefs, family and kith and kin on the other hand…[along with] fragile democratic structures."[160] A Caribbean identity should give support to the private company for the interest of all.

There is room for "nationalism" [161] and "corporate philosophy" [162] to co-exist peacefully. Corporate governance best practices should continue to strive to uphold the procedural claims that it can work even within the insurance companies towards nationalism with its corporate philosophy. A Caribbean private company when understood within the aforementioned context can only promote its corporate philosophy and strengthen efforts towards Caribbean nationalism. The ensuing discussions turned on these matters.

Engagement of domestic private limited liability companies

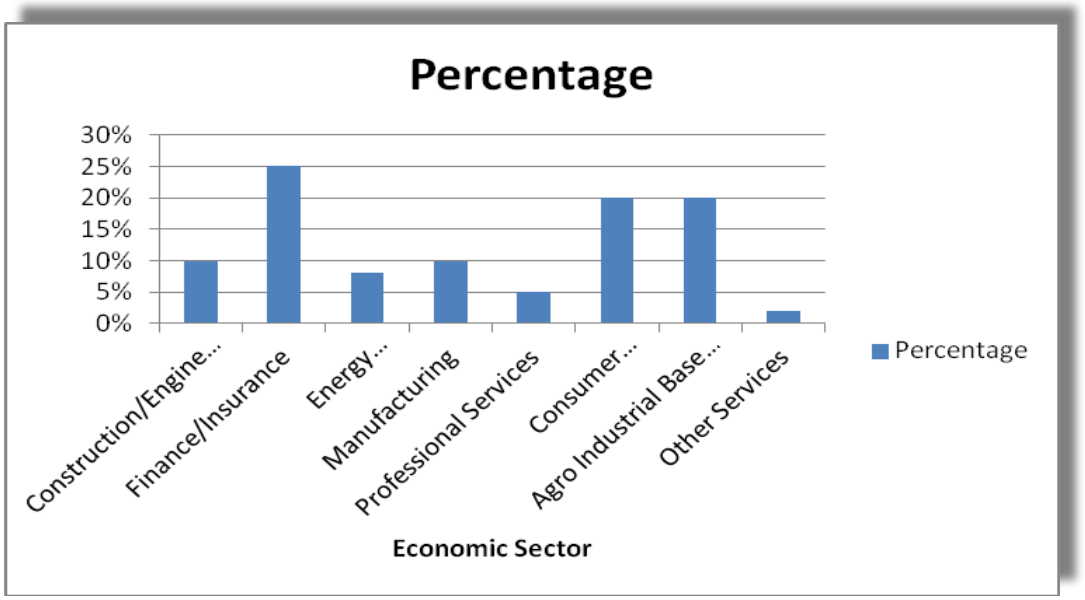
For just over a century of corporate existence, conventional attempts have placed the domestic companies, on average across the following spread of sectors within the local economy: "a 20% of private limited liability companies maintained an agro industrial base through the development of small enterprises; 25% engaged in

[158] Johnson, Malcolm, (Ed) *The Cambridge Handbook of Age and Ageing* (Cambridge University Press, UK 2005) 511
[159] *Ibid*
[160]Charles, Andrian, *Political Change in the Third World* (Routledge, UK 2011) 31
[161]Harris, Peter. B., *The Commonwealth* (Prentice Hall Publishing, USA 1975) 66
[162]Mangal, Rambarran, *An Introduction to Company Law in the Commonwealth Caribbean* (Canoe Press, UWI 1995) 22

domestic banking and or finance and insurance products; 10% concentrated on the provision of manufacturing related initiatives; 8% pursued energy related/services and or supplies; professional services engaged 5% of private companies; construction/engineering was attributed to 10% of companies; consumer production for wholesale and retail purposes was 20% and the category of 'Other' accounted for 2% of private companies that engaged with sale of foods; beverages and building supplies; tourism; sports and entertainment."[163] See Figure 2 (1)

Figure 2 (1)

Engagement of domestic private limited liability companies for the period 1845 - 2013



St. Vincent and the Grenadines

Source: Compiled by researcher – 2019

[163] *Appendix 1(5A)* Corporate Governance Assessment Tool (Adapted from OECD Corporate Governance Assessment Tool kit by researcher)

* Figures unavailable as to exact number of private companies that remain registered over the same period per economic sector. Figures were not available for the international sector (private limited liability companies)

Although there were a number of institutional structures in place, they were insufficient to "manage the transformation of the economy,"[164]post decline of the demise of the banana industry. The growth in the economy declined coupled with natural disasters by sea, land and air. The years 2000 onwards proved challenging and poverty was compounded, as there was much difficulty in "adjusting the vital export sector that points to the weaknesses or limitations of the institutional structures in the economy of the country."[165] The entire report provided an exhaustive and comprehensive discussion on existing realities.

On the whole "genteel poverty"[166]supported the narrative that an ever-increasing need exists for an aggressive approach at poverty reduction and alleviation. "Poverty"[167] for St. Vincent pointed to some critical factors. It was noted that, "unemployment and underemployment threaten livelihoods."[168] High unemployment was somewhat offset by persons finding and creating local employment "through cottage industries"[169] and other enterprises.

Does Population matter?

The population of St. Vincent and the Grenadines would have grown from the earliest estimated figures in 1848 of around "26, 300"[170] to a current resident population

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[164] *Report on the Institutional Assessments: St. Vincent and the Grenadines Country Poverty Assessment 2007/2008 Vol III* (Kari Consultants Limited, Trinidad and Tobago) 4
[165] *Ibid*
[166] *www.jamaica-gleaner.com/gleaner/20120229/business/business7.html* - accessed 2 February 2013
[167] *Op. cit*. [*Report on the Institutional Assessments: St. Vincent and the Grenadines Country Poverty Assessment 2007/2008 Vol III]* (n 80)
[168] *Ibid*
[169] Gordon K. Lewis, *The Growth of the Modern West Indies (*Ian Randle Publishers Jamaica 2004) 154
[170] Martin, Montgomery R., *History of the British Colonies Vol II: Possessions in the West Indies* (Cochrane and M'Crone, UK 1834) Section '**a' -** 1300 Whites & 25,000 Coloureds

estimated at “109,991.”[171] To date, the islands of St. Vincent and the Grenadines have a predominant "African derived population" [172] from which shareholders and stakeholders were drawn. It was viewed as a "modern competitive post colonial economy"[173] with emphases on the introduction of the offshore sector nearly a century after the establishment of its first domestic private company (John Hazell Sons and Company Limited).

To bolster investor confidence was a major undertaking by the government of the day. The private company was galvanised into being the stronger catalyst for economic transformation and was positioned to attract shareholders and stakeholders simultaneously who were not only resident in St. Vincent but also national and non-nationals domiciled overseas who were enabled by legislation to invest by setting up international business companies. There was more than a mere presumption that after over a century, the stakeholder population was composed of a rich racial intermixture of other nationalities. Within the immediate past decade, these were mainly from other racial intermixture other than from the indigenous African derived population. For instance, the “composition”[174] of the island’s population from as early as the 1700s was representative of its African diaspora.

Many argued that there should be more engagement on financial matters within corporate entities. This however, was a contentious issue played out in the media and was outside the remit of the current thesis. One could not forget that from the pages of

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[171] Leonard, Barry (Ed) *Basic Facts about the United Nations* (Department of Public Information, United Nations, USA 1995) 312; *Statistical Report, Statistical Department, St. Vincent and the Grenadines, Kingstown, St. Vincent and the Grenadines 2012*

[172] Crawford, Michael, *Current Developments in Anthropological Genetics: Vol 3 - Black Caribs - A Case Study in Biocultural Adaptations* (Plenum Press, USA 1984) 307

[173] Gonsalves, Ralph. Dr. - Prime Minister of Saint Vincent and the Grenadines "*The Modern, Competitive Post Colonial Economy: The Case of St. Vincent and the Grenadines* (Office of Prime Minister, Cabinet Office, St. Vincent and the Grenadines June 2007) 5 - 6; Spinelli, Joseph, *Land Use and Population in St. Vincent 1763 - 1960: A contribution to the Study of the Patterns of Economic and Demographic Change in a Small West Indian Island (*University of Florida 1973) …

[174] Appendix 2(5) Table showing composition of population from the 1700s

history that Great Britain - a former colonizer - operated a "mercantilist model."[175] This system organised productive activity to obtain economic self - sufficiency and short - term gains through favourable trade balances. St. Vincent like sister island Trinidad was part of that "economic exchange" generally until emancipation. It was the company whether established or incorporated that was part of the cycle from which an economic exchange was initiated. Still grappling with their sense of economic reality, the period of emancipation in time was recognised as productive outside that notion of the abolition of slavery in the nineteenth century.

Solow insisted that, "In the Leeward Islands, Barbados, and the Windward, (St. Vincent is part of the Windward Islands) wages were lower ranging from 6d. /day to 1s. 5d/day."[176] Economic development therefore had to come from outside of the "plantation economy"[177] through improved minimum wages, more employment opportunities and the legislative support for private companies. Long after emancipation, Beckford insisted that there was the "'establishment and growth of the peasantry' and the 'evolution of the multinational plantation enterprise."[178] These

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[175] Findlay, Ronald et al, Eli Heckscher, *International Trade and Economic History* (Massachusetts Institute of Technology, US 2006) 243

[176] *Ibid*; Note that 'Labourers do not enter into annual engagements (wages 71/2d. to 1s.) *Schedule of Taxes*, *duties Fees and all other Sources of Revenue specified under the respective Laws or authorities under which they are – St. Vincent 1852* (W. Clowes and Sons, 14 Charing Cross, UK 1852) X-2 – Average rate of wages for labour; Ordinary domestics are employed by the month and earn from 16/-to 25/- per month. Butlers, Coachmen and Grooms are paid from £1 13. 4 to £2 10.

[177] See Appendix 2(4) – Thierens, Clyde, A newspaper article entitled: History this week: Reasons for the rapid growth of a black peasantry in British Guiana and Trinidad immediately after 1838 – where the Staff writer of the Stabroek Newspaper in Guyana outlined his views as to the rigors of the plantation economy and the effects on the black peasantry not just in Guiana (Guyana) but also to other smaller islands like St. Vincent as being part of this post emancipation economy in the Caribbean. The socio economic conditions provided a catalyst for change or many families who wanted to engage in alternatives to their current livelihood. In St. Vincent the emergence of the private limited liability company limited by shares could be considered one of the best alternatives for a new stakeholder population. The provision of good to gravitate

[178] Abramo, Lais, Cecchini, Simone, Morales, Beatriz, *Social programmes, poverty eradication and labour inclusion: Lessons from Latin America and the Caribbean* (United Nations publication, USA 2019) 10; Beckford, George, *Persistent Poverty: Underdevelopment in Plantation Economies of the Third World* (Oxford University Press, Jamaica 1972) 47

umbrella ideas provided incubators for further economic activities one of which was the versatile private company limited by shares.

As it was in other CARICOM states, so it was with other smaller island states like St. Vincent. Documented discussions were sparse but a "newspaper article from Guyana"[179] captured the salient points on Caribbean society, which was articulated by Beckford previously. The researcher agreed with Beckford on the ultimate expansion of the 'money economy', which was seen in the 'diversification of economies and the linkages between the service and production sectors'. The private limited liability company limited by shares was seen as part of this diversification of economies in this regard.

The substantive matter of size of the island

Irrespective of "size of island state,"[180] it has been argued that to emphasize the smallness of a nation state as SVG is damaging to its reputation and encourages the view that it may have very little potential for economic growth. It is not intended here to do any such thing. To the contrary there is a very good case for arguments in favour of the value of 'smallness'. It is the smallness of such states that allow for effective and efficient regulatory and supervisory mechanisms to be put in place when it comes to the harnessing of economic activity. See for example states like the Isle of Man, the Cayman Islands, Bermuda and especially "Guernsey"[181] in terms of size and

[179] *Op. cit.* [Thierens] fn 182

[180] St. Vincent is 133 square miles (mainland) and in the Grenadines they are 17 square miles. The location of most of the private companies is on the mainland. See map showing where companies are located – *Figure 2 (1)* - Map showing location of companies

[181] See the following as verified by the Guernsey regulators as bona fide as of 8/5/12 for what the jurisdiction of Guernsey holds: www.guernseyregistry.com; accessed 25 October 2019 (unstable link)
www.dixcart.com/articles/2012/01/09/in172-key-features-of-guernsey-company-law-and-the-guernsey-registry.htm - accessed 25 October 2019 (unstable link)
www.ardelholdings.com/file/57/ardel-company-management.pdf - accessed 25 October 2019 (unstable link)
www.collasday.com/Assets-F2CMS/Bulletin-Board-Issue-16-14.pdf - accessed 25 October 2019 (unstable link)

their regulatory and supervisory capabilities when compared to the commercial capital of the world.

The issue of race, ethnicity, class and colour

Within each generation and just over one and a half centuries from 1845 onwards to 2013, there was a naturally occurring newer configuration of stakeholders and shareholders within the private companies on St. Vincent and by extension in the sister island of Trinidad and Tobago. Save and except for amendments to the legislation, corporate governance prescription within bylaws and or Table A or the law was not radically altered. In terms of the issues of race, ethnicity, class and colour these did not constitute a recognisable, mutually reinforcing 'divide' within the wider stakeholder/shareholder community or in any company as far as was known.

From the days of colonialism and slavery, there was an identifiable "transition to post - emancipation society and new forms of social organizations."[182] It was to this post emancipation society that the private company was distinguishable as a social organisation. The homogeneity between and among social organisations such as a company on Trinidad and Tobago, St. Vincent and the Grenadines or any other former British colonies was remarkable. The aforementioned issues did not adversely affect any director and or shareholder or other stakeholder as far as was known.

Chapter Three gave information about a customer loyalty model that demonstrates the strength of corporate governance practices. This was complementary to the over all acceptances of all companies positioned within both the domestic and international

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www.careyolsen.com/downloads/publications/incorporating_a_guernsey_company.pdf - accessed 25 October 2019 (unstable link)
www.tridenttrust.com/PDFs/TGUE-C-KF.pdf - accessed 25 October 2019 (unstable link)
www.tridenttrust.com/PDFs/Companies-IND.pdf - accessed 25 October 2019 (unstable link)
www.mondaq.com/article.asp?articleid=86326 - accessed 25 October 2019 (unstable link)

[182] Midgley, James, Piachaud, David, *Colonialism and Welfare: Social Policy and the British Imperial Legacy* (Edward Elgar Publishing Ltd, UK 2011) 59

sectors on St. Vincent. Customer loyalty was the natural by-product of corporate governance best practices. A somewhat 'logically occurring' dichotomy within the 'mushrooming' private companies did not necessarily equate to a dichotomy in corporate governance best practices. This dichotomous phenomenon was mentioned briefly here so as to highlight a unique characteristic of the regulatory regime for private companies.

Within the Vincentian society, and for nearly two centuries of its existence, the institutions, organisations and private companies on the island continued to experience a 'staggered approach' towards company law and corporate governance development. This was understood within the context of attempts at a national development plan and the policy agenda for company development. As such a sort of tension existed between" centrifugal tendencies"[183] and "state policies"[184] and ideals on one hand; and individual beliefs, family, kith and kin on the other hand. These tensions were further exacerbated by "fragile democratic structures"[185] and even more "fragile economic and political foundations" [186] on which a viable, cohesive "nationalism"[187] and "corporate philosophy"[188] sought stability. In other words, the private company evolved through a somewhat haphazard schedule.

Respectfully, company law and corporate governance were contingent on the aforementioned and only as an embodiment of all of these tendencies within the ever - growing society that still held its shareholders and stakeholders together. One of the primary purposes of the company can be seen when each member co-operated with

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[183] Johnson, Malcolm, (Ed) *The Cambridge Handbook of Age and Ageing* (Cambridge University Press, UK 2005) 511

[184] *Ibid*

[185] Charles, Andrian, *Political Change in the Third World* (Routledge, UK 2011) 31

[186] Baban, Serwan, M.J, (Ed) *Enduring Geohazards in the Caribbean: Moving from the Reactive to the Proactive* (University of the West Indies, Jamaica 2009) 193

[187] Kodilinye, Gilbert, Kodilinye, Maria, *Commonwealth Caribbean Contract Law* (Routledge, UK 2014) 55 – 57; see also Harris, Peter. B., *The Commonwealth* (Prentice Hall Publishing, USA 1975) 66

[188] Mangal, Rambarran, *An Introduction to Company Law in the Commonwealth Caribbean* (Canoe Press, UWI 1995) 22

each other and non - paradoxically so but for a common good. This was probably the best example of centrifugal tendencies that balanced out towards the company's own corporate existence and its best practices.

2.3 Effects of slavery on the development of institutions

In the British West Indies (to which Trinidad and St. Vincent belong), this came about around 1834, when a law was passed by the British Parliament to abolish slavery through the empire….[189] This was a breakpoint, an era that allowed for transitioning to new realism – one in which stakeholders were willing participants. Although the company evolved over time, the ownership of shares in a company and a stake in an alternative form of economic exchange was embraced. St. Vincent was comprised predominantly of an "African-derived population."[190] The issues of race, ethnicity, class and colour did not constitute a reinforcing 'divide' in the society although there was a rural urban demarcation but not reinforced.

In other words, there was an environment conducive to the nurturing of shareholders and stakeholders who were themselves interested in the formation of a company for productive purposes. Major stakeholders were drawn from this pool. They were not limited to directors, managers, Chief Executive Officers, other officers and staff within private limited liability companies. As time progressed, one of the policies of government was the 'Education revolution', which was responsible for attempting to bridge the gap between the educated elite and those who were functional illiterates.

It was obvious that there was a major transformational dynamism so that from the days of colonialism and slavery, there was a recognizable "transition to post-

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[189] Meditz, W. Sandra, Hanratty, M. Dennis, (Eds) *Caribbean Islands: A Country Study (Washington, 1987)* – 27 February, 2018 – Section on *The Post-Emancipation Societies* – www.countrystudies.us/caribbean-islands/ - accessed 5 April, 2018

[190] Crawford, Michael, *Current Developments in Anthropological Genetics: Vol 3 - Black Caribs - A Case Study in Biocultural Adaptations* (Plenum Press, USA 1984) 307

emancipation society and new forms of social organizations."[191] Since the 1930s the arguments made on behalf of the private limited liability company limited by shares, can still be attributed to it as being a "major social organization."[192] Equipped with its corporate governance best practices, this social organization engaged in the reformation of family life at every level. There was a consensus that corporate governance reshaped the juridical body as the family earned that right to do so through daily family interaction within the business environment.

It was through this juridical body and more specifically, the species of insurance companies that many Vincentians from all walks of life sought ways and means to 'better themselves' financially. They were able to invest earnings from agriculture and non-agricultural products and services through the purchase of premiums insurance policies. Interestingly, if any one could give a fairly good assessment of Caribbean society and Vincentian society, it would be those who have lived the experiences and interpret such experiences through socio-cultural and socio-economic expressions.

Some writers and historians depicted the Caribbean society within this categorization as "pluralist"[193]. One of the famous 'sons of the Caribbean soil' was Derek Walcott. He wrote about the "plurality of society"[194] and as a pivotal moment of what was coined as a 'Caribbeanization' of the region. Caribbean juridical bodies form part of such 'Caribbeanization' to which Vincentians, Trinidadians and others belonged. The "poet laureate Derek Walcott"[195] argued in favour of this "ethnic plurality"[196]within

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[191] Midgley, James, Piachaud, David, *Colonialism and Welfare: Social Policy and the British Imperial Legacy* (Edward Elgar Publishing Ltd, UK 2011) 59

[192]Berle, Adolf A., Gardiner C. Means, *The Modern Corporation and Private Property* (Transactions Publishers, USA 2009) 3

[193] Besson, Jean, *Martha Brae's Two Histories: European Expansion and Caribbean culture-building in Jamaica* (University of North Carolina Press, USA 2002) 9 - 11 - for discussions on the Caribbean: Jamaican experience of a 'plural society' reflective of experiences in St. Vincent and the Grenadines' with similar and shared historical past.

[194] Thieme, John, *Derek Walcott* (Manchester University Press, UK 1999) 6

[195] Lee, John Robert, *Bibliography of St. Lucian Creative Writing: Poetry, Prose, Drama* (Cultural Development Foundation, St. Lucia 2013) 83

society. Within his literary sphere of influence and with an emphasis on one of many theories, there was some justification for a contemporary pluralistic Caribbean society. The private company was a contemporary phenomenon, which sought to transmit best practices to its stakeholders. In many respects over the years, it was encouraged to doing so by way of the various company laws and Companies Acts.

Both Trinidad and Tobago and St. Vincent and the Grenadines boasted of being part of this social phenomenon of the private limited liability company limited by shares. A society in which there was an acceptance of benefits to be derived from companies also reflected the dynamism within socio-cultural norms and values that, when perceived in a positive light, these elements held out as the nurturing ground for stakeholders and shareholders with a common interest. That interest was one that assisted stakeholders to appreciate the value laden corporate governance best practices.

When these factors were combined, many from within the stakeholder communities, like Walcott were understood to mean that they recognized commonalities irrespective of differentiation based on size of population and or the geography of an island. The choice of the private limited liability company or its purpose became relevant due to felt needs. The establishment of these companies were made easier since the stakeholder population began to readily accept them as social organisations for positive and financially rewarding entities. Change was inevitable either in view or else. Nonetheless, these characteristics of social interests and the promotion of business networking all added to community cohesion within the various islands.

There were shared interests amongst its stakeholders and shareholders as entrepreneurs. Existing legislation encouraged joint ventures and other types of businesses flourished within this pluralistic society. Balme opined that intellectuals

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[196] Balme, Christopher & Collier, G., '*Derek Walcott': The Journeyman Years. Vol II: Performing Arts: Occasional* (Editions Rodopi, New York 2013) XIV

like Walcott tried to look at cultural dynamism especially through 'theatre' to provide "the cement" or additional justification for the anticipated maximization of "economic and political power."[197] The private limited liability company limited by shares was one such organization that allowed for the development of people and for the further enhancement of their economic power.

The analyses on corporate governance best practices centered for the most part on companies in St. Vincent. With regards to procedural outlines as per bylaws and other British company laws and the UK Companies Acts, general trends and thoughts could aptly apply to the same construct in Trinidad and Tobago. These analyses were necessary since both islands were part of an unprecedented financial crisis, which affected their gross domestic product. This substantively supported the hypothesis about best practices and the correlation with the gross domestic product of either country.

After all, "the most critical actors in national economic activity were creatures of the law - juridical entities, like the corporation, the limited liability company and the firm."[198] St. Vincent and the Grenadines was the country whose corporate governance from 1845 to 2013 was assessed. Corporate governance in this context was relegated to the private limited liability company limited by shares on both St. Vincent and the Grenadines and on the island of Trinidad and Tobago. Both islands were part of CARICOM and were part of a network of businesses using specific business models germane to their own sense of corporate governance best practices. These "companies"[199] were replicated within all other former colonies of Great Britain influenced by British company laws and the UK Companies Acts.

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[197] McNicol-Gopaul, Sharon-Ann, *Working with West Indian Families* (Guilford Press, USA 1993) 8

[198] Pollard, Duke, *The Caribbean Court of Justice: Closing the Circle of Independence* (The Caribbean Law Publishing Company Ltd, Jamaica 2004) 106

[199] *St. Vincent Companies Act 1994, Trinidad Companies Act 1995*

It was borne in mind that the indicative hypothesis was that it became apparent over time how a lack, disregard or absence of corporate best practices within the private limited liability companies affected the gross domestic product of certain islands. This was especially noticeable during an unprecedented financial crisis that affected sister islands within CARICOM. Both St. Vincent and the Grenadines and Trinidad and Tobago are member states within CARICOM. There were also identifiable limitations that touched and concerned corporate governance best practices spread across geographical space especially with a decided socio-cultural divide. Company laws in St. Vincent were especially referenced within the ensuing discussions.

The role of path dependency

The role of a path dependency towards the expressed corporate governance best practices was clearly defined. From 1845 through to 2013, generational assessments about best practices cannot be divorced from its genesis. They cannot be divorced either from the constituent parts of why such practices were carried out in the manner in which they were done. How, what, where and when corporate governance practices emerged would normally rest with a few persons who were deemed the custodian or the conscience of the company.

It was to a dependency on 'agricultural mono crops within the region' that dominated the lives and livelihood of many. They were 'stunted' into thinking that may of us will not e poor. The idea was to dispense what was deemed best. While it was the medium through which economic growth was realisable, it was the same medium that manifested a stifled entrepreneurial spirit for generations of families. Many wanted to get off the "estates."[200] The plantation of cotton, sugar, arrowroot and bananas contributed to mainstream economic growth.

[200] John, Karl, *Land Reform in Small Island Developing States: A Case Study on St. Vincent, West Indies 1890 – 2000* (Virtualbookworm.com Publishing Incorporated, 2006) 176

It was only after the failure of these crops and a renewed thrust towards revitalisation programmes, that many stakeholders were encouraged to diversify around those main industries. The growth of cottage industries was probably the forerunner to a more formalized basis of the country's economic progress. The private company has to be one of the avenues through which families sought to raise the bar on their own efforts towards financial stability for themselves within rural and urban communities.

Among the available scholarship on Caribbean unity or attempts thereat, it was Andres Serbin since 1998 that added to the debate. He provided a wider context and clarity about how the Caribbean was emerging from "an historical genesis that was marked by colonialism; by the vicissitudes imposed by its ethnic, cultural, linguistic and religious fragmentation..."[201] It does appear that small island states like St. Vincent and the Grenadines and to a large extent the Caribbean region displayed a cautious optimism in attempting regionalism. The private limited liability company limited by shares was another useful vehicle in this context. Serbin continued to highlight that, "the prioritization of new issues in the regional agenda, which made ...for ... creation of common policies and institutions..."[202]

The private limited liability company limited by shares can be seen within the remit of a financial institution to effect such a change. On one hand there were a number of regional groupings that attempted to consolidate CARICOM, but not to replace it. From the pages of history the evidence indicated that colonialism came with bane and blessings for the peoples of the Caribbean region. From some experiences gained through travelling and working within the region, the effects of colonialism were

[201] Serbin, Andres, *Sunset over the Islands: The Caribbean in an Age of Global and Regional Challenges* (MacMillan Educational Ltd, USA 1998) 1 – used for positioning the argument of an evolving geopolitical space as these same trends postulated by Serbin were reiterated in later publications or lectures and quoted by other authors.

[202] Riggirozzi, Pia, Tussie, Diana, (Eds) *The Rise of Post hegemonic Regionalism: The Case of Latin America - United Nations University Series* (Springer /Springer Science + Business Media, UK 2012)) 147 - 164

undeniable. Through a proposed "path dependency,"[203] mentioned elsewhere in the discussions, respectfully, there is that notion of an alternative trajectory of the nation state and its current economic thrust towards its own development. The presence of the private companies in St. Vincent was roughly a decade or so post-emancipation.

In the current discourse the evolutionary process of the more vibrant offshore sector on St. Vincent was much longer and well beyond the early days of the first established private company. The question though is whether economic growth through these same private companies limited by shares would be inhibiting institutions. These companies came into being because of need and the economic focus they were given through the policies of successive governments since "Statehood."[204] Within the domestic and international sectors, there is real reason to appreciate the role of path dependency such that it,

" … helps us to understand why and where countries are today in their process of evolution. The concept is also helpful in beginning to grasp what is required to alter adverse path dependency to decisions that can lead to a higher level of growth and development in the future."[205]

Some of the arguments in light of the above put forward by Acemoglu are quite instructive. He further indicated that, "it might seem obvious that everyone should have an interest in creating the type of economic institutions that will bring prosperity."[206] He cited the case of the Kingdom of Congo. Using only a bird's eye non-economic perspective on the development of the nation state of St. Vincent, the private companies especially those classified under the international financial sector, are those institutions that are geared towards the increased wealth of Vincentians.

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[203] Cypher, James M., Dietz, James L., *The process of Economic Development* (Routledge Publishing Company, UK 2004) 72

[204] *Government Gazette, Vol 102 No 8,* St. Vincent and the Grenadines, Tuesday 23 December 1969

[205] *Ibid*

[206] Acemoglu, Daron, Robinson, James A., *Why Nations Fail: The Origins of Power, Prosperity and Poverty* (Profile Books Limited UK, 2012) 83

The insurance company was not deemed to be one that would lead to "genteel poverty"[207] and as it further exacerbated national "poverty."[208] This is a corporate anomaly and could not be attributable to the choice made by a government. The insurance company from across porous borders of Barbados had made its way into the nation state of St. Vincent since 1849. A newer version of the same company was not seen as a challenge to the corporate status quo. These companies were seen as the best alternatives to any others within the sphere of economic growth for nation states and more than "six million"[209] beneficiary stakeholder population within the region.

The collective decision to allow the private company to do business for the benefit of all stakeholders was a great one but the inherently weak infrastructure, coupled with a flawed business model and the lack, disregard or absence of best practices of corporate governance manifested in unprecedented financial crisis. A subsequent chapter is dedicated to a case study on the current status of such a private company. The nature of corporate governance in St. Vincent is the focal point of such discussions.

The substantive corporate governance rules and procedures rest with the company. Despite the fact that the regulatory and supervisory machinery needed reform, the internal decision-making processes of the company remains critical. Those who were keen on resisting the imposed vicissitudes of life according to Serbin were provided with financial and economic alternatives. However, there was a slow start to accessing 'domestic monetary policy' in small nation states like St. Vincent. This was seen as an alternative policy to the relics of colonialism.

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[207] *See* Chapter One – Explanation of Terms – Genteel Poverty
[208] *Ibid* – Explanation of Terms - Poverty
[209] CARICOM Census Data – *www.caricomstats.org/popdata.htm* - accessed 29 September 2017 and 2 April 2018

"Following independence, the governments in CARICOM through successive acts of parliament outlined suitable monetary policies within which they identified various goals and objectives based on the extent of institutional…and financial development of the economies." [210] The impact of any monetary policy was held as having direct bearing on financial conditions and institutions within the economy. This was not just for costs but also where and when anyone can access credit within the financial sector. A correlation existed between the aforementioned and the influence of expectations about economic activity and measures of inflation.

The overall impact on the price of goods and services, assets prices, exchange rates as well as consumption and investments with the financial sector where private companies are positioned could not be underestimated. Internally, within the nation states it would seem that the private companies themselves had to be leveraged against each other across the rural urban divide if it existed at all. External to them and geographical land spaces of each territory another leveraging had to be done across porous borders.

Initial sluggish approaches to accessing money markets as suitable and enabling monetary frameworks were noticeable. Small island states remained more cautious but were at a great disadvantage through the same imposed vicissitudes spoken of by Serbin. Private companies especially the robust insurance company provided at the time, one of the best opportunities for stakeholders as a promising financial sector with the greatest returns on premiums and other investment opportunities.

2.4 Theories of corporate governance

Theories were used continually to explain corporate governance best practices used to combat the challenges of governance of the private limited liability companies. On St. Vincent for several decades aspects of such theories were undoubtedly implemented

[210] Birchwood, Anthony, Goto, Marielle Dr., *Issues in Monetary and Fiscal Policy in Small Developing States – A case study of the Caribbean* (Commonwealth Secretariat, UK 2011) 4

so as to facilitate the relationships between and among stakeholders for mutual benefits. It was regrettable that corporate scandals gave rise to the question as to whether there was a lack, disregard or absence of best practices.

Theories themselves were "malleable and can rarely decide a point one way or another."[211] They were not a source of law but their usefulness was evidenced in the varied explanations for the corporate personality of the private limited liability company. There were several theories that were applicable to the post - colonial emerging and modern competitive economy within which the private limited liability company functioned. Among the five that were discussed, the "agency theory"[212]was the prevailing theory behind the relationships between the financial markets and quoted companies. When taken as a holistic unit, the private limited liability companies positioned within the domestic and international sectors generally had the flexibility as a result of elements borrowed from the philosophical base within the agency theory.

The Agency Theory

The debate on corporate governance can possibly be traced to Berle and Means deliberations in the 1930s in the USA. They contended that its characteristic features were those that redefined relationships between the principals who were deemed to be shareholders of the company and their considered agents – the directors of the company. According to this theory, the "principal employs an agent to act on his behalf"[213] specific to governance of the private limited liability company.

[211] French, Derek, Mayson, Stephen, Ryan, Christopher, *Mayson, French & Ryan on Company Law* (31st edn Oxford University Press, UK 2014) 153
[212] Berle, Adolf, A., Means, Gardiner, C*., Modern Corporation and Private Property* (Transactions Publishers, USA 1991) ix, xii; Pitt, Kate, Forbes, *The Assumption of the Agency Theory: A realist theory of the production of agency* (Routledge Publishers, UK 2011)
[213] Munday, Roderick, *Agency: Law and Principles* (Oxford University Press, USA 2010) 329

Corporate governance was about who served the company's needs with regards to separation of ownership and control. The principals were known to have delegated the direction and control of the company to agents or directors. According to legislation, the shareholders adhered to the prescribed expectations that their agents would perform the tasks of directing, making decisions and control the company in their best interests. The agent on the other hand, historically was not obligated to make decisions in the best interests of the principals and very often did not comply.

Issues such as self-interests and opportunistic behaviours were aspects of the agents' function at times. Under this theory, there was a line of demarcation between ownership and control of the affairs of the private entity. The theory was prescriptive. Peoples or employees were held accountable for assigned tasks and responsibilities. In the 1970s there was a further refinement on this debate about the agency theory, which became known as the "law of agency."[214] This was said to be at the root of company law such that as a consequence the said theory may be considered as being at the root of corporate governance best practices in this context.

The down side to this was that the effectiveness of a board (a one tier board for over two decades on the island of St. Vincent) could not be deduced from this type of near mechanical relationship. Further, the performance of the company and its relationship to good governance could not be effectively determined outside of a 'tick box' approach on its execution on the island. There was no 'market' governance for unlisted companies but the openness and integrity of financial disclosures; internal and audit functions to be performed by agents were of paramount importance. Aspects of internal monitoring did exist in the form of annual general meetings.

[214]Gower, L.C. B., Prentice, D.D., Pettet, B.G, (Ed), Prentice, Daniel. D. (Ed), *Principles of Modern Company Law* (5th edn Sweet and Maxwell, UK 1992) 139, 164

The Resource Dependence Theory

The next theory was of significance was that of the resource dependence theory. Herein lay the explanation for corporate governance effectiveness through its focus on the role of the board of directors. They were responsible for the provision of access to resources needed by the company. The director's role was to provide and or secure resources since he/she was pivotal to any linkages to the existing environment of the company.

The director performed his tasks in so much as there was improved functionality within the company; improved performance and all these factors added to succession planning and the longevity of the company. Directors were supposed to bring skills, information, and access to suppliers, buyers, policy makers, social groups and others. These were geared towards the creation of legitimacy within the company.

There were several criticisms of this theory when applied to domestic as well as to the international private limited companies domiciled on the island. Primarily the choice of domestic directors was generally along the lines of friendship and family ties. Many decades of the company's service to stakeholders attest to the fact that the many directors did not have access to the existing environment that could have added to the legitimacy of the functioning of the private limited liability limited by shares. Many developed the skills necessary for the functioning of the company as they served in the capacity as director. Maybe this was the single most contributory factor to less robust activity and growth especially within the domestic sector.

On the other hand, directors for private companies within the international sector were more apt to access the existing environments of the development of their companies. This was one of the factors that contributed to the prevalence and number of companies located within the international sector. Among these companies, there were foreign investors and others who demonstrated that they had access to an

enabling environment, which impacted the greater sphere of economic development of the country at large.

The conclusion arrived at was that directors of such companies provided the private company with a vital set of resources. The directors or boards of directors were perceived to have added "capital"[215] to their respective private limited liability companies limited by shares. Some directors were known as sources for skills and demonstrated the requisite expertise in management, directing and controlling the entities. There was undoubtedly a correlation between management and performance and this added to the survival of the companies beyond a decade.

The Stewardship Theory

The stewardship theory was another that was offered to explain aspects of the company's corporate governance. The board was said to exist so as "to govern, not to advise or manage the organization."[216] A steward was one to protect and maximize the wealth of the shareholder. This was done primarily through the performance of the private limited liability company limited by shares. Among those deemed to be stewards, were executives and managers. Their assigned tasks were to engage in meaningful work for shareholders and to protect and create profits for shareholders. The stewards' satisfaction comes from the company's successes.

This notion of the stewardship theory was noticeable in several companies on the island. Additionally, paid chief executive officers could advance their deepest satisfaction from being salaried rather than organisational successes attained. Additionally, employees and executives were to act as autonomously as possible but all in the interest of shareholders' profit maximisation. The employees were to take

[215] Wright, Mike et al., (Eds) *The Oxford Handbook of Corporate Governance* (Oxford University Press, UK 2013) 428

[216] Koenig, David, R., *Governance Reimagined Organizational Design, Risk and Value Creation* (John Wiley and Sons Publishing, 2012) 18

ownership of their assigned tasks and work assiduously at them, as this was their motive.

The theory suggested that there was potential for what it called the pro-organizational motive of directors. The directors' personal identification with the aims and purposes of the organization drives the private limited liability companies limited by shares to succeed. The theory pointed to the fact of the executive and the shareholder having an interest in maximizing the long - term stewardship of the private limited liability company.

The roles of the Chairman and the Chie Executive Officer should remain combined in order to protect key aspects of high performance, which were the strength, and authority of executive leadership. The steward theory questions the apparent pessimistic assumptions of the agency theory on human nature. It prefers "trust"[217] as a core concept and "assumes that managers in general should be trusted."[218]

It further suggests that the problem of governance does not lie in self-interest of the executive; but rather in the assumptions that the distant others - investors and regulators - make good as to their self-interested motives. It further contended that negative investor assumptions may distort or weaken leadership of the private company. The encouragement to investors by government through a robust investment policy countered this negative assumption. There was equilibrium at 'play' in private companies in St. Vincent given the interdependence and simultaneous manifestation of elements of the aforementioned theories.

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[217]Huse, Morten, *Boards, Governance and Value Creation: The Human Side of Corporate Governance* (Cambridge University Press, UK 2007) 54; Rani, Geeta, D., Mishra, K.R, *Corporate Governance: Theory and Practise* (Excel Books Publication, India 2008) 30

[218] *Ibid, 141*

The stakeholder theory

The ideas associated originally with "this theory were developed by Ed Freeman"[219] in the 1980s about 'value creation and trade.' There were problems and misconceptions with other theories of corporate governance that the stakeholder theory tried to address. The application to corporate governance in St. Vincent raised a multitude of questions. Here was an attempt to try to give suggestions as to possible outcomes. To begin with, it was felt that the theory was geared specifically towards "how business does and can work"[220]. It challenged the assumption of the agency theory about the primacy of shareholder interests. It argued that the private limited liability company should be managed in the interest of all its stakeholders. Private companies in St. Vincent for instance were generally driven by the need to maximize profit and not necessarily in the interest of all of its stakeholders: the employee; suppliers and customers; the local community as well as the environment.

Stakeholders have direct and indirect interests. For instance, the case study of John Hazell Sons and Company in Chapter three demonstrated that the principles of the stakeholder theory could be aptly applied. On the other hand, there were difficulties that some raised with respect to the application of this theory in all areas of governance. It was claimed that the theory was hard to be operational due to challenges of deciding what weight should be given to different stakeholder interests that corporate governance would serve.

The writer was in agreement with Keasey when considering the aforementioned issues with respect to stakeholder interests. He had this to say, "shareholders are not the only residual claimants, and encouraging executives to believe and behave as though they were may have deleterious and economically inefficient consequences for

[219] Freeman, Edward, R., et al., *The Stakeholder Theory: The State of the Art* (Cambridge University Press, UK 2010) 4
[220] *Ibid, 188*

other stakeholders."[221] It was reasoned therefore that the interests of stakeholders were pivotal to the outcomes of the financial fiasco that originated with CL Financials Limited in Trinidad and Tobago. More details on this crisis followed in a case study in Chapter Four. While it can be reasoned that this private limited liability company was not based in St. Vincent, its deleterious and economically inefficient consequences for stakeholders in St. Vincent, have tended to a new variant of poverty, called genteel poverty.

More will be developed on the correlation between genteel poverty to a decrease in the gross domestic product in the case study of Chapter four. Lessons were learnt were not in isolation as the "Cadbury Report"[222] had previously provided such a discussion platform for similar financial crises as was being experienced by stakeholder. On the other hand, referencing the recent corporate scandals and crises in the USA it was argued too, that, there was a failure by the board to hold "executives accountable"[223] for poor decisions and job performances.

Others argued that if executives were to be accountable to all of the stakeholders, they would in effect be answerable to none. In St. Vincent, the matter of holding executives accountable would be one that needs thorough assessment both within the domestic and international financial sectors. The standards of executive or "board accountability"[224] would be deemed commensurate with the particular sectors where the executive 'sits'. It begs the question further as to whether or not the same duty of care is applicable for so called domestic 'executives' as opposed to non-domestic executives who are generally from outside the jurisdiction or domicile in St. Vincent.

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[221] Keasey, Kevin, Thompson, Steven, Wright, Mike (Eds) *Corporate Governance: Economic Management and Financial Issues* (Oxford University Press, UK 2002) 74

[222] *www.ecgi.org/codes/documents/cadbury.pdf* - accessed on 20 March 2019

[223] Kothari, Vinay B., *Executive Greed: Examining Business Failures that Contributed to the Economic Crises* (Palgrave McMillan, USA 2010) 73

[224] Keay, Andrew, *Board Accountability in Corporate Governance* (Routledge Publishers, UK 2015) 68

Any test on this particular attribute of corporate governance of a private limited liability company on St. Vincent could be subjective. There was the notion of the Enlightened "stakeholder theory" [225] that suggested the practical value of accountability to shareholders even if a board took other interests into account in its conduct of the business of the company. In one sense however, the nature of the private limited liability company on St. Vincent could be exemplified through the stakeholder theory. The interests in business; executive pay and the correlation to the private company downsizing; the corresponding negative impact on employees and the local communities as a result of corporate failure, continued to "undermine the legitimacy of the demand for shareholder value."

When stakeholders get involved in the process of money management and allocation of limited resources of the private limited liability company limited by shares, that affected them, then this generated several important insights. It was outlined especially in the Case study outlined in Chapter Four, that there should have been early intervention given that there was a multi- stakeholder process within the C L Financial Limited fiasco. A renewed perspective was that management of expectations and outcomes for all or a greater percentage of stakeholders. Further, there would have been an assessment of strategic concerns. The issues associated with poverty and "poverty reduction,"[226] became even more acute and complicated, as expectations for return on investments were not realistic for many, while for others, it became challenging.

To sharpen the focus on the nature of corporate governance in St. Vincent a conclusion must be drawn given the collapse of a series of private limited liability companies within the complex networks of CL Financials Limited. The expected returns on premiums and other associated funds to policy holders of an insurance company that never materialised, “threaten the basis of any traditional psychological

[225] *www.core.ac.uk/download/pdf/16388018.pdf* p.3 - accessed on 19 August 2019
[226] Chinyio, Ezekiel, Olomolaiye, Paul (Eds) *Construction Stakeholder Management* (Wiley-Blackwell Publishing Limited UK 2010) 30

contract"[227] that exist between stakeholders of the private limited liability company and the "license to operate."[228] All these privileges were afforded to society generally by the private limited company limited by shares.

The issue of "globalization"[229] raised the concern of the single-issue pressure group and a "heightened visibility to corporate governance practices." The matter of "Corporate value statements"[230] and the role of the board in creating "ethics codes" and social and environmental reporting all reflected an acknowledgement that there exist wider corporate obligations that goes well beyond the delivery of shareholder value. Further there was insistence that such performance by the private limited liability company must be realized within certain ethical constraints.

It was true that "ethical constraints"[231] have the potential to affect how performance was pursued within the private limited liability company inclusively. This was the idea advocated in the "Balanced Scorecard "[232] of the stakeholder theory. This was seen as the most direct contribution of stakeholder ideas to the private limited liability company's performance. To the best of knowledge, there was no empirical research that existed in St. Vincent about performance measurement within the private limited liability company.

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[227] Sage, Andrew, P., Rouse, William, B., *Handbook of Systems Engineering and Management* (2nd edn John Wiley and Sons, Inc., USA 2009) 826

[228] Benn, Suzanne, Dunphy, Dexter, (Eds) *Corporate Governance and Sustainability: Challenges for Theory and Practice* (Routledge Publishers, 2007 UK) xiv; Zinkin, John, *Challenges in Implementing Corporate Governance: Whose Business is it Anyway?* (John Wiley and Sons Pte. Ltd. Asia, 2010) 30

[229] Dignam, Alan, Galanis, Michael, The *Globalization of Corporate Governance* (Routledge Publishers, UK 2016) x – xii; 92 - 95

[230] Idowu, Samuel. O., Vertigans, Stephen, *Stages of Corporate Social Responsibility: From Ideas to Impacts* (Springer International Publishing, Switzerland 2017) 80

[231] Babbie, Earl, *The Practise of Social Research* (Cengage Learning, USA 2013) 62

[232]Niven, Paul, *Balanced Score Card Step by Step: Maximizing Performance and maintaining Results* (John Wiley and Sons, USA 2006) 12 - 22

To support this claim about performance measurement, the "ideas proposed by Kaplan and Norton"[233] were not far - fetched. They may be deemed applicable to the diverse nature of private limited liability company in St. Vincent. It was acknowledged that there was substantial and quantifiable correlation within the power of correlation with the performance measurement. This was quite instructive to the process of corporate governance best practices in St. Vincent so that, there were 'potential distortions on operational effectiveness' that can arise from 'purely financial accounting measures like earnings per share or return on investment' especially so within the private limited liability companies dedicated to the international financial sector.

Having viewed corporate governance through the prism of the Balanced Scorecard, It was not difficult to explain how stakeholder interests could be embodied in the private limited liability company limited by shares such that - specific set of measures, that linked important operational drivers to financial performance. Managers were provided with a way to explore the correlation between customers' needs and what the company must do operationally to meet these needs and sustain competitive success. As far as was known, beginning with the early private limited liability companies on St. Vincent, there were no scorecards or any such instruments used to assess competitive success or customers' needs. It was observed that the management and directors more specifically of the private limited liability companies was mindful of a few things. They were aware of maintaining customer satisfaction while keeping an eye on the competition that existed within the sphere of their own existence.

They took stock of their operations and the measures that brought them success. Their management capacity and capability were keen on displaying best practices throughout. There was a major drawback in that, some records were not available for comparative analyses due to lack of use and or deterioration. This was from within

[233] Kaplan, Robert, S, Norton, David. P., *Alignment: Using the Balanced Score Card to Create Corporate Synergies* (Harvard Business School Publishing Corporation, USA 2006) *Cap 7, Aligning Boards and Investors*

the domestic sector. Within the international financial sector, the focus remained predominantly on the accumulation of statistics. The private limited liability companies limited by shares had strategy and vision. However, it begs the question as to whether these were communicated sufficiently to the leadership of the private limited liability companies; to staff and customers.

Other non-British jurisdictional influences on the British company

The influence of the French

St. Vincent and the Grenadines was once colonised by France. Arguably, they did not have the same objective as the British with regards to the use to which the island was put. The French at one time, felt that while the entire island was not under cultivation or control by the natives, this gave them authority to access lands using a diversified agricultural approach. There was no immediate consideration towards the construction of juridical entities such as the private limited liability company limited by shares. So they considered,

"… St. Vincent as their home where they should earn a living and spend the rest of their days…[and] preferred to practice diversified agriculture…deep into the interior…"[234]

For well over a century, the layout of the main architecture, naming and infrastructure of the island's six major towns were distinguished as being French in origin. Beyond that, the influence of the French in corporate governance procedural structures is respectfully considered as "thin" and without any depth or influence on corporate governance legislation. However, there were practices and customary commercial transactions to aid daily commercial life then. Only in the 1990s "French corporate governance"[235] existed. There was that notion that France's hybrid of both unitary and

[234] *Ibid* for discussions about the involvement in St. Vincent and the Grenadines; *Op. Cit*. [The Rise and Fall of the Black Caribs]
[235] Goyer, Michael, *Contingent Capital: Short Term Investors and the Evolution of Corporate Governance in France and Germany* (1st edn. Oxford University Press, UK 2011) viii – x;

two-tiered boards corporate governance structures may serve as viable examples to the current St. Vincent and the Grenadines's model. The latter was currently attempting to construct a similar hybrid model through more modern legislation in order to address the fallout of an unprecedented financial crisis that impacted the private limited liability companies on the island.

Influence of Swiss lawyers

As an independent nation since 1979, St. Vincent's corporate governance transition can best be described as piecemeal and phenomenal. From as early as 1845 up to the 1970s the legacy of the British company laws remained predominantly so, save and except for legislative changes commensurate with local policy changes and reform. Significantly too, was the input of Swiss lawyers when St. Vincent and the Grenadines was introduced to a level of corporate governance experiences through the offshore sector and a development agenda for its "international financial services sector in 1976."[236]

The timing of this intervention was likely to be in keeping with policy changes that signaled a new thrust and response towards the further advancement of the private companies. A decade on from the days of Statehood achieved in 1969, this was welcomed. A comprehensive package of legislation supported this initiative. While Swiss lawyers lent support to the Vincentian experience, "major reforms"[237] within Switzerland itself were taking place. This added to the wealth of corporate law that became part of the Vincentian corporate model.

Sarbah, A., Xiao, W, *Good Corporate Governance Structures: A Must for Family Businesses* Vol. 3, No 1 (Open Journal of Business and Management, 2015) - https://www.scirp.org/Journal/papercitationdetails.aspx?PaperID=53295&JournalID=2447 - accessed on 8 August, 2019

[236] *www.svgfsa.com/industry.html* - accessed on12 April 2019

[237] *www.globalcorporategovernance.com/n_europe/250_254.htm - accessed 20 September, 2015* and 12 April 2018*; Swiss Corporate Law Reform Bill – Bulletin,* November 28 2016 for additional context of on-going reform; *Calkoen, Willem J.L., The Corporate Governance* Review (2nd edn Law Business Research Limited, UK 2012) 338

Continuing Corporate Reform and the private limited liability company

The unitary board model inherited from the UK was still the prevailing and customary standards and practices within the private companies in the state of St. Vincent and continued up to 2013. The corporate landscape of St. Vincent through its continuing legislative reform from the 1970s through to 2008 thereafter allowed for the private limited liability companies to be used as international business companies, "Limited Liability Companies"[238] [similar to those in the United States] and other hybrids. These were regulated by the Financial Services Authority and will be explained subsequently. Emphases were on boards of directors and shareholders that were generally domicile outside of St. Vincent. These investors were naturally diverse from the 'early' stakeholders. The creation of two regulatory systems was now in place to cater to domestic and international companies.

The piecemeal introduction of new legislation into the Vincentian corporate and financial landscape, especially from 1976 onwards and with other policy decisions moved the private limited liability company to the forefront of the national economy but more so to "push the island to the forefront of emerging jurisdictions."[239] It was the accepted norm that the private limited liability company was so versatile to be a catalyst for national economic change. This was not a tentative move. With this came the understanding that corporate governance practices provided much for scrutiny. The offshore sector "did not develop as other emerging centres in the OECS."[240] A number of reasons could be cited but prevailing legislation was still in its embryonic stages.

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[238] Ireland, Paddy, *The Rise of the Limited Liability Company (*Academic Press Inc. UK 1984) 239 for discussion on historical aspects on the rise of the Limited Liability Company that bears striking legislative resemblance to those in St. Vincent and the Grenadines; Chrisman, Rodney D., *Fordham Journal of Corporate & Financial Law Vol 15, No 2* (2009) Article 4 – 459 - 489

[239] Author, unspecified, *Social and Economic Studies* (Institute of Social and Economic Studies UWI, Jamaica 1997) 250

[240] *Ibid*

There were some successes in terms of the establishment of the regulatory regime for this international sector. The structures in place were still being developed simultaneously on island. Linkages across the region were also being developed with oversight stimuli on supervision and regulation functions. While the local private limited liability companies limited by shares served the local stakeholders generally, greater emphasis was being placed on the regulation of those private limited liability companies within the international financial sector. Among the corporate entities, the limited liability companies on St. Vincent found some resonance within the law that provided for the following categories:

- International Banks
- International Business Companies (These included Segregated Cell Companies as well as hybrid Companies)
- International Trusts
- International Insurance Companies
- Limited Liability Companies
- Mutual Trusts

Registration and incorporation of both domestic and offshore insurance companies in St. Vincent emerged as simultaneous and complementary occurrences. For instance, insurance companies were considered as domestic insurance companies under the "Acts"[241] as well as under specific insurance companies legislation and other applicable "international"[242] limited liability company laws. At times both species of insurance companies were required by law to submit to visits by the dichotomous regulators and were expected to submit the necessary forms and other prerequisites to this dichotomous legislative arrangement. Corporate governance best practices had to be considered at best as being under double scrutiny by a regulatory phenomenon that

[241] St. Vincent and the Grenadines Domestic Insurance Act 2003; Money Services Business Act 2005; Saint Vincent and the Grenadines Companies Act 1994 and a plethora of other Acts – see *www.svg.com/laws.html* - accessed on June 14, 2017

[242] *Ibid*, see also St. Vincent International Insurance Regulations 1999; St. Vincent International Insurance (Amendment) Regulations 2004; St. Vincent Limited Liability Companies Act 2008 (Amendment) 2010

could not deliver at best through their proposed and perceived strengths as effective and efficient regulators.

Some economic drivers of corporate governance

As was mentioned previously, Trinidad and Tobago was considered one of the largest Caribbean 'mineral – rich' countries. On the other hand, as opposed to Trinidad and Tobago, predominantly the former colony of St. Vincent remained an agricultural based economy and over the years, under periodic economic reviews it was highlighted that,

..."Success of the economy hinges upon seasonal variations in agriculture, tourism, and construction activity as well as remittance inflows. Much of the workforce is employed in banana production and tourism, but persistent high unemployment has prompted many to leave the islands."[243]

There was that observable notion that sister islands did create commercial networks on businesses and other mutually beneficial instruments. The private limited liability company was that vehicle that served as the 'driver' of economic development to a larger extent in St. Vincent rather than Trinidad. The obvious reason was that St. Vincent was riddled with a staggered approach towards its own economic development for several reasons. The private company was also positioned within an agricultural economy that relied on the occasional favourable conditions for the export of its crops to regional and international markets.

At best, the export of crops and or production on the island suffered the severest of conditions that were either manmade or natural consequences of disasters (hurricanes, storms). Trinidad on the other hand was an economy that thrived on its mineral rich

[243] www.cia.gov/library/publications/the-world-factbook/geos/vc.html - accessed on 14 June 2012 and 12 April 2018

acquisitions. As a small nation with historical migratory patterns, within CARICOM and under the managed migration programme, all nationals were entitled to work and live within the borders of CARICOM "through the CSME and its commitment to the Free Movement of People."[244] The private company may have had its fair share of stakeholders, but with the movement of people some of whom may have availed themselves of the services provided by the private company, were prone to travel and live abroad.

Up to 2013, the aforementioned economic conditions of the country have been compounded by the "decline in the banana industry"[245] which impacted national employment. The employment figures stood at "21.5% up to 2012"[246] census year. Private limited liability companies were encouraged as 'contributory agents' to economic growth through such areas as tourism, agriculture, construction and others. As such the private company provided for some levels of employment amidst the appreciable movement of peoples across porous borders. It is difficult to assess how such movement impacted corporate governance best practices. However, by extension, it was through these companies that there was some scope for the expression and expansion of corporate governance best practices but this path was quite challenging.

Stakeholders within both states (St. Vincent and Trinidad and Tobago) had at their disposal, the same legislative guidance on best practices inherited from the British company laws. Yet, Trinidad was that territory that provided for a more active, mobilised and educated stakeholder community where the private company flourished. Within both countries there were noticeable economic divergences that

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[244] *www.immigration.gov.tt/Services/CSME.aspx* - accessed 2 April 2018

[245] Appendix 2 (3) – An extract from the Guardian – European Commission on Bananas – Banana industry in decline - Opinion – See Newspaper – accessed 2 April 2018; See also – *Saint Lucia: Country Strategy Paper for the Banana Industry, Agricultural Diversification & The Social Recovery of Rural Communities* (Government of St. Lucia, 1999) 7 - 9. While this was a country strategy it was also a joint strategy for the Windward Island Banana industry of which St. Vincent was an integral part.

[246] *Total Labour Force, Total Unemployed & Unemployment Rate by Age Group, 2001 & 2012 - www.stats.gov.vc/Default.aspx?tabid=136- accessed 19 March 2018 and 2 April, 2018*

shaped the content of best practices and their delivery to stakeholders. St. Vincent and the Grenadines was the poorer of the two countries and this in itself held many implications for the nature of any established or incorporated company. The further comprehensive exploration of these issues remains largely outside of the remit of this thesis.

Both states were unequal in their summation of what they had to offer through their respective private companies as part of the plan for economic growth and development of the wider stakeholder communities. For instance, suffice it to say here that, the income inequality of persons within the St. Vincent cuts across the entire nation as well as the rate of inflation. These same divergences also influenced the capability of companies; the quality of stakeholders and the area of businesses to which the companies were put.

Also, other concerns were; the input by shareholders; the value of their contributions in general meetings and the capacity of those who were placed in the directing and controlling of these companies. Decided differences were noticeable within companies found in both countries, which affected the quality of best practices. This point was discussed later in the findings of both case studies that formed the basis of Chapters Three and Four. Arguably, that category of private companies - the insurance companies - within the country that was least developed economically (St. Vincent and the Grenadines) became dependent on the execution of such best practices of the more developed country of Trinidad. This was to the extent that a symbiotic relationship and dependency developed.

Maybe it was because of years of experiences on how best practices were customarily dispensed within the insurance companies in Trinidad and Tobago. Dependence on externally driven corporate governance practices resulted in a wholesale acceptance of such corporate governance practices in similar insurance companies in St. Vincent. In Chapter Four, this phenomenon was explained in greater detail.

In light of the aforementioned, corporate governance best practices developed on St. Vincent but only as allowable within the confines of some stringent procedural practices within the small segment of companies – the insurance companies. These were acceptable by management of such companies that would later experience the fall out of an unprecedented financial crisis that was discussed more fully elsewhere in this original thesis presentation.

The continuing contribution to economic development by the private limited liability company

Historically, high unemployment was offset somewhat by persons finding and creating local employment in St. Vincent through cottage industries and the establishment of other private limited liability companies. Some persons were fortunate enough to have secured capital to finance such causes. However,

> "This lower-middle-income country [St. Vincent] is vulnerable to natural disasters tropical storms wiped out substantial portions of crops in 1994, 1995, and 2002. In 2008, the islands had more than 200,000 tourist arrivals, mostly to the Grenadines, a drop of nearly 20% from 2007. Saint Vincent is home to a small offshore banking sector and has moved to adopt international regulatory standards. The government's ability to invest in social programs and respond to external shocks is constrained by its high public debt burden, which was 68% of GDP at the end of 2011. GDP grew on average 6% annually from 2002-07 but contracted between 2008-10; as a result of the global economic downturn, growth remains slow."[247]

[247] www.banknoteworld.org/st-vincent - accessed on 25 June 2014 (Link does not appear to be responsive)

The country was vulnerable to natural and manmade disasters and other vulnerabilities. Its political administration found it necessary to turn to the offshore sector through the private limited liability companies. There was mentioned that company laws were reformed so as to accommodate the continuous repositioning of said companies to the forefront of the economy. This was especially so as they were also mediums for employment, raising much needed revenue and to bolster overall economic development within the country. These companies were also responsible for the personal and financial development of beneficiary stakeholders in the wider CARICOM region where other networks of associated insurance businesses were located and to stakeholders that were domiciled overseas.

2.5 Rationale for a dichotomy in regulation

One has to understand that it was only from 1909 that St. Vincent and the Grenadines saw the first registration of a company on its register. This was a domestic private limited liability company limited by shares. Thereafter only in 1996 that there was the mention of the offshore sector where other private limited liability companies were even considered for inclusion on a register – under the Financial Intelligent Services Authority renamed the Financial Services Authority.

This process of incorporation between and among the same construct for different purposes took nearly ninety years to become practicable and was quite slow. The "Registry of Companies"[248]seen was only for domestic companies that provided a plethora of companies some of which were amalgamated and or struck off. These were regulated through the Commercial and Intellectual Property Office. On the other hand, the Financial Services Authority regulated the offshore companies within the international sector. Maybe it was due to the time span in terms of the establishment of these two regulators and or the policy decisions on the purpose for all these private limited liability companies, but this dichotomous regulatory regime was quite unique.

[248] *Register of Companies in St. Vincent and the Grenadines* – Examined by researcher during visits to the island in 2012 and 2013 (Records for the first century (1800s to 1900s) were in a state of disuse)

These companies were the replica of those found within the British company laws and the UK Companies Act. They held property and had identifiable powers and liabilities as an individual but were "distinguished from the members."[249] They had a "common seal."[250] Members on the other hand possessed a "liability to contribute to the assets of the company in winding up."[251]. However, exceptions were when crime or "fraud was suspected and ought to be proved."[252] This was the same construct that remained as robust to date as the day it was introduced to the nation state.

It was within this remit that a Vincentian company or branch of the conglomerate The Colonial Life Insurance Company Limited continued to be incorporated and regulated through the direction and control of a "dichotomous regulatory"[253] regime. The insurance companies as well as all private limited liability companies limited by shares were well under the purview of the legislation administered by the Commercial and Intellectual Property Office. This was the more established regulator. There was a plethora of applicable laws from the inception of the Authority and to the current period such as:

- Companies Act, 1994
- Companies Regulations, 1996
- Registration of Business Names Act, Cap. 111
- Registration of Business Names Fees Regulations, 1981
- Societies Act, Cap. 330
- Trade Marks Act, 2003
- Trade Marks Regulations, 2004

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[249] *Salomon v Salomon (1897) AC 22*
[250] *Op. cit*. [St. Vincent Companies Act 1994] s.25; UK Companies Act 1948 as amended by UK Companies Act 1980 applicable to St. Vincent - First Schedule Table A, Art. 82, 113; see also Appendix 2(10) Historical *Table A*
[251] *Op. cit.* [Companies Act 1994] s.*37; s.371*
[252] *Adams v Cape Industries plc. [1990] Ch 433*
[253] Insurance companies are regulated by the Financial Services Authority (FSA) and the Commercial and Intellectual Property Office (CIPO) through specified mandates

- Patents Act, Cap. 110
- Patents (Amendment) Rules, 1998
- Registration of United Kingdom Patents Act, Cap. 112
- Registration of United Kingdom Patent (Amendment) Rules, No. 29 of 2001
- Copyright Act, 2003
- Geographical Indications Act, 2004

The Financial Services Authority (FSA) is the second regulator of private companies. The formation of both the Financial Services Authority and the Commercial and Intellectual Property Office (CIPO) fell well within the period of study (1845 to 2013). However, the services of these regulatory authorities were unavailable to the private limited liability companies limited by shares for the periods of 1845 to 2003 and 2011 due to legislative enactments of the Commercial and Intellectual Property Office and the Financial Services Authority respectively.

Laws specific to "International Business Companies,"[254] "International Insurance Companies"[255] and hybrid companies some of which were the "Limited liability Companies[256]formed part of the portfolio on supervision of private limited liability companies by the Financial Services Authority. It must be reiterated that corporate governance within the aforementioned private companies was never without guidance. There exist international best practices established and promoted by several international organizations and found within British company laws and UK Companies Acts. As a post emancipation emerging nation, St. Vincent adhered to these established international laws.

[254] International Business Companies Act 2007; International Business Company Regulations 2008; International Business (Amendment) Regulations 2010; International Business Companies (Amendment and Consolidation) Act 2009
[255] International Insurance Act 2009; International Insurance Regulations 1999; International Insurance (Amendment) Regulations 2004
[256] Limited Liability Companies Act 2009; Limited Liability Companies Act 2008 (Amendment) 2010*;*

The situation was similar in Trinidad and Tobago having its private limited liability companies regulated by similar laws and its own regulatory authorities. Although they are separate countries each island state is part of CARICOM with its shared legislative legacies. Precedents set in any case and the resulting case law was persuasive to such similar occurrences in these former colonies. However, such misdemeanours or wrongs within corporation law were not as popular as other areas of law.

Reformation on Company law

The call for a Caribbean wide reform on Company law and the corresponding corporate governance practices was contextualized within the dynamic and multicultural intermixture of nation states within CARICOM. This was the call on individual sovereign states. Corporate governance practices had influenced perceptions and practices throughout the life cycles of insurance companies and other categories of juridical bodies locally in St. Vincent and in the "wider Caribbean."[257]

Although these corporate governance procedures on best practices outlined the roles and responsibilities of shareholders and directors, there was a consensus that further change was necessary and obligatory and in keeping with public policy and the demands made on the companies. From 1845 up to and including 1925 there were major amendments made to the UK Companies Act that impacted countries that followed British traditions on Company laws like St. Vincent and Trinidad. As far as was known there was slow progress made in St. Vincent and elsewhere since 2003 on accelerating a Caribbean perspective on corporate governance. Within its own jurisdictional purview a "call was made"[258] by one of the regulators on its own agenda for reform.

[257] *Report on the Caribbean Corporate Governance Forum* (A Working Document) 30 – 43, ECCB Headquarters, St. Kitts, 3 – 5 September, 2003

[258] Appendix 2(11) – see for information on the Financial Services Authority mandate for the reform of its juridical entities to have a two tier board model within its remit on corporate governance/company law

Individual countries within the region created their own corporate agenda over time. Unlike other states that were affected, more specifically in Trinidad and Tobago, there were no metals to be extracted from St. Vincent and no "oil and gas discoveries."[259] Some expressed fears of a further collapse or economic stagnation within the region, if more robust and timely steps were not taken to correct major defects in corporate governance within the private companies.

Amidst all of this, it was reconsidered that the evolution of corporate law in St. Vincent was examined within the context of those changes that occurred within "the Commonwealth Caribbean … a homogeneous entity joined by strong British legal ties."[260] The Caribbean society responded to a variety of developmental trends as "differences in socio-political and economic policy, which are reflected within the law."[261] Through "colonialism"[262] it was reasoned by some that a "transplantation"[263] or "imposition"[264] of English Law was all that was necessary to cater to the commercial needs of this "tropical"[265] "economy"[266] and the structure of its "pluralist"[267]populace. Mangal opined that "the territories…used…as a model for

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[259] Velculescu, Delia, Rizavi, Saqib, *Trinidad and Tobago: The Energy Boom and Proposals for a Sustainable Fiscal Policy* (International Monetary Fund, Washington 2005) 3

[260] Belle-Antoine, Rose-Marie, *Caribbean Commonwealth Law and Legal Systems* (2nd edn Routledge-Cavendish, New York, 1998) 7

[261] *Ibid*

[262] Patel, Sujata (Ed), *The ISA of Diverse Sociological Traditions* (Sage Publications Ltd, London, 2010) 226 - where colonialism wrought profound changes in African societies and reorganized the purpose and practice of knowledge production in the region (Caribbean)

[263] *Nyali Ltd v AG of Kenya [1995] 1 All ER 646, CA 653 - Lord Denning's* dictum about 'transplant' was in reference to the common law. However, the terminology is applicable to legislation that is 'transplanted' from one jurisdiction to another without sufficient consideration for the economic, social and political environments of the receiving state.

[264] *Rudling v Switch (1821) 2 Hag Con 371, @ 380* The dictum of *Lord Stowell* who was then the Master of Rolls - 'When the King of England conquers a country…the Conqueror by saving the lives of the people conquered gains a right and property in such people; in consequence of which he may impose on them what the laws he pleases. The use of the word 'imposition' in this context is noted.

[265] Doumerc, Eric, *Caribbean Civilization: The English - Speaking Caribbean since Independence* (Presses Universitaires Murail, Toulouse, France 2003) 23

[266] *Ibid*

[267] Besson, Jean, *Martha Brae's Two Histories: European Expansion and Caribbean culture-building in Jamaica* (University of North Carolina Press, USA 2002) 9 - 11 - for discussions

their legislation, a United Kingdom Act and have relied upon the Case Law."[268] As can be seen from Belle Antoine's discussions though, "substantial differences in areas like foreign direct investment law, international tax law and company law exist."[269]

It was noted that " several hundred Acts"[270] regulated commercial activities within St. Vincent as well as the wider Caribbean region. There were minor changes occurring over the years in a piecemeal manner. The research findings demonstrate that there were "statutes"[271] and ordinances as well as Acts of Parliament that were "repealed, revoked and replaced or amended"[272]from time to time.

Within recent times, "corporate laws led from the US"[273] also influenced legislation on companies in the Caribbean. Therefore the evolution of company law within the colonial administration of St. Vincent was predicated on these imported laws conjoined with those that constituted British legacy. Phases of corporate governance development in St. Vincent

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on the Caribbean/Jamaican experience of a 'plural society'/populace which was comparable due to its colonial past in which St. Vincent and the Grenadines' experiences would be reflected

[268] Mangal, Rambarran, *An Introduction to Company Law in the Commonwealth Caribbean* (Canoe Press, UWI, Kingston, Jamaica, 1995) - the words territories, Commonwealth Caribbean or the region refer to the same geographical landscape of the former colonies of Great Britain.

[269] Belle-Antoine, Rose-Marie, *Caribbean Commonwealth Law and Legal Systems* (2nd edn (Routledge-Cavendish, New York, 1998) 7

[270] Sheppard, Charles, *An historical Account of the island of Saint Vincent and the Grenadines* (W.Nicol, Cleveland Row, London, 1831) 205 – used for historical account

[271] *Saint Vincent and the Grenadines, Consolidated Index of Statutes and Subsidiary Legislation* (Compiled at Faculty of Law, Law Library/Ministry of Legal Affairs, Kingstown, Saint Vincent/UWI, Barbados, 1981) ii, iii for guide to references and explanations as to statues and ordinances; from 1926 to 1969 (attaining of Statehood), statutes were originally enacted as and entitled ordinances. In 1978 all such Statutes were renamed Acts by the Citation of Ordinances Act 1978.

[272] *Ibid,* See 22, 23 for Companies Acts that were enacted with references as per (Cap 219) 2/1518 to 32/1976

[273] Milman, David, *National Corporate Law in a Globalised Market - The UK Experience in Perspective* (Edward Elgar Publishing, United Kingdom 2009) 9

Coupled with this, the direction and control of all such private companies were generally within a "dichotomous regulatory"[274] regime. The issue of ownership of shares is quite unique to the domestic sector. Here, private companies either within the domestic or international sectors are unlisted. The guidance on corporate governance developed over time. Some adherence to international best practices remains entrenched within municipal laws and deemed necessary.

Reform on financial rules

There seems to be a continual and rigorous reform on financial rules and regulations by international regulatory agencies imposed on the state. This was not to say in any way that compliance to these rules were lacking. The inhibiting factor sometimes was the pace with which compliance was achieved or achievable given the size and scale of the available expertise in government and within the private limited liability companies. Small states with regulators with close to ten thousand companies without a code on governance in this way were generally at a disadvantage. The technical expertise within the regulatory regime and government assigned officers operated under severe challenges given the current regulations that changed very little for close to two centuries.

Money markets

It was not an overemphasis to say that accessibility to those money markets by Vincentian companies remained contingent on corporate best practices that would facilitate good places to 'park' funds to be used in shorter time frames. Such instruments were generally categorised as insurance deposits, collateral loans, premium deposits and acceptance and bills of exchange.

[274] Insurance companies are regulated by the *Financial Services Authority* (FSA) and the *Commercial and Intellectual Property Office* (CIPO) through specified mandates

Operating within the money market was the banks to which shareholders deposits were collected through the insurance company. Liquidity was critical to accessing money markets and the main purpose or doing so. However, the insurance company made a decision to facilitate short -term debt for covering the operating expenses or even the working capital of a company. This decision making process is normally done through the procedural outline of its corporate governance.

Risk

Taking risks was "largely dependent on"[275] the company's monitoring environment. When a company focuses on its shareholders monitoring, it created a tighter monitoring environment, which alleviated the effect of a contractual risk-taking enticement on risk-taking activities. It was also noted that, better institutional governance has been shown to encourage "greater risk taking."[276]In light of the debacle that heavily impacted one of its institutional shareholders, the Building and Loan Association the jury is out on how far risk taking can be pushed. These instances of apparent corporate irresponsibility and lack of proper monitoring and accountability provide for further analyses, which are constrained by this thesis.

It was the decision to maintain a risk-averse profile as far as was possible, that would probably be the best use of money markets due to safety. Associated with this was a business model that must work in order to keep the private limited liability company afloat. Any disregard, lack or absence of such best practices will of course create breaks in communication; be detrimental to best practices on corporate governance and add to the ultimate ‘demise’ of the company.

[275] Leipziger, Deborah, *The Corporate Responsibility Code Book* (2nd edn Greenleaf Publishing Ltd, UK 2010) 148
[276] Miller, Geoffrey, P, Cafaggi, Fabrizio, *The Governance and Regulation of International Finance* (Edward Elgar Publishing, UK 2013) 172

At best there were the associated complexities of the paradigm "risks"[277] faced by investors, "shareholders"[278] and "stakeholders"[279] alike. The contextual phenomenon to corporate reality on the island as well as within CARICOM was multifaceted. Having regard to the discussion on risk, it was obvious that a measure of risk was anticipated and taken given the nature of investment. Additionally, the comparative analyses demonstrated that the private limited liability companies remained conjoined within CARICOM, and were shaped by both external and internal influences.

Law reform in St. Vincent and the Grenadines

In the Consolidated Index of Statutes and Subsidiary Legislation for SVG, "Statutes for the years 1926 (May) to 1969 (October),"[280] were originally "enacted as and entitled 'Ordinances'."[281] Further, in 1978, "all such Statutes were renamed 'Acts' by the "Citation of Ordinances Act 1978."[282] This was evidence of a transplantation of legislation irrespective of whether the Vincentian environment was ready. Within the latter part of the nineteenth century, the nation state began to grapple further with the realities of its own existence in light of real or perceived "economic growth."[283] This of course was within the post independence period. It was no longer the case that "the colony was considered part of the Realm of the colonizer"[284] and could benefit from mere adherence to British company laws and the UK Companies Acts.

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[277] Chapter One
[278] Chapter One
[279] Chapter One (Figure 1(5))
[280] *Consolidated Index of Statutes and Subsidiary Legislation for (St. Vincent and the Grenadines): Abbreviated Version -To the 1st January, 1981*(Faculty of Law Library, Ministry of Legal Affairs Kingstown, St. Vincent (University of the West Indies, Barbados 1981) ii
[281] Ibid
[282] Citation of Ordinances Act 1978
[283] I*nternational Monetary Fund Country Report No 11/343* (International Monetary Fund Publication, USA December, 2011)
[284] *The Monthly Review or Literary Journal, Vol 39* (R. Griffiths, London 1768) 324 - 325; See also Memmi, Albert, *The Colonizer and the Colonized* (Earthscan Publications, UK 1974) 53 where Memmi talks about the colonizer - having come to a land by accidents of history, taking away land belonging to the inhabitant, upsetting the established rules, it is so in the eyes of the colonized and the colonizer; see also, Edwards, Bryan, *The History, Civil and Commercial of the British Colonies of the West Indies, To Which is added a Historical Survey of the French Colony in the island of Saint Domingo* (B. Crosby, Stationer's Court,

A response by government was welcomed in light of changes in the economy. In order to begin the process of adjustment and attempts at economic and fiscal policy considerations, the growing corporate sector in St. Vincent and the Grenadines began to address the issues of repositioning the private company. Several "debates and amendments to company legislation with emphasis on "economic"[285] development were well articulated in the local parliament. Similar discussions across the Caribbean region were also within the public domain.

The company laws that were amended were to address corporate governance issues that touch and concern municipal matters. Nonetheless, an overall guidance from international best practices served, as guidance on corporate governance within the private companies on the island that could not operate in a vacuum. See Figure 2 (2) that shows corporate governance derived best practices and the impact on private companies.

Figure 2 (2)

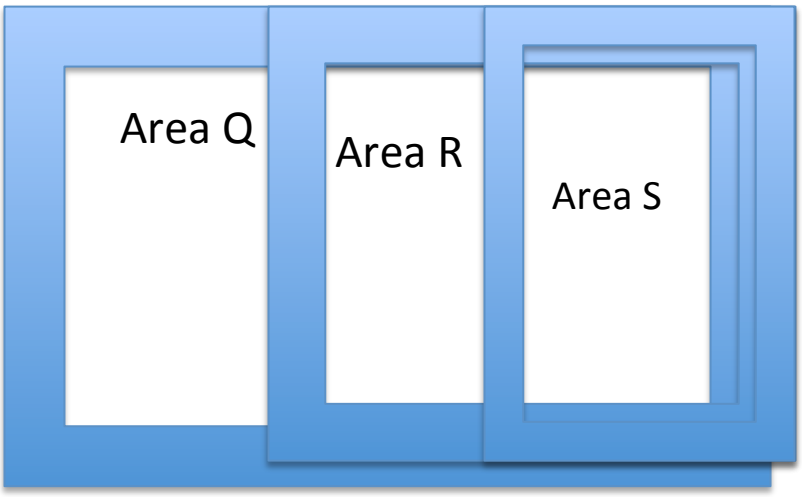
See overleaf

London 1798) 103, how the colonizers tried to entrap the natives of St. Vincent to get them to comply with their demands

[285] *Parliamentary Debates, House of Assembly,* Saint Vincent and the Grenadines, 26 June 2001 (Dr. Hon. Ralph Gonsalves, Prime Minister and Minister under whose portfolio regulation of companies fall. (The Companies (Amendment) Bill 2001) – Amendments proposed were to amend the Companies Act No. 8 of 1994. The house debated on the merits and demerits of the change in the policy of the government. Dr. Gonsalves re-iterated the claims made by the Eastern Caribbean Central Bank as well as the Caribbean Development Bank in light of the real economic growth that was envisaged. He claimed that the change in the law as per company legislation would set the premise on which to 'put some money into the economy'; as well as to get the public sector investment programme kick off properly for the last five or six months of that particular year. The Prime Minister in response to the Opposition Leader's (OL) comments on the introduction of this amendment, said, that he was happy that the "OL does not support rich foreigners to escape the payment of the 10% and to avoid them not paying the $3000 where I could get them to pay the $3000 to register the company. Remember this; the per capita GDP of this country is just over EC$5000 so if I get 2 overseas companies registered that's the per capita GDP of one person in his constituency."

Figure 2

Corporate governance derived best practices



Key:

Area Q – International best practices on corporate governance derived from established time tested principles originated within companies established by families initially and amended in response to corporate failure and legislation

Area R (Q + R) – Municipal or country specific corporate governance where best practices are amended and enshrined in legislation and by-laws

Area S (Q + R + S) – Company specific corporate governance best practices as the sum total of distilled/amended derived practices and executed through the applicable system of corporate governance in the country

Source: Researcher's compilation – 2018/2019

All in all, it was further contended that company law legislation served as the bedrock for the offshore and non- offshore sectors as far as the nation's "economic"[286] stability was concerned. This was the sentiment echoed by the current Prime Minister Ralph Gonsalves. The amendment to legislation specific to companies was an imperative. It was more than an assumption that critical players to the process of reform were the role of government, an efficient and impartial judiciary and an impartial regulatory regime.

Role of government generally in the reform process

While the private sector was considered the country's chief economic force, the need for government regulation was one that transcends the very nature of corporate governance. The role exercised by government ran corollary to the history of the country itself. Within the reform process, the enabling institution was government so that its policies dictated the length of the process; the constituents parts as the how such process of reform was conducted; why and when it was conducted and the beneficiaries of the result of the process of reform.

The constitution permitted government to regulate some commercial activity of which the private limited liability company within the financial sector remained a part. There was a noticeable increase role of government over time and through its role, the private limited liability company positioned enjoyed considerable freedom. The private limited liability company was permitted establishment, registration and or incorporation in order to operate. The private company created and enforced its contractual obligations; the protection of the rights of consumers or stakeholders and their safety; the regulation of the environment and its protection as a major stakeholder of the private limited liability company; the government's right to taxation to generate revenue from the company and the protection of investors rights.

[286] *Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines, 26 June 2001 (The Companies (Amendment) Bill 2001)* – Amendments proposed was to amend the Companies Act No. 8 of 1994.

Signatory to international conventions

Amidst all of its internal and external influences and its attempt at structural change and recovery from financial crises, St. Vincent adhered to and was signatory to various United Nations conventions and protocols. It maintained membership of a "number of regional and or international organizations"[287] some of which advocated international best practices on financial and corporate governance issues. The nation's re-interpretation and application of its laws, policies and agenda on corporate governance has never been altered but merely incorporated into its existing British company laws. The country was accepted as a sovereign law abiding state. It was compliant with international corporate governance best practices as advocated by international organisations.

2.6 Models of corporate governance

The discussion now turned on the issue of the models of corporate governance and the case made for a hybrid corporate governance model. See Figure 2(3) below.

Figure 2 (3)

Major Characteristics that influenced the hybrid Corporate Governance System up to 2013 in St. Vincent and the Grenadines

See overleaf

[287] Appendix 2(1) – Countries to which St. Vincent is signatory specific to financial transparency and development

Figure 2(3)

Major Characteristics that influenced the hybrid Corporate Governance System up to 2013 in St. Vincent and the Grenadines

Source: Researcher's compilation - 2018 - 2019

The above gave a synoptic view of the major constituents or characteristics within a hybrid corporate governance system up to 2013 on St. Vincent and the Grenadines. This is how it evolved. From the Anglo American model inherited from Great Britain, it has borrowed from German corporate law. The nature of corporate governance was influenced greatly within recent times from elements within the German corporate

law with emphasis on the two-tier model. When combined with the existing unitary or one-tier board model that existed for well over a century it has considerations for relevancy. The context therefore presupposes that:

✓ The unitary board existed with emphasis on consensus in decision-making and the process of centralisation, control and management.

✓ Efforts currently being made in response to averting further catastrophic and systemic shocks to the financial sectors in St. Vincent and possibly to the Caribbean region by extension.

✓ In response to stakeholders' concerns and shareholder primacy, the legislature continues to reform the financial sector and company law so as to safeguard overall economic growth.

✓ Government has to bolster poverty alleviation strategies and strengthen the safety net in light of "genteel poverty."

✓ There is much to be gained to restore confidence in the private limited liability companies within the wider stakeholder regime.

A further analysis of the intricacies of generally accepted models of corporate governance applicable to St. Vincent is necessary. The discussion turns firstly to the time tested Anglo American model of corporate governance.

Reassessment of the Anglo American model of corporate governance

The legislation on corporate entities reflects the Anglo American model of corporate governance within the context of the English Company laws and the companies under review in this chapter. As former colonies of Great Britain whose laws were the construct of the British, both St. Vincent and the Grenadines as well as Trinidad and Tobago continued to adhere to the legislation on company for the greater part. The overriding factor was that the company was directed and controlled in the interest of the shareholders primarily. Shareholders generally remain unprotected save and

except for the unanimous shareholder agreement that served as a contractual mechanism to protect them against corporate decisions that carry risks associated with investment decisions.

The creation of wealth was critical to this company. The spill off was an anticipated focus on profit maximization that was designed to contribute to economic growth. The focus was not on social functions and other associated considerations. As opposed to shareholders, directors' interests at times appeared not to be sufficiently balanced. The directors did not determine the decided leverage between social interests and economic thrust of the company. The shareholders demonstrated up to a certain level, an efficient system in investing and thereby creating for some time, levels of economic welfare for the company.

There was no noticeable account taken of other interests besides those of the shareholders. These might have included and not be limited to the interests of the shareholders and directors; concern for the community in which the company operated or an emphasis placed on the company's benefit to the wider community. In the Anglo American Model of Corporate governance there must be a responsible management structure. The board of directors, its executive management and shareholders comprised the core of management. At law the company remains a separate legal entity but its actions were demonstrated through its management team. The priority was on profit maximization and hence the company's focus was on investments and the generation of profits for the benefit of shareholders.

The social, cultural and political ethos of the state itself transcends the composition of the board and the quality of the corporate governance it practices. The hiring of employees, staffing issues, monitoring on a daily basis were aspects of the management and control of the company. The board was equipped with the necessary policies and legislative mandate on international best practices. It delegated a wide cross section of responsibilities. These were the enabling mechanisms that assisted

them with carrying out the objectives of the company and further to monitor how these were applied by the management of each of the companies within the CL Financial Company grouping. The main organ of the company was the board of directors. It was also true to say that the board acted as 'agents' for shareholders that supervised the actions of managers. In this model the unitary or one tier board exists.

A unitary or one-tier board was created and was subject to re-election and would have served in excess of the year. The Anglo American Model and the quality of best practices was dependent on the composition of the board and the qualification of board members. Whether they were able to supervise the executive management determined the success of the company. What obtained was that a majority shareholder in practice controlled the executive management. Personnel were elected by the shareholders at the annual general meeting of the company for a specific tenure, which was normally a year.

The problem on management or the opportunity provided for the majority shareholder was played out in the relationship between executive management and the Board of which the majority shareholder was a part. The board in meetings should have been technically responsible for the supervision of the Chief Executive Officer and his team of management. However, this was not the case as the majority shareholder undertook all major decisions. Also the Chairman was the majority shareholder of the company that placed a limit on the powers of the board.

Although outlined by legislation, the unanimous shareholder agreement appeared to be at conflict with the original constitution of the company. The legislated requirements for the Chairman/Chief Executive Officer and majority shareholder dictated a more personal approach towards certification of annual reports generated by the company. In that case the majority shareholder duly serving as Chairman of the company had the added advantage of making sure that the reports are substantive and quite subjective in intent and design.

Board Structure

The two-tier board: a new consideration

Considerations must be given to this fully functional hybrid. Upon reconstitution and not upon incorporation, the newest addition that constitutes corporate governance in St. Vincent as proposed was taken from the established German model. The influences from this model were recognised and introduced effective 2013. The recent call for a "two-tier model"[288] of a board. This was introduced to the domestic private limited liability companies and other juridical bodies. The reasoning behind this was a response to the recent unprecedented crisis within the insurance companies. There was an expectation that the insurance companies and other named juridical bodies will adopt this model. It was further expected that the restructuring of the boards will be undertaken by the company in meetings and accordingly comply with the prevailing law almost immediately.

The expectations further detailed that the Chief Executive office as well as Executive directors were to be employed within the company on a daily basis. The roles of the independent non-executive directors as well as the Chairman were to be assigned some mundane tasks as they 'run' the organisation. Having very little to do on a daily basis was probably commonplace. However, the details of this new phenomenon did not set out a proper procedure as to the effectiveness of management and or direction and control of the entity. Time was of essence as experience had not yet accumulated nor tested this hybrid.

In the 1890s "Germany introduced the GmbH."[289] The similar species of companies to the British private limited liability company limited by shares was introduced in 1908. Whether the British borrowed the concept from the Germans or elsewhere,

[288] Appendix 2(11*)* – Excerpt on the Financial Services Authority on Minimum Requirements for Approval and Continued Approval by the Authority – Directors of Domestic Regulated Financial Institutions

[289] Morck, Randall K., *The History of Corporate Governance around the World: Family Business Groups to Professional Managers* (University of Chicago Press, USA 2005) 3 - 5

there were certain similarities and differences. The major one was that the GmbH was premised on a two-tier board while the private limited liability company limited by shares revolved around a one-tier board.

Having worked and served with the Credit Union movement and the Co-operative Department in St. Vincent, similar construct exists within this non-company law occurrence. The credit unions affiliated to the "Caribbean Conference of Credit Unions,"[290]have clearly defined roles and responsibilities of each board that are carefully crafted. This gave validity to their corporate existence in terms of functionality, transparency, the levels of power they exerted, the levels of independence when acting in the interest of shareholders and other stakeholders and above all, their own accountability as to effectiveness and efficiency.

Supervisory board, the board of directors, credit committees, education committees and other adhoc committees are critical to good governance within that remit. These place restraint on power and the delivery of services within their corporate governance regime. It might well be that this is the singular reason for the proposal of the two-tier model on board management within the private limited liability company limited by shares on St. Vincent. Respectfully, however this might be challenging if done in isolation of other salient aspects of the German model or the two-tier board. It was noted that there has been no reference to the terminology "German model"[291] in any literature examined locally during the research. It probably was not necessary to do so but rather the optimum functioning of the company was to be stressed. This may not be significant to non-practitioners of corporate governance. However, research pointed to the German model as relevant to the named 'two-tier model'.

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[290] *www.caribccu.coop/affiliates/st-vincent-and-the-grenadines* - accessed 15 September, 2015 and 12 March 2018

[291] Jonathan Charkham, *Keeping Better Company: Corporate Governance* (Oxford University Press, UK 2008) 294

As proposed, the two-tier board structure will conjoin with the inherited unitary board structure from the UK and applicable to companies in St. Vincent and the Grenadines. When carefully scrutinized, this "mandate from the Financial Services Authority"[292] suggested that, resonance was found somehow within the German model but with minor extractions. The principle behind the two-tiered board is one of "co-determination or participation of employees in the process of deciding or settling in companies and enterprises."[293] The German corporate law makes provisions for all three of its corporate entities, but the "GmBH is a private limited liability company"[294] and similar in a number of respects to the private limited liability.

In both constructs, there are similar legislative provisions on corporate governance. Within the GmBH there are 'mandatory bodies such are its shareholders meeting and the managing director(s).' In the British company similarities exist which are shareholders meeting (shareholder assembly) and the directors. While directors may be selected or elected based on the internal governance of the company, any hybrid of corporate governance structures is likely to be amended over time in light of the growing needs of stakeholders and or government policies about the company. The call for a supervisory board to be part of the hybrid system of corporate governance in St. Vincent is revolutionary. Research indicates that the supervisory board may be on a voluntary basis. This is however contingent on having employees in excess of five hundred.

Within the Vincentian experience, a consideration might be to have at least a representative or representatives of employees within the two-tier board structure as proposed. Howsoever such a hybrid is constructed, the process should replicate as far as possible the principles of having a participatory approach to corporate governance

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[292] *Appendix 2(11)* – Excerpts from the Financial Services Authority

[293] Cleiss, Mark Oliver, *German Co-determination and Corporate Governance* (GRIN Verlag, Auflage, Germany 2008) 5

[294] Dine, Janet, Koutsias, Marios, *The Nature of Corporate Governance* (Edward Elgar Publishing UK 2013) 276

by both employees and employer within the newly constituted private limited liability company.

There is the concept of co-determination linked to representation at the supervisory board level. Whether the performance of the private limited liability will change, if at all, with the introduction of elements of "Co-determination"[295]is yet to be determined. Fundamental too, is the fact that those employees of the 'insurance companies' would be representatives of a particular labour force and serve as a determinant of size of such a labour force. Up to one half or fifty per cent of employees representation can form the supervisory board. This might not be the qualifier for employee representation on the board.

Within the insurance companies as far as is known, the labour force is not near enough to five hundred. On the other hand, it may be that a reduction on the numbers representative of a labour force could be radically reduced to accommodate to the Vincentian hybrid corporate governance system. It could well be that a private limited liability company's representative of whatever sector, may employ five hundred employees in the future. However having said that, the idea behind the two-tier board is likely to use a different matrix given that it is a hybrid of both one and two tier board models.

Careful considerations must of necessity arise with respect to all directors within the hybrid system. As reflections on the recent crisis would dictate, the role of non-executive and executive directors should be carefully crafted. One of the major questions that could be raised in light of all the current discussions on corporate governance was whether it would be appropriate to permit private limited liability

[295] Margaret M. Blair & M. J. Roe, *Employees and Corporate Governance* (The Bookings Institution, USA 1999) 177

companies to "indemnify non-executives even when this was not considered with respect to executive directors."[296]

The more persuasive arguments in light of the aforementioned could be drawn from discussions within the "House of Lords"[297] as the legislature in St. Vincent would at some time hopefully reference. The dictum was that all directors are treated the same at law with respect to liability. For corporate governance practitioners and those who would seek to guide the next generation on company legislation, it is imperative to assess the implications for all directors, not only of "insurance companies in the OECS" [298] but for other directors within Vincentian private limited liability companies. The idea promoted throughout is that the director's duty is primarily to the "company and its employees."[299] The latter upholds the shareholder primacy theory.

A series of public releases and board discussions continue to place emphases on the unitary board with the role of chairman highlighted as pivotal. The "Financial Services Authority"[300] was part of the reform process to counter the effects of a lacuna in the law as well as providing guidance. Previous to this, the IFSA and the IFU served as quasi-regulatory bodies as the government continued with its 'proposals for company law reform in the state as well as expressing concerns for the region.' The advantages of the unitary boards remained part of the discussions

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[296] *See* Appendix 2(12) – Newspaper article from the Trinidad Daily – Clients money funded Duprey's personal needs" which must be read in context and be verified or held to be so in the court of law. Included for the purpose of analysis in an educational/academic fora and should not be taken otherwise. Liability rests with the newspaper - last accessed on 19 April, 2018

[297] *HL Deb 21 October 2004 vol 665 cc975-7*

[298] *www.cavehill.uwi.edu/fss/resources/research-and-publications/clico-s-collapse-_wayne-soverall.aspx* - accessed on 27 September 2012; see also Appendix 2(6) – A newspaper article, Tack, Clint Chan :- CLICO 'SHOCKS' CARICOM – where the writer laments the plight of the Caribbean as a result of its signal to the International Monetary Fund as it appeared that he was quoting notable economist Sir Ronald Saunders. See also Appendix 2(8) another article entitled: "WORST CASE – CLICO LIABILITIES EXCEED ASSETS BY $11.9 B"

[299] See *fn 101*

[300] www.svgfsa.com/ - access 27 January 2013 and 12 February 2018

onwards up to the recent times of 2013 when the two-tiered board was cited as a viable alternative.

Based on discussions post CLICO/BAICO debacle, a further demand is placed on non-executives. Not only that but, the qualifications of directors are called into question. It would seem therefore that the more 'academically' qualified the director, the better he/she should be at dispensing corporate governance. All in all, the idea was to produce or encourage directors to be qualified and become more competent in their fiduciary duties and commensurate with the techniques of management of the company.

Additionally, what seems to be driving the process is the issue of control. The control of the executive is of paramount importance. The 'management' of tensions between and amongst boards of directors and Chairman, has not gone unnoticed. A re-examination of the role of non-executives; boards of directors generally as well as management personnel remain pivotal to corporate governance debates. One of the areas of concern must of necessity be, whether different levels of liability can be held out for members of the boards given that decisions are by consensus generally. Even up to the time of writing, these matters remain as focal points in local discussions among leading lawyers on St. Vincent.

The one tier or unitary board

One of the major features of the existing corporate governance system in St. Vincent was the "unitary board."[301] It determines primarily the procedural manner by which companies are run. There are associated benefits such that the unitary board is a single, fundamental, decisive executive 'office' and it is part of the system of governance for all private limited liability companies in SVG up until 2013. More would be said of the introduction of elements of the "German two tier model of

[301] *Cadbury, Sir Adrian, Corporate Governance and Chairmanship: A Personal View* (Oxford University Press, UK 2002) 69 - 70

governance" in 2013, which effectively produced a 'hybrid' system geared specifically at the management of one category of private limited liability companies - the insurance companies. However, the question that many would continue to ask as was done some years ago, is "whether the unitary board in the form in which has become established in Britain and in those countries which follow the same pattern of governance, is the best model on offer?"[302]

It has been the experience f most companies that the unitary board is a simpler management of the financial system within private companies ranging from the simplest to the largest companies. The benefit of discussions from just over three decades within the UK Parliament is critical in light of the introduction of the German model of corporate governance, albeit specific to one category of private limited liability companies (insurance companies). Lord Kings Norton was adamant that there were really no differences between the two-tier and unitary boards as he elaborated, " ...I did state in the debate on the "Bullock Report,"[303] that we have a two-tier system here. Call it a unitary board system... but ... under the board, a management committee under the chairmanship of the managing director. When we are told, "You ought to have a two-tier structure," the answer is, "We have one", and do let us remember that."[304] It has been 'settled' history that the British preferred a unitary board and this has been part of its corporate governance for many centuries. This system remained generally undisturbed within Vincentian companies up to 2013.

2.7 Phases of corporate governance development in St. Vincent

The following gives an overview of what constitutes the phased development of corporate governance generally in St. Vincent and the Grenadines. The accuracy of this time line is limited but useful in providing a guide on the process.

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[302] Cadbury, Sir Adrian, *Corporate Governance and Chairmanship* (n 22) 69

[303] *The Bullock Report* - accessed 19 September, 2014; HL Deb 23 February 1977 Vol 380 cc179-355; see also *www.larouchepub.com/eiw/public/1977/eirv04n06-19770208/eirv04n06-19770208_043-the_bullock_report_for_the_healt.pdf - accessed on 22 September, 2015*

[304] *EEC Fifth Directive on Company Law - HL Deb 17 March 1977 Vol 381 cc159-202 @177 - 179*

Phase One: 1800s – 1920s:

1830s: Family members within a post-emancipation modern competitive economy established the nucleus of first private limited liability company limited by shares but this was in the form of a partnership and under the UK Partnership Acts and customary practices. There was no distinction between management and control of the entity. Ownership of shares was limited to family members who were partners.

1840s: Continual directing and control of company by shareholders who were also directors. Family members directed and controlled the company using best practices crafted from family values and other established international best practices. The first and only domestic private company transitioned from a partnership firm to a private limited liability company.

Some measure of "limited liability" existed in the UK "legislation in 1837"[305] prior to incorporation allowable under the UK Companies Act 1908. Post 1837 and thereafter "in the ensuing 17 years, 50 companies"[306] were formed as testimony to the availability of measured 'restriction on members liability' and corporate governance could not arise immediately upon incorporation. Similar conditions were operative in the established Vincentian Company from 1845 through to 1908.

1850s – 1900s: Companies compliant with established best practices advocated by public companies. Procedural outline of corporate governance best practices contained in Table B changed to "Table A" but primarily applicable to public companies.

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[305] UK Chartered Companies Act 1837, s. IV

[306] Paul L. Davies, Gower's *Principles of Modern Company Law* (6th edn Sweet and Maxwell, UK 1999) 37

1909: A "register"[307] of companies was kept at a repository in St. Vincent. Corporate governance best practices outlined in Table A and on individual company By - Laws for procedure on directing and control of companies. The practices on corporate governance within family businesses continued through the directing and control by the founding families who served generally both as shareholders and directors.

Size of the company was smaller in comparison to similar businesses in Great Britain. Corporate governance guidance was still to be found in Table A and any By-Laws. A private company was known to have minimum three members and was as effective in the conduct of its businesses as those with members in excess of twenty. Irrespective of size, the "directors"[308]within management was recognised as fundamental to corporate governance as "shareholders"[309] within all types of businesses and with no exception within the "family owned businesses."[310] Further "the principle of legally limiting the financial liabilities of persons investing in business ventures"[311] was laid down in British Parliament in the 1800s.

There was the specific "legislation"[312] that finally granted full limited liability. Legislative provisions for 'private company' were according to the "UK Companies Act"[313] in 1908. Corporate governance did not arise historically as a creature of the legislation. Corporate governance best practices consolidated as a result of the legislation. Sharper focus was on qualifications of directors and managers.

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[307] UK Companies Act 1862, s.25

[308] [St. Vincent Companies Act] *s.58;* Rambarran, Mangal, *An Introduction to Company Law in the Commonwealth Caribbean* (Canoe Press, UWI, Kingston, Jamaica, 1995) 68

[309] *Op. cit.* [Paul L. Davies, *Gower's Principles of Modern Company Law*] 328 - 356

[310] *International Monetary Fund, Staff Country Report 2007, No 07/97(*International Monetary Fund Publication, USA 2007) S.41

[311] Gerald A. Cole, Management Theory and Practise (6th edn South Western Cengage Learning, UK 2008) 98

[312] *Op. cit*. [UK Limited Liability Act 1855]

[313] UK Companies (Consolidation) Act 1908, s. 121

This period under consideration was likely to be influenced by the "industrial revolution."[314] Even though the domestic companies on St. Vincent were not involved in external trading it was instructive that, "penetration of colonial societies"[315] like St. Vincent did occur. Ideas and practices on management were embraced cautiously, and tentatively but such evolution of management was gradual and as a natural consequence by trial and error or the experiential approach.

Through legal oral history, descendants of early corporate life on St. Vincent spoke of the value placed on having a company that represented 'good name'. Phase One characterised the pre-World War I era and lasted until the end of the war. Companies were "serving the community faithfully and well through peace and war."[316] Management decision - making emphasised satisfying the basic needs of stakeholders (community) for clothing, foods (imported), building supplies and household items. The right to own businesses by the general populace was evidenced within the emancipation period and a more robust approach to following corporate best practices through procedure.

Phase Two: 1920s – 1970s: - The rise of the "professional managers"[317] as there was a felt need for greater "separation of ownership and control"[318] a philosophy that resonated with the domestic companies as was in similar jurisdictions within the Caribbean and elsewhere. A few family oriented companies sought institutional investors to expand the business venture. This was in keeping with prevailing trends expressed through the printed and electronic media. Conservative estimates of roughly 30% of all domestic companies in existence during this period were engaged in this practice.

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[314]Cohen, Bernard, Revolution in Science (President and Fellows of Harvard College, USA 1985) 267

[315] Page, Melvin E., Marcus, Harold G., Colonialism: An International, Social, Cultural and Political Encyclopaedia (ABC – CLIO Inc. USA 2003) 276

[316] Appendix 1(4) – Excerpt of minutes of meeting to mark centenary of the oldest established company on the island

[317] Leslie, Hannah, *The rise of the Corporate Economy* (Routledge, UK 2006) 77

[318] Berle, Adolf A., Means, Gardiner C., *The Modern Corporation and Private Property* (Transaction Publishers, USA 2009) 66

Following the practices and procedures advocated by its British counterpart, "Shareholders voting as per Regulations for the Management of the Company"[319] was evident in procedural legislative changes within the Companies Act of St. Vincent and accompanying "Model By-Law"[320] for all private companies and the "Companies Law"[321] of the UK. Boards were strengthened and employed managers and were better at administering internal self - regulation. The unitary board remained in practice, with its emphasis on 'consensus' decision - making. "Delegated management"[322] was also a feature of this era.

Phase Three: 1970s – 1980s: - St. Vincent was one of the Caribbean countries or Associated States that "negotiated...individually with Britain to seek independence on a unilateral basis."[323] It was mindful to maintain dependence on the British legislature. As such the laws remained up to present, largely driven by English company laws and the UK Company Acts referenced earlier. Corporate governance structures with emphasis on the unitary board and shareholder primacy remained undisturbed and were replicated throughout the phases of corporate development within private companies.

With respect to shareholders' involvement the responsibilities of the board and the auditing components relative to corporate governance in the UK, the "Cadbury Report"[324] from the UK was quite instructive. Shareholders were empowered to hire and fire managers and a balance of power was created. There were isolated cases, but formally underreported and challenging to access more accurate information on exactly how many managers may have been caught in the 'cross fire' with shareholders.

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[319] Joint Stock Companies Act 1856, s. 38 - 43*; Table A 1929, s.54 - 62; Table A 1862, s.44 - 51*
[320] *Op. cit.* [St. Vincent Companies Act] *By Law No 1*
[321] UK Companies Act 1948
[322] *Op. cit.* [St. Vincent Companies Act*] s. 58*
[323] Phillips, Fred Sir, *Commonwealth Caribbean Constitutional Law* (Cavendish Publishing Ltd, UK 2002) 214
[324] *Op. cit.* [*Cadbury Report: Financial Aspects of Corporate Governance*]- accessed 25 February, 2018

The financial sector was comprised of both domestic and international companies and the 'interconnectivity' was evident. Emphasis was on economic growth and employment. Greater emphasis on international companies and the scope of corporate governance framework widened. The financial sector on St. Vincent was comprised of credit unions and other co-operative societies, banks, "national provident fund" [325] later renamed national insurance scheme; limited liability companies, unincorporated companies, cottage industries, Small and Medium Enterprises, the lone Building and Loan Association and friendly societies.

Shareholder primacy remained a predominant feature of corporate governance. Some stakeholders became more aware of the impact of the financial sector and demanded more accountability from some private limited liability companies. They exercised their growing concerns about how the company functioned and who are the ultimate beneficiaries. Within the last decade, this demand was made through attendance at meetings and through the use of electronic and printed media. Stakeholder engagement became more proactive.

International financial services discussion became more popular as preparations were made for the introduction of international business companies. Emphasis remained on management and control of these entities; the role of IFSA was discussed; the nature of the corporate entities; the role of legislation with respect to tax evasion and or tax avoidance. Other jurisdictions were reviewed with an aim to study best practices from similar small islands like Bermuda with its well-established "Monetary Regulatory Authority."[326]

If only for a small but important contribution, for many years prior to the research period and up to the present, as a former credit union regulator and current minority

[325] www.nissvg.org/history/ - accessed 20 February, 2018
[326] *www.bma.bm/SitePages/Home.aspx* - accessed 19 January 2018

shareholder within a public company, the researcher experiences an active member adds to the debate on corporate governance development. Generally, shareholders and stakeholders continue to be interactive and rely heavily on printed and electronic communication on corporate governance issues.

Phase Four: 1980s - 1990: - Introduction of a menu of laws incrementally through Commercial and Intellectual Property Office created in 2003 and specifically geared towards domestic companies - Use of "corporate governance" terminology more common place. An even greater emphasis placed on profit maximization. Chamber of Commerce and governments called for more transparency and legislation was amended legislation.

"Corporate Social Responsibility"[327] remained an integral part of management decisions. The company in meeting is critical to succession planning, scrutinized board composition and calls made for independent board members. A greater awareness evident as to: transparency and accountability in the conduct of business; the use of an ethical approach to business and internal governance; the use of SWOT analysis and a review of objectives; each constituent member of the company as a role player; and an equal concern not just for shareholders but other stakeholders. The annual general meetings were interactive communication platforms.

Phase Five: 1990s – 2000s: - There was a comprehensive review of private limited liability companies especially the category of insurance companies. There was the further development of the offshore sector. Reconstruction was imperative within the Intelligent Financial Services Authority so as to provide for better regulation of the sector. Corporate governance structures were questioned as to adequacy, transparency and regulatory responsibilities. An increase in company registration and corporate governance widens with foreign directors and shareholders of international

[327] Solomon, Jill, *Corporate Governance and Accountability* (2nd edn John Wiley & Sons, UK 2007) 8

businesses. Domestic companies not as prominent as foreign businesses/companies geared towards economic growth.

Phase Six: 2000 to present: Formation of Financial Services Authority combining Intelligence Financial Services Authority into one consolidated regulatory unit. Regulation and supervision were streamlined and in keeping with corporate governance reforms in some other neighbouring territories. There were some seminars/workshops for financial institutions attended by regulators/Ministry of Finance personnel. Orchestrated by the Eastern Caribbean Central Bank, a Caribbean Corporate Governance code is still in draft format and as a working document since 2003. Amendments to the Company law and regulations as the Eastern Caribbean Central Bank continue to initiate discussions on corporate governance.

The existence of the Eastern Caribbean Central Bank Agreement Act and the Securities Act created awareness for unlisted companies. Attendance at regional workshops on corporate governance made possible by officials from various regional government representatives within the Caribbean region. Financial crises originating from outside the state prompted shareholders and stakeholders to question the capacity and management structure of one category of companies - insurance companies. This financial crisis contributed to the already impoverished state, new species of poverty called "genteel poverty."

There was a hybrid corporate governance system proposed. Although the unitary board model was maintained and practiced for most of the life cycle of the private limited liability companies on St. Vincent and the Grenadines up to 2013, the two tier model of board structure has been borrowed from the Germans and introduced in that year by way of legislation. In the "two tier system the supervisory board has the duty to advise and control the management board." [328] This was now fundamental to the

[328] *www.uni-hamburg.de/fachbereiche-einrichtungen/handelsrecht/seminararbeitede.pdf* - accessed 10 March 2017

management and supervision especially of private companies and other juridical bodies.

There was no known corporate governance code up to 2013, but efforts had been made by the regulatory bodies to draft such an instrument. Emphasis placed on a Code believed to be necessary and to create guidelines for unlisted companies. Within the domestic register kept at Commercial and Intellectual Property Office and the aggregate of international companies from the Financial Services Authority up to 2013, there were approximately 10,000 private limited liability companies that could no longer be without such a code. Some companies have individual corporate governance statements or charters.

2.8 Conclusion

The company is a historical British construct. It is considered a social organism as well as a nexus of contracts. and having been at the vanguard of the legislative nexus of contracts was also incubators for the more modern Vincentian corporate governance practices. The impact of the phased phenomenon of company law development aforementioned, continued to shape a post-emancipation modern competitive economy. The company was viewed as a catalyst for economic and social change among and between its shareholders and stakeholders alike. The governments of the day attempted to provide the enabling legislative environment for this inherited juridical British construct.

Corporate governance evolved and continued through a process of evolution using its two organs to provide guidance on best practices from 1845 up to and including 2013. The establishment of the category of companies: private companies - was not only a legislative phenomenon but also shaped concepts of common justice for all its stakeholders locally on St. Vincent as well as within the Caribbean region. Through its originality, the research presented some other salient points in exploring the

contextual phenomenon of corporate governance within the private limited liability companies limited by shares on St. Vincent. This was arrived at through a series of analyses from several research methodologies.

At best, these analyses were germane and deliberately synoptic. This could not be intended as an overemphasis. The nature of corporate governance in the identified private companies was forced and albeit phased over several decades. Maybe straddled by a path dependency or other factors. However, corporate governance best practices can best be understood given that there were several development plans geared towards the national economy that failed. Every plan attempted to position and repositioned the private company at the forefront of the said economic development. The development plans were the corollary of historical and legislative legacies of a former colony.

There were several factors that impacted these occurrences. They could best be classified as having multiplier effects on the psychological development of the stakeholder communities and the understanding of the true constituents of corporate governance best practices. Also, it could well be that perception of corporate governance best practices were attributable to their evolution from established and customary practices that were family oriented to those that were captured in bylaws and other British oriented legislation. Nonetheless, private companies over time were geared towards improving overall economic growth in the nation.

When using comparative analyses and other analyses for the private companies, repeated references were made invariably to the same British company laws and the UK Companies Acts and aspects of doctoral research to guide the discussions about corporate governance. This assisted with an evaluation of similar companies from the sister island of Trinidad and Tobago in comparison to those located on St. Vincent and the Grenadines. There was a shared legislative and historical legacy within these companies as sovereign states and as former colonies of the then Great Britain. The

imperative on primary and secondary sources were limited and limiting but served their purposes adequately at this juncture, for the exploration into the nature of corporate governance.

The company with its internal and external factors harnessed corporate governance best practices as the enablers not only of some aspects of economic growth but also limited financial progress for shareholders and the wider stakeholder community locally and within the region. Additionally, there were some attempts aimed at the "harmonisation of company law in the Caribbean Community."[329] The maxim of profit maximisation and shareholder primacy remained as enduring tenets over the years. To date there were no successful collective approach towards streamlining corporate governance best practices and company law within the Caribbean region as far as was known. The researcher suggested a Code on Corporate Governance for unlisted companies in St. Vincent. This was in keeping with the call for a reformation of company law itself, which recommenced in 2013 as robust and progressive.

As time elapsed, there remains an acceptance of an imposed legislative construct that was a versatile vehicle for economic growth to those nations that followed the British unitary or one tier model of corporate governance. Until recently, that one-tier unitary board has predominated the corporate governance model on the island. A hybrid of multiple models was currently being advocated for some of the juridical bodies (insurance companies inclusive). As of 2013, the two-tier board borrowed from German corporate law and the GmbH more specifically was proposed. Being an untested and untried admixture of models, the results whether positive or not, were outside the remit of inclusion in this original thesis presentation.

[329] *Report of the Working Party on the Harmonisation of Company Law in the Caribbean Community, 1979* (University of Texas, digitized 25 October, 2007) 1

Having explored the nature of the phased, inherited and evolving corporate governance in the island of St. Vincent, even after two centuries and more, it was and remained erupting and in embryonic stages. Even so and linked across porous geographical borders within the Caribbean region its current status to date has reshaped individual sovereign states. The composition of the post emancipation society in St. Vincent remained laden with the private companies but they could not be considered as having remained non-static entities. Shareholders and stakeholders within the corporate governance agenda became active participants in a transition from plantation economy to a competitive post-emancipation economy in which financial services were a key component. Many non-domiciled stakeholders were now the guardians of a changed corporate governance agenda and sometimes were unable to guide the process to maximise corporate advantages.

Within the financial services sector, the more economically viable private companies were positioned at the forefront of the economy. This was priority on the agenda for government since the days of Statehood. The international financial sector was more prominent than the domestic sector where all private limited liability companies limited by shares were regulated. The revised policy of the governments recognised the dichotomous regulatory and supervisory regimes and attempts were made to strengthen them through amended legislation.

There was an unprecedented financial crisis that impacted many lives within the Caribbean region. This was best understood within the contextual framework of the preceding discussions. The contagion effects originating in and from a conglomerate headquartered in Trinidad and Tobago reshaped the nature of corporate governance in St. Vincent and the Grenadines. This was facilitated across porous geographical borders that allowed for business networks in the interests of improved economic wellbeing for all stakeholders. On the other hand, this resulted in “genteel poverty” that impacted the gross domestic product of several governments within CARICOM of which Trinidad and Tobago and St. Vincent are member states.

CHAPTER THREE

CASE STUDY: JOHN HAZELL SONS AND COMPANY LIMITED

A PRIVATE LIMITED LIABILITY COMPANY LIMITED BY SHARES

"…That is, I think, the declared intention of the enactment…it would follow that no common law partnership could register as a company limited by shares without remaining subject to unlimited liability"… Lord Macnaghten - Salomon v A Salomon & Co Ltd [1896; UKHL [1897] AC 22

3.1 Introduction

As the caption suggests, this chapter introduces a case study in this original presentation about the nature of corporate governance within the category of private limited liability company limited by shares on St. Vincent. This is the "John H. Hazell Sons and Company."[330] It is important to understand the genesis of this company relative to its corporate governance best practices. Accepted from its own records, the company was established in 1845. This was prior to the enactment of accepted UK Companies Act 1907. There is an attempt to shed light on its origin in relation to the complexities of the nature of corporate governance"[331] on the island. Critical too were the assessment and analyses of the importance of such 'early' best practices.

The functionality of this company was similar to others within its category (private limited liability company limited by shares). This was effectively executed through its

[330] Some of the records of this company indicated that the named company was John Hazell Sons and Company. It was one that was categorized as private and functioned accordingly. There was an indication that John Hazell lived for some time on the nearby Grenadine island of Bequia (nearby to mainland St. Vincent). The origin of the family is not fully known and could possibly be British or Dutch as a Hazell line is traceable to neighboring Barbados (or Hassell which is often spelt Hazell, traceable to Saba, Netherland Antilles). John Hazell was one of the company's shareholders and directors. An update on the amalgamated company's website (Coreas Hazell Inc.) had a slight change in nomenclature so that, it now reads " ... Hazell Limited – the oldest registered company in SVG (established 1845) - www.coreas.vc/about-us - accessed January 2020. This is the same company that is referenced in this chapter.

[331] *www.iod.com/MainWebsite/Resources/Document/policy_article_corp_gov_unlisted_companies_eu.pdf,* 11 - accessed in March 2015 and 15 January 2018 - provides for a definition of corporate governance from OECD as well. This forms part of the discussion in conjunction with others sources.

internal mechanism outlined primarily within legislation as it developed from its infancy. It is noticeable that its corporate governance mandate evolved having been driven by family laden values initially. It was reasonable to assume that some corporate governance influence also emanated from its predecessor partnership philosophy. The private company was understood as an unrestricted private limited liability company that demonstrated its capability to control and direct its delivery of services and products to all stakeholders (internal and external). This was representative of the developed framework and policies that were important for it to arrive at a positive outcome on its corporate governance best practices.

Another issue was whether the company's corporate management systems allowed for effective direction and or control of the company. It is understood that corporate management and corporate governance were not synonymous. Corporate management and corporate governance of this entity and similar bodies were dependant on the scope of their decisions. The company's corporate management was concerned with the day-to-day decision making applicable to specific situations. As was alluded to earlier on in the discussions in previous chapters, corporate governance was a set of policies and procedures. These catered to the needs of the company in its succession planning and aid with the mechanism for general functioning. These and other observable characteristics helped in arriving at a conclusion about this research and accentuated its originality in purpose.

The status of a mid - nineteenth century St. Vincent and the Grenadines was at best tumultuous. In "1845 John Hazell Sons and Company Limited"[332] was deemed to be a

[332] The company claimed to be established in 1845. (In some literature John H. Hazell (Hazells) Sons and Company/John Hazell Sons and Company refers to the same company under study in this thesis) After exhaustive library searches both in the UK and in St. Vincent and the Grenadines, this must be accepted as being undisputed and a historical phenomenon. See *Minutes of the Company* about its Centenary Celebrations – 1845 - 1945 – inspected by researcher 2012 – 2013 - See Appendix (i) as per physical location and Appendix 1(1)
See also *www.goddardenterprisesltd.com/in_co__.cfm?com=8* - accessed 20, June 2017, where mention was made of the company as having been 'established' in 1845 and the 'oldest registered company in St. Vincent and the Grenadines. Goddard Enterprises acquired it in 2001. See also Appendix (i) – Location of company was Lot 35, which was reportedly

company positioned within a poor country. This was a known fact by international standards that colonial states like St. Vincent was classified as poor. Nonetheless, the 'birth' of this company was one that had to contend with an evolutionary stakeholder community. Critical too, was that its corporate governance could not be considered as a simultaneous achievement with incorporation. There is no known instrument of its incorporation. Nonetheless, it was established as a private limited liability company. This is discussed in greater details later on in this chapter.

The company boasted of a harnessed fundamentalist approach towards autochthonous diversification within a country that was premised on a predominantly agricultural based economy. There was a notion such a company of any significance was a visionary. It was unprecedented too, in that its business partners howsoever diverse their business acumen, maintained an outlook towards irreversible and gradual commercial growth. This was subject of course to its response to stakeholders' needs and customer loyalty. The company at first was concentrated in its view towards its own shareholder primacy. It recognised in its infancy that it had the capacity to lend support towards a country that can benefit from its establishment but also that the country could advance its own economic growth with an understanding that a symbiotic relationship was necessary.

This first private limited liability companies limited by shares was positioned within a post colonial and post emancipation emerging economy. "Slavery had been abolished in 1833"[333] and just a little over a decade old and early pioneers saw that there were beneficiary stakeholders outside of the company's internal mandates. Its keenest disposition on corporate governance and its almost philanthropic views about corporate social responsibility were the hallmarks of the company's succession planning.

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conveyed to John Hazell at some point. See also Appendix 3(2) – An Indenture; Appendix 3(3) – Section of the Indenture instrument and Appendix 3(4) – Copy of Conveyance – see accompanying explanation thereat.

[333] Matthews, Gelien, *Caribbean Slave Revolts and the British Abolitionist Movement* (Louisiana State University, USA 2006) 13 – 14, 29

The aforementioned were some of the determinants within the structure of the private company that comprised the nature of corporate governance best practices at its core. If analyses were done on the then average stakeholder, these would show how they were still tied to a "plantation economy"[334] as they irked out their livelihood. However, even as they co-existed with a relatively new phenomenon, the company sought to respond positively to these stakeholders. The earning power of citizens gradually increased over time. There was a move away from plantations and many stakeholders gravitated towards employment that were seen as contributory to services and or products used by employees of this company.

After more than a century, from successive generations of stakeholders within this same post colonial emerging state, there was advancement towards new forms of employment that were less labour intensive and newer financial instruments and organisations. Other companies 'dotted' the corporate governance landscape. This first company by its own admission recognised its competition and even after a century of singular commercial dominance, the emphasis was on providing the best services to its customers so that it could maintain its position as "First house"[335] on the island. This was a synonymous term used to symbolise, first in business, first in service.

Many stakeholders welcomed the company that provided them with much needed hardware and building supplies. After an amalgamation in 1981, the same corporate best practices were seen and or experienced through its services. There were enhancement to its buildings as well as consolidation of the following: a "Hardware

[334] Klein, Herbert. S, Vinson, Ben, *African Slavery in Latin America and the Caribbean* (2nd edn Oxford University Press, Inc., USA 2007) 85 – for a description of plantation economy. There is a scarcity of literature singularly written about the similar occurrences in the smaller Caribbean islands and lessons are drawn from these shared experiences. Slavery was prevalent in Latin America and the Caribbean (St. Vincent inclusive)

[335] This was a reference to the company being the first commercial and or corporate entity on the island.

and Building Supplies Department, a Wholesale Food and Liquor Department, along with Automotive, Shipping and Insurance Departments."[336]

Employment within management and choice of directors appeared to be limited to family members both by marriage and or consanguinity. Undoubtedly, on this seminal point, its inclusion as a case study is pertinent as it contributes to the understanding of the origins of corporate governance best practices and to the "burgeoning debates on corporate governance"[337]best practices generally. This is especially in an era of post financial contagions within the Caribbean and from among a subcategory of the same private limited liability companies to which John Hazell Sons and Company Limited. While this company was not an insurance company per se, it eventually set the groundwork for an insurance department that benefitted from its corporate governance best practices.

The company was identifiable as economically viable from 1845 through to 1981. With a few exceptions, British jurisprudence on company legislation predominates its financial sector. As such, even if the John Hazell Sons and Company had written a procedural guideline on its corporate governance, the company was mandated to comply with the prevailing international best practices. This company was "limited by shares"[338]and was established at a time when there was no local company registry in St. Vincent. The "Commercial and Intellectual Property Office" as the regulator for domestic companies in St. Vincent, was itself established only in 2003 or one and a half centuries after the emergence of this first private company. Establishment and incorporation of any company were not synonymous concepts. There was a

[336] http://www.coreas.vc/about-us - accessed 7 January 2018

[337] Grosh, Margaret, Bussolo, Maurizio, Freije, Samuel, *Understanding the Poverty Impact of the Global Financial Crisis in Latin America and the Caribbean* (World Bank Publications, USA 2014) 39 - 57

[338] In the absence of a contrary opinion, the records of the company revealed that there were shareholders presumed to have held a number of shares and were present regularly at every meeting continuously so over the years. The current Chief Executive Officer resident at the headquarters of the amalgamated companies attested to the fact that shareholders attended meetings without fail and that this was well documented.

suggestion that this was a corporate 'anomaly'. There was an attempt at reconciliation in light of the provisions of the UK Companies Act 1907.

The findings presented through this case study were divided into several sections namely, the history of the company; general principles that influenced fundamental best practices; special features within the company limited by shares in the period 1845 – 1981; relevancy of the post slavery phenomenon; challenges within the shareholders assembly, phases of the development of the company; significance of findings; beyond the results and the conclusion.

3.2 The history of the John Hazell Sons and Company Limited

John Hazell Sons and Company at some point prior to 1845 began as a partnership and transitioned from that "partnership to a private limited liability Company."[339] As was the case, even the name of the company was reflected in its share ownership. Its presumed corporate governance practices arise upon its establishment. It was different from the reputable "Joint Stock Companies"[340] prevalent elsewhere within the British Empire. These companies and were created as a direct result of a public-private partnership. St. Vincent and other colonies of Great Britain were adherents to British laws on companies.

Nonetheless, there were some general guidelines on corporate governance advocated by joint stock companies and applicable to companies established for private purposes. "Table B"[341] reconstituted to "Table A"[342] bear some striking similarities to both types of companies. The other issue is that this company may have fallen within the definition of being a company that 'falls' between a partnership and a corporation

[339] Recorded as per minutes of General meeting of the company held in the 1800s and this transition incurred a fee of '$913. 80'. There was no record as to whom was this fee paid and whether this was a fee for registration of the company. An assumption was made that this was the case.
[340] UK Joint Stock Companies Act 1844
[341] See Appendix 2(10) – mention made of *Table B* reconstituted to *Table A*
[342] *Ibid*

as it related to a shareholder's liability. Either way, a procedural outline on the company's corporate governance was followed. Even if this was not so, the company would have created its own set of corporate governance best practices from 1845.

Thereafter when Table B was introduced in 1856, it would have had recourse to statute based corporate governance post 1856. There was not a time period when the company was devoid of guidance on corporate governance practices. Also, in practice, prior to the enactment of the private companies legislation in 1907, the direction and control of the company, there were other corporate governance procedure to be followed as spelt out in rules agreed by its shareholders and directors. Additional records were not available at the time of research to verify whether incorporation was at a later year. Nonetheless, the claims about the company's establishment must be accepted from one of the company in meeting (shareholder assembly) as a powerful voice of authenticity and an organ of the company.

The concept of limited liablity was debated in the British parliament for many years prior to the development of a Vincentian commercial sector. Such "legislation was not to control the conduct of the most wise and of the most virtuous; it was intended to check the erring, and to deal with human nature as they knew it to exist."[343] Company law was designed to protect all stakeholders (internal and external to the company) as they sought to engage in commercial endeavours of varying financial magnitude. There were 'crooks' who saw the benefits of limited liability and begun to use the private company for worthless means. The decoupling of the rights of control by shareholders from the priviledge imposed by "limited liability"[344] has always been one of a challenge even to the courts.

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[343] *HC Deb 26 July 1855 vol 139 cc1378-97@1386 - 1387*

[344] UK Limited Liability Act 1855 (18 & 19 Vict c 133) – the general public in the UK and by extension within the colonies of Great Britain/UK had recourse to this Act as it was the first that allowed limited liability for companies /corporations to be established by the public. However shareholders were very much liable to their creditors for those unpaid portions on their shares. There was however that notion that it was the shareholders that was now liable to the corporation/company directly and this was introduced through the Joint Stock

John Hazell Sons and Company Limited was in existence in the days of the historic case of Salomon. Lessons learnt remained fundamental to modern company law. In the instance, John Hazell Sons and company was one that had eight shareholders. The company had established its faith in British law. The notion that the company was a "legal persona"[345] and distinct from its member was established law.

The aforementioned statement was not to cast doubt upon the genius of corporate governance that held the John Hazell Sons and Company Limited together in those early years. Rather it is to agree with the British Parliament that a 'check on the erring' was an imperative. Stricter legislation became imperatives over time and these measures impacted the formation of companies in former colonies like St. Vincent and the Grenadines and other nations that followed the British company law jurisprudence. John Hazell Sons and Company Limited remained a bastion of corporate governance as was revealed by this research. The examination of available documents pointed to a well - ordered and well disciplined private limited liability company.

John Hazell Sons and Company Limited introduced to the debate a typical domestic type company with its British company law traditions. There was some indication on transparency on share ownership; levels of authority and autonomy among stakeholders; the nature of how the company was directed and controlled; the company's thinking on risk management and other aspects of corporate governance best practices. The discussions on the aforementioned elements were specified throughout the chapter. Without a doubt, the company in meetings expressed more than a 'singular' modus operandi as to how the business was controlled and directed.

Company Act 1844. Again, this was also applicable to colonies like St. Vincent that followed the British legal tradition.

[345]Brough, Gordon, H, Private limited companies: Formation and Management (3rd edn W. Green and Sons Ltd., UK 2005) 3 - 7

Corporate governance practices were also the determinants in the company's corporate social responsibility.

Undoubtedly, there were commercial pre - conditions that led to the transition from "partnership to a private limited liability Company."[346] Inherent in this transition were implications on a struggle for the recognition of the company's limited liablity status even in these early times. Some insights from discussions on the UK law of "private partnerships"[347] and the struggle for limited liability generally were provided for a wider context. It was the British company laws and the UK Companies Acts that were amended as a result of the concerns expressed by British parliament. In conceptualising the first established private limited liability company on St. Vincent, the following comments were instructive since a historical persuasive was expressed. This was significant even though the establishment of a local Vincentian company was nearly ten years previous to this debate.

Mr. Lowe commented,

> "It being the present state of the law of private partnerships that property and capital not embarked in the concern, and upon which credit was never given, is liable for the debts of the partnership, it remains to be seen what is the proper manner in which to deal with this question of private partnerships. One method would be to carry the present law of limited liability into these partnerships, and to say that any number of persons, however small—even to one, and there could not be a much smaller number than that—that he or they shall be entitled to be formed into a corporation, and to enjoy, as such, the privilege of limited liability"[348]

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[346] Recorded as per minutes of General meeting of the company held in the 1800s and this transition incurred a fee of '$913. 80'. There was no record as to whom was this fee paid and whether this was a fee for registration of the company. An assumption was made that this was the case.

[347] *HC Deb 01 February 1856 vol 140 cc110-47*

[348] *Ibid*, see cc 113

The company on St. Vincent in 1845 did enjoy the privilege of limited liablity but this notion does not appear to have been wholly statute driven initially. When the transition from partnership to company stauts occurred, there was an acknowledgement about the struggle for limited liability among those partners. It was Kraakman et al that spoke extensively about "the same struggle for limited liability"[349] among similar companies at different time periods. However, at the time of establishment, the local legislature on St. Vincent was not sufficiently advanced nor could have acted independently, but total reliance was placed on the UK Companies Acts and British company laws applicable to its colonies within the period "1845 through to 1907."[350]

It became necessary to filter the debate about corporate governance best practices and its commencement on the island through this First House – the John Hazell Sons and Company. There was a distinction on how this company was directed and controlled. Corporate governance best practices of this local First Company goes against the notion that the said corporate governance best practices arise upon incorporation. In this instance, the beginning of corporate governance practices were primarily those 'coined' by the predecessors of the company. These were the subscribers to a Memorandum prior to the legislation that allowed for private companies under the UK Companies Act 1907.

According to an article by Kempin, "limited liability in English thought"[351] was towards the end of the eighteenth century. It begs the question as to whether the conjoin corporate governance arises therefrom and if so, whether all that notion about

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[349] Hansmann, Henry, Kraakman, Reinier, Squire, Richard, *The New Business Entities in Evolutionary Perspective* (unknown publisher, 2005) 1 - 4

[350] UK Joint Stock Companies Act 1844 – mention of limited liability served as guidance to all types of companies in existence. Limited Liability and corporate governance had to be conjoined in the UK Companies Acts 1845 through to 1855; 1862 – 1907. There was no mention of private limited liability company until 1907. Yet, the direction and control of companies relied on guidance from Companies Act 1862 *Table B* and then the reconstituted *Table A* 1865 – 1907.

[351] Kempin, Frederick, *Limited Liability in Historical Perspective - American Business Law Association Bulletin* (Unknown publisher, undated) 13

full corporate governance was also towards the end of the eighteenth century. Be that as it may, the John Hazell Sons and Company alluded to the fact that it was the First House or first company on the island since 1845. The point was reiterated in minutes about its centenary celebrations that "for over one hundred years" the Company held an active status. It was plausible that initially, private companies were not the creatures of legislation.

Having said that, a number of issues shaped the corporate governance practices in John Hazell Sons and Company Limited, that functioned effectively for nearly a century. They were:

- Joint liability by all partners and the extent of the liability had to be extended or maintained,
- Ownership and dispersal of all assets,
- The control of the business entity and to whom such functions were to be delegated if at all,
- The direction of the company and the role of directors were specified according to guidelines, procedures and systems initiated by the company in meetings and,
- The extent to which that direction and control of the business affected the commercial undertakings of the company and whether the management and decision-making processes were concentrated in the hands of too few.

In the company under study, family members served both as directors and shareholders. There were more than "five members"[352] as directors. Their roles were specified and naturally some guidance had to be provided by British company laws. The influence, authority or intentional actions of any majority among the shareholders was not recorded. There was no prohibition by the legislature on the establishment and continuance of this company as a private limited liability company. The direction and control of this entity was in keeping with the objectives of a family and recourse

[352] Appendix 3 (5) – List of Directors of the John Hazell Sons and Company Limited by shares up (Minutes of the Centenary meeting)

was made to the prevailing "legislation"[353] or other available guidance on corporate governance.

As common law juridical bodies, the direction and control of companies whether they were joint stock companies or insurance companies, all followed the fundamental tenets of British company laws. For instance, in St. Vincent there was the existence of a joint stock company in the form of the "Barclays Bank"[354] that was sufficiently advanced in the conduct of its own corporate governance best practices. Also, there was the branch of an "insurance company"[355] that operated out of Barbados from around 1849. Together, these similar companies undoubtedly exerted some influence on corporate governance best practices to John Hazell Sons and Company.

3.3 General principles

While the company engaged in its progressive corporate social responsibility, it did so in order to maintain its 'competitive edge' and as part of its corporate governance best practices. As such, the discussion on corporate governance best practices cannot be divorced from what influences were exerted on its fundamental principles. See Figure 3 (1) below. The John Hazell Sons and Company was one that vigorously promoted a corporate governance agenda for close to a decade. The general principles and ideas about best practices were:

(a) Integrity at its core, which was basic to all corporate governance best practices. It took into consideration its beneficiaries/stakeholder community – the people that it served.

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[353] UK Company Clauses Consolidation Act 1845; UK Joint Stock Companies Acts 1862 - 1878; *HC Deb 10 May 1878 vol 239 cc1705-12* – Debate as to the abuses committed under these Acts. However, corporate governance practices within these companies would have exerted some influence on the direction and control of the John Hazell Sons and Company Limited

[354] *www.cibcfcib.com/index.php?page=barclay-s-history-in-the-caribbean* - accessed on 15 January 2018

[355] *www.sagicorlife.com/Pages/Countries/Countries-St-Vincent-Grenadines.aspx* - accessed on 8 April, 2018

(b) The company demonstrated an ethical approach on the delivery of products and services towards them.

(c) The corporate governance system was one that was reliable in its delivery.

(d) There was fairness in terms of treating its stakeholders equally as was captured in its centenary comments. The Staff was paid dividends and there was general encouragement to them to continue to work assiduously.

(e) Consideration for the welfare of the wider stakeholder community. There was a sense that this was the only way in which to create the necessary balance needed for the company to survive amidst the harsh realities of life.

(f) The matter of transparency in its modus operandi was unquestionable. Although family oriented, the company in meetings was able to report on its yearly operations to its members and other stakeholders. These levels of transparency aided projections and objectives for succession planning by the company.

Figure 3(1)

General principles that influenced corporate governance best practices

Integrity
Consideration for the welfare of beneficiaries (stakeholders)
Ethical approach on the delivery of products and services
Reliability
Fairness towards stakeholders
Transparency

Source: Compiled by researcher - 2018/ 2019

At best, specific to John Hazell Sons and Company were fundamental values to which members were to aspire. These values were repeatedly advocated by John Hazell Sons and Company Limited in meetings and were as follows:

- Square and honest dealing - "Strict adherence to the [principals] principles of square and honest dealing…laid down by predecessors"[356]

- Loyalty to customer - "Loyalty of our customers…"[357]

- Commitment by Staff to assigned tasks - "… The steadfastness and application with which our staff has applied itself to the task allotted to it."[358]

It was clear that the company had benefitted from some measure of an adherence to those principles that were in keeping with honest transactions in its business dealings with shareholders and stakeholders. The emphasis was on members who were advised to maintain best practices for the sustainability of the company. When members were commended for their loyalty to the customers, this category of stakeholders were the ones to confirm that the business had served the purpose for which it was established. These values were for the sustainability of the company and aided with succession planning. What was advocated was that there was no room for failure and a fall off in profits if the company did not adhered to the value laden service to its customers.

The Business Model

The discussion turned on the business model based on loyalty to customers. Without customers, the business would have failed in its first mandate to provide quality services and or products to its many stakeholders. The First House was capable of engaging the general public. However, the Customer Loyalty Business Model was proven to have been effective to date.

As per Figure 3 (2) – The Customer Loyalty Business Model had the following characteristics:

(1) The quality of the product and services utilized by the company.

[356] Appendix 1(1) – Excerpt from minutes of meeting as per fundamental principles of best practices on corporate governance
[357] *Ibid*
[358] *Ibid*

(2) Customer or stakeholder satisfaction was emphasised.

(3) Holistically, the loyalty of customers was encouraged and projected.

(4) The profitability of the company in the long run was the ultimate aim.

The cyclical motion of these key components indicated that the actions and interactions by both the customer and the company led to a harmonious relationship on profitability and productivity. In other words, the company could not exist without the customer.

Figure 3(2)

The Customer Loyalty Business Model

Advocated by the John Hazell Sons and Company Limited – a private limited liability Company limited by shares – St. Vincent and the Grenadines c. 1840s through to 1900s

Source: Compiled by researcher 2018 - 2019

The suggested format had as an end goal to retain its competitive edge and profitability. This model used by the "first house"[359] in the island of St. Vincent and the Grenadines became popular over time and served the company's interests. This was an ambitious task advocated by the company and its members to "maintain…[and] [followed]…we shall continue to keep our place as the first house in St. Vincent."[360] Customer loyalty was the motto for the company that proved positive for well over a century.

The corporate governance best practices dictated that the company provided quality products and services to the customer. When the customer was supplied with the quality of product or service in keeping with the desired expectations, he was more than likely to express such satisfaction. Thereafter the customer was in a state of expressing loyalty to the company. A loyal customer was more apt to purchase more products and services expecting the same conditions that promoted his loyalty in the first instance. The company received satisfied customers and this ultimately added to the company's profitability. This cycle was repeated for the mutual benefit of the stakeholder population as well as the company.

Corporate social responsibility in early corporate St. Vincent

From the onset, the word corporate was synonymous with the businesses developed through the private limited liability companies and part of the wider stakeholder communities in St. Vincent. The population was roughly 110, 000 persons. Comparatively speaking a similar situation was present in Trinidad and Tobago within similar private limited liability companies. The corporate world that surrounded these islands was allowed to establish and or incorporate companies

[359] Appendix 3(1) para II – The use of the word "first house" in reference to the Company's delivery of brand identity
[360] *Ibid*

within the vicinity of villages and or towns. Within post emancipations societies, villages and towns were generally underdeveloped by world standards.

Corporate social responsibility remained in its infancy stages for a considerable length of time and a topic with which some stakeholders had some success. For over a century, the John Hazell Sons and Company understood what it was to include and promote its corporate social responsibility among its stakeholders. Generally, thereafter, the private company either developed their own model or followed examples laid down by others. The private company in its role contributed to the cause of sustainable development.

The protection of the environment, social welfare and profits of the company are some aspects of the company's corporate social responsibility. It was debatable as to whether private companies were to bear the burden for bridging the gap between the corporate world and the poor communities in the state. It was noticeable that companies created wealth for all its stakeholders by the products and services they sell to stakeholders whether rich or poor. It was considered a moral and ethical obligation within the corporate sector to contribute to the development of the poor through Corporate Social Responsibility.

3.4 The special features within the company limited by shares 1845 – 1981

1845 – 1981

There were special features within the company over the period 1845 to 1981. These were risk management; transfer or sale of shares; the Memorandum of Association and Articles of Association.

Risk Management

High on the management agenda was the issue of risk. This was a somewhat appreciative quality of best practices within the direction and control of the company

in early corporate St. Vincent. As they were an integral part of the business, the family understood the culture of risk management. This aspect was integrated into an approach to succession planning and the company viewed this as its collective responsibility. An explanation was offered about the decision taken about risk management. Those issues were made clear to the company in meeting "in the interest of all concerned."[361] One such concern was whether the company in meeting understood the complexity of the risks faced by the company. "The stock and the buildings belonging to the company"[362] remained as critical within the risk assessment cycle.

Additionally, the management of the company expressed another concern as to whether the potential risks were clearly identified. Further, there was an evaluation of the threat profile of the risks or potential risks such that the decision was taken to "fully cover"[363] against "all the usual risks, such as fire, earthquake, hurricane & gales, volcanic eruption etc. and a policy was negotiated through our London agents with Lloyds."[364] The company was determined to do what was necessary to protect itself all risks as well as to continue with the monitoring and evaluation processes within risk management.

Transfer or sale of shares

A few "descendants"[365] of the original shareholders explained that this was a phenomenon. Sale and or transfer of shares to other family members enabled the purchase of individual homes and other commodities. The actual dates could not be verified but the feature of share transferability was one that was provided for within legislation on the private limited liability company limited by shares.

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[361] Appendix 1 (3A*)* – Excerpt from minutes – "in the interest of all concerned."
[362] *Ibid*
[363] *Ibid*
[364] *Ibid;* see also Appendix 1(2) as symbol was still displayed on the Headquarters of the amalgamated Coreas Hazell Company even after a century to demonstrate commitment to the undertaking by pioneers of the company in association with Lloyds of England in this regard
[365] Discussions with descendants of shareholders: 'shares held by shareholders were both transferred and or sold so as to purchase homes and other commodities.' This information was relayed to researcher as part of the oral history that surrounds this company. – Mr. Steve Maingot (London, UK November 2012)

Memorandum of Association and Articles of Association

There was no record of a Memorandum of Association being filed with Companies House in the UK or in St. Vincent and the Grenadines in 1845. The Memorandum of Association is the document, which outlines the details of the company. On the other hand the Article of Association detail the rules and regulations of the company. These are presumed to have been part of the documentation. In the case of St. Vincent, there could not be, as this was by reason of historical. It was not considered a legislative anomaly or the occurrence of a lacuna in the law. The memorandum of association was to show that the family members' intention to subscribe to the formation of a company.

Memorandum of Association, minutes and more

In the minutes of meetings, there were records of the directors and shareholders roles and responsibilities and the company kept records of the business of the company for the years over its life cycle. Some of the records due to years of disuse were unavailable for thorough examination. However, there were records and minutes of annual meetings and other special meetings that provided sufficient evidence of a functioning organ (shareholder assembly/company in meetings) of the company. An amendment to its Memorandum of Association"[366] or provision for such transition and amendment was proof that there existed a fully formed and recognisable entity.

The Memorandum of Association appeared to have dwindled in significance. It appeared that this was due to common law and statutory challenges that were faced by companies generally and which might have contributed to such a shift. However, the Memorandum of Association was introduced under the Joint Stock Companies Act 1956 as a constitutional document. Herein lay the procedural outline of the company and its corporate governance best practices so called.

[366] H.K Saharay, *Company Law* (5th edn Universal Law Publishing Company Pvt. Limited, India 2010) 3; Dine, J, Koutsias, Marios, *Company Law* (8th edn Palgrave McMillan Publishers, UK 2014) ix

The Memorandum governed the manner in which the company related to its stakeholders while the Articles of Association spearheaded its internal affairs. The Memorandum was more like the constitutional document that gave a snapshot of the history of the company. From 1856 onwards, the Memorandum of Association was a document considered as fundamental. It prevailed over the Articles if there were any inconsistencies. The Memorandum of Association provided information about the company's name; where it was domicile; the objects; whether the property was private and in this case it was and whether in this instance, the company was limited by shares. If so, the company clearly, did have the power to amend its constitutional documents.

Companies could amend their constitutional documents by special resolution by in 1856 there was no such provision. However, by Companies Act 1862, companies were allowed to amend their Memorandum in so far as to allow the company to change its name and capital requirement. The law prohibited any other amendments. It was the amendments on those Articles whose scope was widen by subsequent Company Acts. There was not a general power given to amend. Every amendment was subjected to procedural requirements, which were special procedural requirements.

3.5 Post slavery and a British Company structure on St. Vincent

Additionally, the lasting impact of the Slavery Abolition Act in 1833 on the island itself was still felt even a decade on when the John Hazell Sons and Company was formed. The socio economic fabric of society was changing. There was readjustment to a new working environment generally for the wider stakeholder population. Greater emphasis was placed on the value of their labour. Within this same time frame in the mid 1800s, and among the wider Caribbean region, there was also a prevailing anti-slavery movement inspired in part by many within the wider British Empire. These could only be classified as abolitionist agitators. These issues must have contributed

to the shaping of the socio-cultural aspects of the internal organisation of the company.

Emphasis was placed repeatedly on religious, economic and other social factors emanating from this cause. Britain was keen on maintaining peace and economic stability within its colonies. There was no imposition of a British construct such as a company like John Hazell Sons and Company. A family oriented business became established for economic gain and this was no mean task. It took time to be well appreciated by the wider category of stakeholders. The significance of direction and control of the company to the nature of corporate governance itself, took time to be assimilated and appreciated by would be beneficiaries.

Coupled with this the company in meeting documented how it navigated its existence through other social and economic phenomenon such as World War 1 and World War II for the period 1914 to 1918 and 1939 to 1945 respectively. Its obligations to staff for one thing, clearly demonstrated that it acknowledged its corporate social responsibility and its fiduciary obligations to customers, directors and shareholders alike. Also, there was always the emphasis on directors' duties and how they responded to many challenges.

Challenges within the shareholders assembly

The synoptic view expressed by the company about the challenges embraced over a century of its existence read this way:

"But it will mean greater application and harder work than in the past. Today the firm faces greater competition than before. New concerns … it seems reasonable to assume that such business available will be more thinly spread…."[367]

[367] Appendix 3(1) – *Minutes of centenary meeting of the John Hazell Sons and Company Limited, 1945*

What was clear from the outset was the company in meeting, recognized that it faced competition as time progressed but that directors and shareholders alike were willing to be proactive about charting a decided future for the company. This was part of the company's corporate governance agenda and one that emphasized those concerns held jointly by management and shareholders within the company. Nonetheless, the legacy on best practices and overall contribution to what constituted the nature of corporate governance within the private limited liability company limited by shares remained an undeniable occurrence.

Observations within the scope of the hypothesis

There were however, two major observations about this company within the scope of the hypothesis examined. In the first instance it was not an insurance company and secondly it could not be categorized as contributory to the lack, absence or disregard of best practices, which contributed to genteel poverty. It therefore could not impose any negative impact on the gross domestic product of the nation state.

As far as was known during the composition of this original thesis, there was no monograph on the study of "John Hazell Sons and Company Limited"[368] nor any other article written with an objective on the company's contribution towards corporate governance best practices in St. Vincent and the Grenadines. It is respectfully submitted that these observations should amplify any call made to have the company recorded officially as part of the island's " history of company law."[369]

[368] John Hazell Sons and Company Limited – see section from Appendix 3(1) - on section of the minutes – quote the section where name was written " John Hazell Sons and Company Limited 1945 having been established for one hundred years previously

[369] Appendix 3(2); Appendix 3(3) and Appendix 3(4) - Indenture and Deed of conveyance – a historical document on the conveyance of property that constituted the ownership of the original property that laid the foundation for John Hazell Sons and Company Limited. This was thoroughly discussed with the CEO Mr. Joel Providence. These were archived documents for the company that laid claim to its genesis as the First House/First business/First private limited liability company to have been established on this premise on the island.

Identification Of The Organs or Institutions Of The Private Company

The establishment of this company was noted as a legislative 'anomaly' in a colony where the prevailing UK Companies Acts and British company laws were applicable. It should not be an overstatement to reiterate that the claim to its establishment was in 1845 but only in the UK Companies Act 1907 provision was made for the term 'private'. Again, this does not preclude this established company from being duly recognised as a duly called private limited liability company even prior to the Act. The actions of the directors and shareholders were those that were allowable in English company laws. The directors and or managers allowed for a transition in keeping with guidance provided to the company. This was representative of part of their corporate governance mandate for proper corporate procedure and practice to date. Nonetheless, for such transition an expense of nine hundred and thirteen dollars and eighty cents - "$913.80"[370] - was incurred. It was said that, "your Directors have considered it wise to write off this entire sum in the past business year."[371]

Normally, however, according to the legislation, it was upon incorporation the issue of corporate governance arises such that the organs of the company became identifiable so as to facilitate the continuance of the company. The narrative here seems to suggest that initially, the formation of John Hazells Sons and Company was not driven by company legislation. It may have been out of necessity and expediency in light of partnership arrangements that may have become too onerous. From the pages of its history, the company in meeting identified its directors, shareholders and management structure.

There were categories of stakeholders charged with corporate governance practices even if the word 'corporate governance' was not in popular usage. The identification of the institutions within the company is critical. In a broader context, and to avoid

[370] Appendix 1(6) of which the details are mentioned elsewhere in this thesis regarding payment made on transition from partnership to private limited liability.
[371] *Ibid*

confusion, a distinction has to be made between the word "institutions"[372]when referring to the organs of the company or the company itself. The company is duly called a financial institution. Here in this instance, the organs are also institutions within the private limited liability company limited by shares and are identified as the board of directors and the (shareholder assembly) /the company in meetings.

Direction and control of the company – 1845 - 1981

The board of directors

1845 - 1862

In this first phase, the ethos behind best practices on corporate governance was provided for through UK Companies Acts 1845 to 1862 that governed public companies. Companies for private purposes were not yet fully provided for through legislation until another four or more decades. They were also presumed to be those advocated by family members (value laden) who served simultaneously as directors and shareholders. At best, the procedural guidelines (corporate governance best practices) appeared to be modeled on the former Table B reconstitued as Table A of public companies.

These existing UK Companies Acts and their Statutory Instruments along with the default Table A did serve as a general guide to early established companies both in Great Britain and in its colonies and former colonies. It was presumed that the established John Hazells Sons and Company Limited did follow to a great extent, some corporate governance guidelines but not as a private company per se. Within the prescriptive Table A a number of key provisions were outlined and relevant to the corporate governance of the company and possibly used even though there was no record of the its incorporation:

[372] *www.siteresources.worldbank.org/EXTPUBLICSECTORANDGOVERNANCE/Resources/governanceandgrowth*.pdf, 2 - 27 July, 2019

1. The power and duties of directors, disqualifications of directors; rotation of directors; proceedings of directors and,

2. Shareholders or members; the company in general and other special meetings and the procedure as to what and how members can utilize shares effectively.

Other reasonable assumptions were these:

- The number of directors who were also shareholders and were known to have consanguinity. As a result the business strategy was discussed among the same key personnel within management who were also shareholders. This would appear to have had the effect of a sharper focus on corporate governance. The strong "ownership criteria" on shareholding could not be ignored. The company at law was an entity that could not be owned by individuals even though its members were drawn from the family as well as its shareholders. These persons formed the management team and provided direction to business entity. The presumption was that it became increasingly easier to transmit the corporate governance practices on a more regular basis as was communicated. The company in meetings recorded the outcome of management decisions taken over the years.

- The day-to-day management of the company undoubtedly proved "challenging" through the years. There was always an outlined path to follow in the interest of the continuance of the business and the execution of best practices.

- Those who established the company engaged in succession planning; and apportion issues that touch and concern management, corporate governance, leadership, accountability and other pertinent to effective governance. This had the effect of alleviating potential contagion effects of controversies within the family and among the wider stakeholder community.

- The structure of the family business was considered by those who managed and controlled the day to day business. Some of those issues were: ownership rights; general rights and responsibilities of shareholders; choice and effectiveness of directors and the role of managers and employees. When taken together the sum total of decisions about corporate governance best practices positively impacted the company that lasted for more than a century.

Directors

At the outset, there were at least five to seven directors. These were generally family members. Whether grounded on the legislative guidelines or on "moral suasion ... that is purely informal ... and ... no legal force,"[373] corporate governance principles were well articulated in the interest of the company.

3.6 Phases of development of the company

1862 – 1981

Although references were made to these UK Companies Acts up to 1907, they still provided corporate guidance to public companies and private companies. There were debates and public discussions in parliament about the merits and demerits of the various amendments in response to economic and political changes in the UK society.

This notion of repeated planning and execution of those plans constituted part of the life cycle of the company. The consensus drawn was that although it could not be ascertained as to the date the company was incorporated, there was "evidence of corporate governance best practices"[374] in some instances. From the applicable UK Companies Acts, the version or versions of Table A remained those in practice by similar companies within the private limited liability company on St. Vincent and the Grenadines for the stated period 1862 to 1981.

For a comprehensive review of the Table A that were likely to have been referenced as procedural guidelines on management during the life span of the company, see Appendix 3(4). Barring a contrary opinion, even after 1907, the presumption was that

[373] Gupta, K. R, Mandal, R.K, Guptha, Amita, *Macroeconomics* (5th edn Atlantic Publishers and Distributors (P) Ltd., India, 2008) 483

[374] See Appendix 1(6) – Directors role in the financial decision making process towards transitioning from partnership to private limited liability company

the company had recourse to "Model by laws"[375] and "Model Articles"[376] which were supplementary to the prevailing UK Companies Acts. Also the company may have had the option of placing reliance on the multiple versions of "Table A."[377]

The role of Shareholders in this context

Since the establishment of the private company, a closer examination revealed the duality of roles that shareholders [these members] shared. Each shareholder had to have at least one share at minimum. The provisions within the UK Companies Acts and Statutory Instruments attributed much significance to the shareholder. He or she was a purchaser of shares within the company. These members or shareholders contributed to the share capital of the company; held varying classes of shares with differing attached rights; and have had the power to convene and or conduct meetings by virtue of the critical role they played.

The Articles of Association

Default Articles of Association continued to outline the shareholders input into the company. The regulating of shareholder' relationships between and among themselves was done by virtue of shareholders' agreement in conjunction with the provisions in the Articles of Association. The shareholders' agreement was one that prescribed privacy among the shareholders. The Articles of Association on the other hand was a public document and available for inspection by members of the public and generally so at the Registrar's Office in the UK up to the early 1900s in St. Vincent and the Grenadines. There was none on record for John Hazells Sons and Company.

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[375] Appendix 1(8) - Model Bylaws that contained the procedural guidelines on corporate governance of the private company that may have been applicable in its current format. These guidelines save and except for incremental changes were borrowed from the UK Company Acts as legislation for public companies and accordingly amended to fit the Vincentian experience

[376] See Appendix 5(1) – Model Articles applicable to private companies registered after 2013; see also *Appendix 5(2)* for Model Articles for private companies limited by shares prior to 2013 for contrast and comparisons of the UK and St. Vincent Model Articles.

[377] Appendix 5(3) – See for comparisons made of old model *Table A/Table B* and its relevance to corporate governance of an incorporated entity

Mention here if only for reference was that the greater binding effect of such a document cannot be underestimated. While the Article of Association bound the shareholder in his capacity as such, the shareholder agreement bound the person in his capacity as a director, creditor or an agent of the company. This was presumed in the case of the first private company. The interesting thing about the Articles of Association as compared to the shareholder's agreement, the latter can be amended by specific measures namely, the unanimous shareholder agreement. From the minutes of meetings, the presumption arose that this operation of shareholder agreement was in practice.

Shareholder agreement

On the other hand, there was a significant disadvantage of any shareholders' agreement. This was due to its contractual nature as it only bound the parties that were privy to the contract and could not bind all shareholders. This remained a concern when transferral of shares from one shareholder to the next as it could not bind the 'new' shareholder to the terms of the shareholder's agreement made. While shareholders and shares changed hands it was diffiuclt and next to impossible to ascertain the binding effect of the shareholder's agreement within this first company.

The company in meetings

Annual general meetings and extra - ordinary meetings

For the period 1845 – 1981 the John Hazell Sons and Company was under statutory obligation to hold its meetings. This aspect of the private company indicated that procedurally this organ was functioning. It was not traceable as far back as to the days of its early establishment but the company always complied with the prevailing and applicable UK Companies Acts and British company laws to hold annual general meetings and extra - ordinary meetings; and to conduct the business of the company

accordingly. Copies of its annual general meetings and extra ordinary meetings were analysed.

All of the company's shareholders met at duly convened meetings yearly and at times dictated by the company in meeting. Local laws were amended to reflect the prevailing laws of the UK. Even after gaining its political independence, this did not significantly affect any laws relating to companies save and except where the socio-political and economic conditions dictated otherwise within the domestic sector where this company was classified. The nature of the business meetings varied according to the diversity of issues that confronted the company in meetings over those years.

Up to the year of amalgamation, there was still a statutory requirement for private companies like John Hazell Sons and Company to hold an annual general meeting. Due to the absence of some of the company's records, the minutes of the centenary meeting served to verify that annual meetings and other meetings of the company were held. Discussions were held with the current Chief Executor Officer of the amalgamated companies – Coreas Hazells Incorporated. The legacy left by this company indicated that the greater number of directors/shareholders attended 99% of annual meetings and other meetings held by the company during its life span. Discussions with descendants of at least two of the subscribers also supported the claim that attendance at meetings were regular and 'without fail.'

As was customary and provided for by the law and the company's articles of association or model articles, the annual accounts were presented as well as the directors' reports. The election of directors and auditors was also a feature at the annual general meetings. There was a presumption on this point in that the accounts were still distributed to the shareholders. It was also reasonable to assume that the company for some time was not subjected to the normal rules that provided for the requirement of financial reporting. As a result there was limited information about the company's financial performance.

"Extra - ordinary meetings"[378]

This was undoubtedly another feature of the private limited liability company limited by shares. Over time and with the increase of business, these meetings were called so as to deal with matters that were considered extra - ordinary or to discuss general matters that affected the direction and control of the company. These were duly called and a register of attendance was kept.

Significance of findings

If only for emphasis on its historical and legislative significance, it was from the minutes of its meetings that it was established that the transition from a partnership firm to a private limited liability company occurred in 1845. Partnerships were creatures of the common law. These dated back to a time when similar provisions were also identifiable within Roman law. The case in point was the "societas universorum quae ex quaestu veniunt"[379] or a commercial partnership that generated profit or a "general partnership."[380] It was allowable for partnerships to be formed through oral agreement, a written document or by the conduct of such partners.

This type of societas was accepted in the absence of proof to the contrary. It was highly likely that the partnership (partners) that transitioned to the private limited liability company consented which was deemed as per verbal contract. The interesting thing was that Roman jurists did not acknowledge this kind of procedure given that consideration must first be moved from each partner and recorded. However, as commerce dictated, the partnership phenomenon like many others became codified in the UK "Partnership Act"[381] in the 1890s having borrowed elements of the societas from Roman law.

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[378] *UK Companies Acts 1907; St. Vincent Companies Act 1994*
[379] *Butters v Mncorca 2012 4 SA 1 (SCA) para. 14*
[380] *Ibid*
[381] *UK Partnership Act 1890*

With regards to limited liability, Holdsworth explained that it was,

" As early as the fifteenth century it was clear that an individual co-operator was not personally liable for the debts of the corporation and after some hesitation this conclusion was ultimately accepted in the latter part of the sixteenth century (by common law courts)."[382]

The statement by the John Hazell Sons and Company in meeting was that it was a private limited liability company. The "minutes of that meeting"[383] was likely to be made in 1845 and this status of the said company may have been possible given the aforementioned statement made by Holdsworth. However, private limited liability status was made possible by the Limited Liability Act 1855 ten years after the claim made by the company to having been established. A number of observations seem pertinent here in that,

- The question remained as to whether the company in meeting was referring to customary practices in 1845 that may have amounted to being considered as a 'private' company. It must be noted though, that the belief where shareholders were accountable to the company was introduced by the Joint Stock Companies Act 1844. John Hazell Sons and Company was not a joint stock company but one that declared it was a private limited liability company.

- Inserting clauses in the Articles of Association that provided for an expressly stated and complete liability of shareholders for the company's debts as though "they were private partners."[384]

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[382] Holdsworth, William, *A History of English Law, Vol III* (Methuen and Company UK, 1966) 203 – for historical context

[383] Minutes of the centennial meeting – Company records - John Hazell Sons and Company Limited, Kingstown, St. Vincent 1945 – See *Appendix 3 (1)*

[384] Fay, C. R., *Great Britain from Adam Smith to the Present Day* (Longman, Green and Co., UK 1950) 317 for historical context.

- Incorporation of companies in the UK was subject to the Joint Stock Companies Act 1844. One year later, the assumed establishment of John Hazell Sons and Company limited was not cheap. It may be that the company was the First House and not necessarily a private company at that stage ….The factor of cost was implied according to the comments made by the company. Additionally, it stated that a good decision was made by management to write off this debt in the next financial year.

- The fact that the company had moulded what was likely to be an unincorporated partnership into a form, which would have provided some measure of corporate liability, without a formal grant of incorporation remained a strong possibility.

John Hazell Sons and Company was positioned within the colony and responded to the mandates of its own commercial undertakings amidst a newly emancipated stakeholder society. There was evidence of "shareholders"[385] who were also the directors of the company. This was a singular venture in comparison to the prevailing customary practices of multiple established foreign - based companies with associated activities. Reference is here made to the "sugar industry, emancipation and slavery in St. Vincent"[386] from a historical perspective. The climate for an established corporate governance agenda was entangled in the aftermath of emancipation, the production of sugar and a new environment. Stakeholders then were not the same in terms of their holistic view of the benefits to be derived from any indigenous company.

Beyond The Results

The ownership of shares presupposes that the company in "meetings"[387] had a fiduciary duty to report to shareholders and directors about the nature of its business on a yearly basis and at other special times. Before there was legislative provision for

[385] Appendix 3(5) – Names of shareholders of the John Hazell Sons and Company Limited, 1945
[386] Appendix 2(2) – Fraser, Adrian, Newspaper article - *Sugar, Slavery and Emancipation in St. Vincent* -
[387] UK Companies (Consolidation) Act 1908, s. 64 – s. 71; Companies (Consolidation) Act 1908 – First Schedule/Table A: Proceedings at General Meeting s. 49 – 59

a "private company,"[388] all UK companies were premised on their appeal to the public and were public companies. John Hazell Sons and Company Limited was never a public company according to its own records.

Within the whole of the UK and given the remit of public companies, there were examples of "limited liability,"[389] the phenomenon to be found especially among some unincorporated companies. The precedence for limited liability within the seminal British company law jurisprudence on Salomon's case that became trite law. The legislation on companies was proactive and responded to the economic and political changes within British society. It was well over one and a half centuries and the legislation on private companies limited by shares was still the prevailing law of St. Vincent save and except for amendments and reform influenced by the Swiss, United States and Germany.

Fundamental was the unitary board model, which was key to the corporate governance procedural format that predominates within the hybrid system to date. The phenomenon of the hybrid corporate governance model seeks to incorporate elements of both the unitary and two-tier board structure. The effectiveness of this model remained largely untested to date.

The next generation of stakeholders would do well to continue to explore innovative ways in which the elements of limited liability can be expanded. As knowledge increases, the depth of corporate governance will also increase. It has the capacity to incorporate other aspects of corporate law that will ultimately be accommodative to

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[388] *Ibid*

[389] The Limited Liability Act 1855 provided for a limit on the liability of corporations that were established by the general public in the whole of the UK. Shareholders were liable directly to creditors for that unpaid portion of their shares. The modern principle that shareholders were to be held liable to the corporation was introduced by the *Joint Stock Companies Act 1844*. However the 1855 *Act* provided limited liability to companies with more than twenty-five bona fide members or shareholders. The insurance companies were excluded from this Act but was covered in the *UK Companies Act 1862* thereafter.

corporate flexibility, accountability and transparency using technological advancements.

3.7 Conclusion

St. Vincent and the Grenadines remains part of the Commonwealth Nations and a former colony of Great Britain. Its legal system remains largely predicated on British laws save and except for 'borrowings' from other states' corporate law. The John Hazell Sons and Company Limited was one company that was limited by shares in which British company laws and the UK Companies Acts were replicated in form and intent incrementally for close to a century. The private company was established by family members and transitioned from a partnership to a private company. Both partnerships and private limited liability company shared similarities with respect to limited liability for members and other requirements for their corporate governance practices.

The prevailing legislation as per the Joint Stock Companies Act 1844 may have had a direct bearing on the formation of John Hazell Sons and Company in so far as availability to incorporation by registration. To date, there has not been any indication as to whether the company was registered in the UK or locally save and except that the company in meetings recorded the transaction on its establishment. The notion of limited liability was available to countries that followed the British legal jurisprudence.

The partnership instrument also held legislative significance in terms of their composition and both the UK Partnership Acts and the Joint Stock Companies Act 1844 were instrumental in guiding the pioneers of the John Hazells Sons and Company Limited towards their transition. The company was a successful commercial entity for over a century and amalgamated with other sister companies in

1981. Part of its name (Hazells) could be found within and among this family legacy on companies.

Corporate governance best practices developed from well-articulated family values and were codified and or mandated through legislation. Corporate governance served as an insurance against corporate scandal, fraud as well as criminal and civil liability within the company. Corporate governance best practices promoted the company as a self - policing company with responsibilities to its shareholder and wider stakeholder. The shared philosophy, practices and culture of the company and its employees were well articulated over time. Its corporate social responsibility indicated that it had a soul or conscience.

Corporate governance best practices were specified in the applicable by-laws and amended Table A; the latter was a workable but historical document that provided a set of rules and or instructions about corporate governance best practices. While these guidance about corporate governance was found therein, incrementally, there was adherence to common law and customary international corporate governance best practices for the private limited liability company limited by shares.

While it lasted, the company was still able to address its challenges through a proactive approach on corporate governance. Its unitary or one-tier board model was central to the company's succession planning and risk mitigation. It conducted business in keeping with British company laws and the UK Companies Acts from the 1800s. Having been amalgamated in 1981, the dictates of British company law was lasting.

During the years of its continuance, the company was able to remain the custodian of purpose that provided assurance to those staff members as well as other key stakeholders – customers, other organizations, government and the community at

large. It did appear that the company also protected management as far as was possible from anything that was deemed short - term distractions. John Hazell Sons and Company held closely to its business model and at times appeared to meld with some aspects of the disciplines of a 'Private equity house' in its bid for continuity of purpose. It demonstrated and unleashed its potential as a multidimensional company by harnessing its full access to available capital and management talent during its life cycle.

The company had the policy of dealing fair and square with its stakeholders. This was quite commendable for a company that emerged from the earliest days of a post colonial, post slavery and post emancipation society. The organs of the company were identifiable. For instance, the directors and the company in meetings (shareholders assembly) and the latter kept a record of minutes over the years. When it comes to the financial aspects of the business, it had equity, which was the value of the asset of the company after the value of the liabilities was deducted.

The sum total of the earnings was not recorded, but a reference to the 'presentation of annual accounts' directed attention to the fact that the company maintained its annual accounts. There was mention made of the decision taken by directors to 'write off ' the sum payable for the transition from partnership to private limited liability company. Additional mention of 'other assets' like buildings, the operational costs and bonus payable to staff was some of the equity of the business.

Finally, there was evidence of capital, which was not listed on any public exchange but garnered from funds, and from investors that directly invested in the private limited liability company. The mere fact that the transition from partnership to private limited liability company allowed for the company to become a thriving business enterprise signals that it amassed more capital through input by its shareholders. The paid in capital and retained earnings were part of the company's balance sheet and representative of its equity. Finally, when it comes to amalgamation of the company,

it was reasonable to conclude that the lack of control of negative equity was an imperative. It was not suggested that this was the principal reason for amalgamation but it was an acknowledgement that consideration must have been given to negative equity.

Varying aspects of the company's corporate governance best practices were always utilised in keeping with its undertakings. Shareholders made the decision to amalgamate this company based on the calculation of any equity built up over the years. The comparison of tangible and intangible assets was also imperative. The intangible assets of the company's reputation and the brand identity were still part of the amalgamated company "Coreas Hazells Company"[390]of present times.

[390] *www.coreas.vc/about-us* - accessed on 24 April, 2019

CHAPTER FOUR

THE CASE STUDY OF THE BRITISH AMERICAN INSURANCE COMPANY LIMITED - THE CLICO/CL FINANCIAL FIASCO

"The economic crisis doesn't only make us free to imagine other models, another future, another world, it obliges us to do so."
President of France - Nicholas Sarkozy, 16 May 2007 - 15 May 2012
More than GDP: Measuring What Matters

4.1 Introduction

This penultimate chapter presented a synoptic view about the research topic through the use of another case study. In this instance the focus was on the British American Insurance Company Limited "registered in St. Vincent and the Grenadines."[391] It was one of close to ten thousand private limited liability companies limited by shares in the state and may also be considered a "branch"[392] of the British American Insurance Company (BAICO) whose headquarters was located in Trinidad and Tobago. The Colonial Life Insurance Company was part of the CL Financial Limited and together with the British American Insurance Company an affiliation at times seemed to suggest an intangible complexity in structure.

References to CLICO/BAICO but more specifically to BAICO made for the greatest comparison. This was in keeping with an identifiable corporate structure registered on the island and operating on behalf of policyholders not as CLICO but as British American Insurance stakeholders. As such while references to CLICO/BAICO were made legitimately, concentration remained on BAICO. For the purposes of analyses, the company was treated both as an external company and as a domestic company.

This purpose for the inclusion of this study was two-fold. First, it provided a précis of the nature of corporate governance with regards to the private limited liability

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[391] *British American Insurance Company Limited - Companies Act* (*St. Vincent and the Grenadines) 1994 - Certificate of Registration of External Company, No 119 of 2002, 07/05/2002*

[392] *British American Insurance Company Limited (Judicial Management): Policyholder update: Proposed Plan of Arrangement* (KPMG UK LLP /KPMG Europe LLP Publication UK 2016) 3

company limited by shares, which was used primarily for insurance purposes. This was significant since such a legitimate corporate structure was found on both islands of Trinidad and Tobago and St. Vincent and the Grenadines as elsewhere within those countries that followed the British legal jurisprudence.

Both countries had been part of regional groupings such as "CARICOM and the OECS"[393] having had shared legislative and historical legacies. It was however those business networks within both islands that were brought under scrutiny when the said private limited liability company became embroiled in an unprecedented financial crisis. From this example there was a sense that the hypothesis was realizable where there was an apparent lack, disregard or absence of corporate governance best practices.

Indeed a new species of poverty called "genteel poverty" was execrable and attributable to the financial debacle. This 'imposed stakeholder – status' was noticeable especially so from the period 2009 up to 2013. Notwithstanding this, the country of St. Vincent and the Grenadines was already classified as an impoverished state prior to these issues. Trinidad and Tobago on the other hand, was also referred to as having suffered tremendously. That island succumbed to the same contagion risks associated with the private limited liability company limited by shares. In the words of the Governor of their Central Bank, he lamented that the bank was more than cognizant of the " contagion risks that financial difficulties in an institution as vast as the "CL Financial Limited"[394] could have on the entire financial system of Trinidad and Tobago and indeed in the entire Caribbean region."[395] The CL Financial Group will be discussed shortly.

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[393] See Appendix 2(1) – for explanation of these acronyms CARICOM and OECS

[394] This was one of the largest privately held conglomerates in the whole of the Caribbean region with interest in 32 countries worldwide. Established in 1993 – See [*CL Financial Company Limited Annual Report]* 2

[395] Williams, Ewart. S., "*Banks' liquidity challenges in Trinidad and Tobago*" (CIB/CLICO Media Conference, Port of Spain, 30 January 2009); see also *Appendix 2(6)* CLICO shocks CARICOM; Appendix 2(7) CLICO Commission report alleges Criminal Misconduct

Secondly, the chapter provided substantive analytical information, which followed along the following lines:

- ❖ The identification of some issues that contributed to genteel poverty and their impact on the gross domestic product and the nature of corporate governance in St. Vincent and the Grenadines;
- ❖ The collection of identifiable data;
- ❖ The impact of the crisis generally in St. Vincent;
- ❖ A brief history of the British American Insurance Company;
- ❖ Shareholders and the unanimous shareholder agreement;
- ❖ The articles of association;
- ❖ The process used for identification of issues;
- ❖ Evidence of a gap in scholarship;
- ❖ The model of the current corporate governance observed;
- ❖ Lessons learnt;
- ❖ Beyond the results, interventions, the regulatory framework for the insurance sector and the conclusion.

Observations and conclusions were made between both Vincentian and Caribbean corporate governance practices through the private limited liability company limited by shares and used for insurance purposes. As such, special attention was placed on analyses of some official transcripts of cases and reports locally in St. Vincent and the Grenadines and from within the Caribbean region; listening to podcasts from the ECCB; letters sent to CARICOM from government officials expressing concerns for the "financial stability of the region;"[396] reading and analysing newspaper articles locally and from within the region; special research on other corporate entities like the

[396] See Appendix 2(9) – Letter sent to CARICOM from Prime Minister of St. Vincent Dr. Ralph Gonsalves

Building and Loan Association for relevance and to draw correlation on corporate governance practices; analyses of copies of general meetings; annual reports from CL Financial Limited; judicial management reports and news feeds; written records of board meetings and meetings of shareholders and other special committees of CL Financial Limited.

Identification of some issues and their possible impact on the gross domestic product

There were several issues that led to the impact on the gross domestic product of St. Vincent. To begin with, a complexity in structure existed wherein the private limited liability companies were held. This configuration of Colonial Life Financial Limited (CL Financial Ltd.) held together several other private limited liability companies for the purposes of conducting businesses in areas such as manufacturing; distribution; finance; real estate; banking; agriculture; insurance; health, energy and petrochemicals. The corporate governance practices by which each company were directed and controlled were mandated by the same British rule bound legislation.

The model of corporate governance was predominantly one tier board. Decisions were by consensus. There were no major differences with regards to specific outlines as to how such practices were to be executed. There were differences in the personality and the character of stakeholders; management; directors and staff members within each entity.

The issue of the date of incorporation seems to suggest that the holding company and by extension the insurance type or subcategory of private limited liability company limited by shares, would have had years of experience with a well developed corporate governance system which allowed for effective and sustained business transactions. CL Financial Ltd. was incorporated in 1963. Acting as a holding company for the Colonial Life Insurance Company (CLICO) that was situated in Trinidad and Tobago, the presumption was that CL Financial was in the best position

to monitor and safeguard each type of company that was in its remit as exercising a fiduciary duty or obligation to corporate governance best practices. It was observed that CL Financial Limited held investments in sixty-five companies scattered across thirty-two countries. While CL Financial Ltd. was the largest conglomerate in Trinidad and Tobago and was at one time deemed to succumb to the too important to fail" syndrome, there was some perceptible best practices that accounted for this seemingly observable positive trait.

BAICO was located in St. Vincent and the Grenadines and was a part of this network of businesses that operated across geographically porous borders. More specifically, the parent company of BAICO was "Colonial Life Insurance Company"[397] with headquarters in Trinidad and Tobago but still within the CARICOM region. A bank in St. Vincent and the Grenadines accepted from 1996 to act as a trustee of certain BAICO assets to satisfy statutory requirements in relation to its Statutory Fund. There were statutory fund deficits in BAICO that amounted to just below one half times total liabilities within the CARICOM region.

There were enormous problems associated with this arrangement when major liquidity crises surfaced in CLICO (Trinidad) and British American Insurance Company (BAICO). The BAICO branch in St. Vincent and the Grenadines corporate governance practices reflected those of BAICO/CLICO in Trinidad and Tobago. The crisis accounted for over 60% of total insurance liabilities in the Caribbean region. Additionally, it may be argued that the "forces of globalisation"[398]exerted tremendous

[397] Colonial Life Insurance Company (Trinidad) Limited (the Company or CLICO) is incorporated in the Republic of Trinidad and Tobago …As of December 31, 2008 the company was a subsidiary of CL Financial Limited (the Parent). As of 2011...a stay of all legal actions against the Company." Special Financial Statements of Colonial Life Insurance Company (Trinidad) Limited, December 2013, p10; Also *Deed of Trust for Eligible Institutional Investors [SCHEDULE II CLICO PRIOR ASSIGNMENT MUTUAL FUND]*; see also *An overview: CL Financial Limited* (The Caribbean Centre for Money and Finance 2009) – the company was started in 1937

[398] Appendix 4(1A) – Statement for the CIB/CLICO MEDIA CONFERENCE – Mrs. Karen Nunez-Tesheira, Minister of Finance – January 30, 2009 – Statement was also broadcast live on regional media to which St. Vincent and the Grenadines have had live access; See also Appendix 4(1B) or similar comments by the Attorney General of Trinidad and Tobago

influences on a number of institutions and governments. However, the internal mechanism on corporate direction and control was its corporate governance system that was at the heart of the difficulties experienced by BAICO/CLICO as private limited liability companies. Used as insurance companies, the difficulties were associated with corporate governance practices that led to a focus on short - term deposit-like products that paid stakeholders above the market interest rates. This decision was likely to have been taken by the company in meetings and or its directors. The "tenure of directors"[399] was suspect at the zenith of the operation of BAICO/CLICO.

Other decisions and or corporate governance procedure, practices, relationships and or systems led the private limited liability company - BAICO/CLICO to participate in high risk investments that were within real estate, equities and many other ventures that were aimed at generating high returns. It was only through corporate governance practices that "excessive risk concentration"[400] deemed "excessive within the inter-group investment"[401] portfolio which was articulated as well by the then Governor of the Central Bank of Trinidad and Tobago.

Saint Vincent and the Grenadines was considered among the "smallest independent nation"[402] states of the world and within CARICOM. The nation's debt to gross domestic product in 2010 was "91% with a marginal decrease projected at 90% in 2015."[403] The fall out from the private limited liability company limited by shares used for insurance purposes was undoubtedly responsible for further 'inroads' into the

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[399] See Appendix 4(1) – Tenure of directors which was indicative that there were tell tale signs that the corporate governance practices with regards to tenure was suspect.
[400] Williams, Ewart. S., Governor, *Central Bank of Trinidad and Tobago: Presentation to Commonwealth Secretariat Conference on Sustaining Development in Small States in a Turbulent Economy* (Central Bank of Trinidad and Tobago, July 2009)
[401] *Ibid*
[402] Hey, A.K, Jeanne, *Small States in World Politics: Explaining Foreign Policy Behaviour* (Lynne Rienner Publishers Inc., USA 2003) 31; See also Blouet, M. Olwyn, *The Contemporary Caribbean: History, life and culture since 1945* (Reaktion Books Ltd., UK 2007) 66
[403] Guerson, Alejandro & Melina, Giovanni, *Public Debt targeting an application to the Caribbean* (International Monetary Fund 2011) 18

nation's gross domestic product. Figures may vary depending on the source for economic forecast but one thing was for sure, there was negative impact on the gross domestic product (GDP) during the period of the financial debacle and up to and including the year 2013. There were no recorded figures to demonstrate a correlation between the financial contagions and the aforementioned fall out but the reality of the situation was highlighted by the IMF in its forecast and assessment of the affected financial sectors within CARICOM (St. Vincent and the Grenadines and Trinidad and Tobago inclusive).

Like many other private companies, the conglomerate CL Financial limited; and BAICO/CLICO were strangled by a corporate governance system as outlined by the out-dated insurance legislation inherited from Great Britain that dated back to 1980 – the Insurance Act (Trinidad and Tobago). The subsidiaries and branches of CLICO (Trinidad) replicated that same system of corporate governance. Insurance companies within the CARICOM region and in St. Vincent especially were regulated and supervised by dichotomous regimes that were weak and which utilized the same out-dated legislation for their supervisory and regulatory mandates. Additionally, the insurance supervision was vested in a small unit within the Ministry of Finance in St. Vincent and the Grenadines.

Capital requirements were minimal and there were liquidity requirements that were non-binding. Aggregate restrictions on related party transactions were also non-binding. Even though the oversight bodies made regular checks, the private companies themselves did their own internal checks and balances. Coupled with the organizational policies, the company had what was deemed "moral conscience."[404]This should have helped it to determine what was right from wrong in

[404] van Luikj, Henk, (Ed) *Ethics Management: Auditing and Developing the Ethical Content of Organization* (Kluwer Academic Publishers, The Netherlands, 1998/2012) 4; Vischer, Robert K., *Conscience and the Common Good: Reclaiming the Space Between Person and State* (Cambridge University Press, USA 2010)1, 179

a corporate governance sense. The company recognised that it should weigh the decisions it made and the possible consequences.

At the outset, the decision to create a complex structure had to be a management decision. It proved at times quite challenging to decipher such complexity of the ownership structure but a network of proportionate smaller private companies served the overall objective of CL Financial limited. It would appear that the law itself was not as strong on the defined role of such a complex organization. The private limited liability company was duly formed but the scale of operations appeared to be beyond the capacity of those who were charged with the responsibility of directing and controlling CLICO, BAICO and CL Financial Limited and its subsidiaries and branches.

The intention was good as it sought to provide employment and bolster economic growth within the region. However, the occurrence of financial crisis of this magnitude did little to counteract good intentions. As a result of the associated contagion, the nature of corporate governance in St. Vincent was reshaped significantly. Three major factors continued to 'drive' corporate governance best practices. Primarily, the economic uncertainty within CARICOM states with regards to their own fiscal arrangements especially, deepened stakeholders' awareness of the reciprocal influences that the private limited liability company might have had on issues in politics, all round national fiscal policies and peoples' own lives and livelihood. Secondly, the voice of the shareholder as well as other stakeholders was now heard in the given forum at annual meetings especially towards the national financial development agenda.

Thirdly, governments became more aware that the nation's economic growth demanded a more robust regulatory system through a reform and strengthening of legislation for the financial sector of which the private limited liability company was a part. The strength of the businesses that CL Financial promised was critical in that

they held the potential for stronger business relationships within CARICOM. This also placed the greatest demand for best practices that should have been aimed at ensuring the highest integrity oversight of these businesses. Cross border investments within CARICOM were probably one of the more important factors within the ambit of best practices of corporate governance that would have created a sense of security for stakeholders given the high visibility of corporate businesses.

In keeping with its economic and financial development agenda this insurance company was belonged to the category of private limited liability companies limited by shares. It was one that was foremost a part of the financial sector. As was promised by the political electorate, all private companies were to be positioned within the forefront of the economy. This was promised since the island gained "Statehood in 1969."[405] The emerging nation state of St. Vincent and the Grenadines continued to articulate for strong growth in its economy through its foreign policy initiatives.

As as a "signatory to a number of international organizations"[406] with appropriate instruments and international conventions on financial matters there was every encouragement for its development agenda on private companies to be commensurate with corporate governance practices. Private companies by virtue of being part of the network of businesses within the region were member states of the OECS and CARICOM where they were considered "open and vulnerable"[407] to external shocks. It was concluded that post crisis; "legislation was too weak"[408] to contain the spread of one of the largest privately owned conglomerates of which British American Insurance Company was a part.

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[405] *Government Gazette, No. 108*, St. Vincent and the Grenadines (St. Vincent, December, 1969)

[406] See Appendix 2:1 St. Vincent as a sovereign independent state is signatory to these listed organization/agencies

[407] TRADE AND DEVELOPMENT BOARD, Fifty-fourth session Geneva, 1-11 October 2007 - "Structurally weak, vulnerable and small economies": Who are they? What can UNCTAD do for them?

[408] Jhinkoo, Julia, *Caribbean Centre for Money and Finance* - Newsletter Vol 6, No. 1, 2013

One may consider that it was in the 1980s and 1990s, that the "financial sectors were the "Achilles heel of economic development in the Caribbean."[409] Since then, it was also said that the "region continues to succumb to financial crises" [410] of unprecedented proportions. To be fair, at one point, in spite of these issues, the financial sectors on St. Vincent and the Grenadines and Trinidad and Tobago emerged with some measure of small growth as they continued to cultivate individual internal integrative approaches to their own "development agenda."[411]

As if echoing the OECD, it was probably best said of the private limited liability companies limited by shares that indeed, "Corporate governance is one key element in improving economic efficiency and growth as well as enhancing investor confidence."[412] The point that should not be missed was that this was the perception of such corporate governance within the private limited liability companies that catered to the stakeholders and shareholders among whom were the targeted investors.

After several years, there were new actors, financial markets and instruments springing up with an added dimension of broadening the financial landscape within the Caribbean region. Even in 2011, a few years on from the collapse of CLICO/BAICO, St. Vincent and the Grenadines was said to have experienced a "growth rate ...of 0.8 per cent."[413] There were no empirical studies to show what effect that the insurance private limited liability companies limited may have had on

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[409] www.imf.org/external/pubs/ft/gfsr/2010/02/pdf/press.pdf - accessed on 23 November 2013
[410] www.bis.org/review/r100305d.pdf - accessed on 14 December 2013
[411] *National Economic and Social Development Plan 2010 - 2015*, St. Vincent and the Grenadines pdf/power point presentation - accessed on 29 October 2013; See also *St. Vincent and the Grenadines - National Economic and Social Development Plan 2013-2025* - accessed on 23 February, 2015
[412] *www.iod.com/services/information-and-advice/resources-and-factsheets/details/UK-Corporate-Governance-Code-July-2018, accessed 17 January, 2019*
[413] Gonsalves, Ralph, *Budget Speech Theme: Job Creation, Economic Growth, Financial Stabilisation, Fiscal Re-Balancing And Social Equity At A Time Of Continued Global Economic Uncertainty* (Kingstown, St. Vincent and the Grenadines 2012) 8

the aforementioned figure. Although this was considered a "flat"[414] growth rate, it was enough to be somewhat encouraging.

Process for identifying issues

In order to effectively identify the causal linkages within the context of the hypothesis, several research methods not limited to case study and "socio-legal ethnography."[415] These were used to derive contextualize analyses on the private limited liability companies limited by shares. A thorough analysis of the issues within this private company was undertaken. The species of companies – the insurance companies – were assessed within the post colonial developing societies of both St. Vincent and the Grenadines and Trinidad and Tobago.

This cross-referencing became necessary in light of the research topic and the nature of the private limited liability company under review. Comparative analyses of the principal British company laws and the UK Companies Acts that provided for the incorporation of the private limited liability companies were reviewed. Also, there was a comparative analysis of the models of corporate governance in use.

The contextual framework

As was expected there was evidence of the "Anglo-American model"[416]of corporate governance in use comprehensively with its emphases on decision making through consensus within the remit of the one-tier board. It begs the question as to whether such decision - making was critical this process. The responsibility of the company for its own direction and control to be placed in the hands of a few rests with it through its own bylaws and other legislation.

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[414] *Ibid*
[415] *www.johnflood.com/pdfs/Socio_Legal_Ethnography_2005.pdf- accessed on 17 June 2014, 34 - 36*
[416] See Appendix 1(7) – Comparative Table on Models of Corporate Governance

The rights of the shareholders could not be negated from the fact that the company operated firstly for the benefit of the shareholder. Comparisons were also made in keeping with the OECD principles of good governance. The socio cultural and socio economic factors prevalent among the wider stakeholder post emancipation community manifested through the interactions of those who directed and controlled the company. The associated peculiarities impacted how the company; where it was directed and why was the company directed and controlled in the ways that it was done.

The communication processes enabled transmission of information about best practices that constituted part of the substantive nature of its corporate governance. These practices were not followed as prescribed and this is why the hypothesis was tested. It would be said that the "law is constantly changing because society changes...and current interests are pushing back against pressures for change."[417] However, when it comes to the private limited liability company limited by shares, the bylaws and other inherited British legislation on companies were unchanged from since antiquity.

Arguably, the nature of corporate governance was prone to be manipulated by human agencies through a "flawed business model."[418] Both contextual and comparative analyses gave further clarity on this category of insurance companies that are contributory to genteel poverty and the negative impact on the gross domestic product of the islands. Of necessity, account was taken of recorded "interaction between the driving forces of development and economic, political, social and environmental

[417] Gordon, Robert. M & Horwitz, Morton, Law, *Society and History: Themes in the Legal Sociology and Legal History of Lawrence M. Friedman* (Cambridge University Press, UK 2011) 3

[418] *www.fss.uog.edu.gy/beware-boasting* - accessed 10 April, 2018 – available as Appendix 5(4*)* Opinion post from the University of Guyana, September 2017

trends as well as decisions taken during that period by authorities, businesses and citizens."[419] These impacted both the branch BAICO and the parent company CLICO.

For instance, those forces that cultivated mobility towards corporate governance development and the economic, political and social trends emanated from within the private company. It was as a direct response to the unprecedented crisis that involved the private company, that the pressure was applied by the political directorate to consider another model - the two tiered - model of corporate governance.

A theme that runs through private insurance companies on both Trinidad and Tobago and St. Vincent and the Grenadines using their unique interpretations about socio cultural norms was the two dimensional tool - fraud and risk. Fraud has to be proved in a court of law. On the other hand, it was too simplistic a view to ignore that liability insurance does necessitate some measure of risk taking and that "it is certainly possible to distinguish fraud (which involves deceit) from risk taking (which does not)."[420] CL Financial Ltd business model allowed for a diverse investment portfolio into several businesses across business platforms that took some measure of risk.

Respectfully, no attempts on the part of the research to raise the presumption of either risk or fraud was made here but rather to highlight the fundamental characteristics of liability insurance of which CLICO/BAICO were constituted. The decisions taken by these companies were those believed to be in the best interest of shareholders and the requisite stakeholders alike. However, one is mindful that, considerations taken by underwriters in assessing risks would have included but was not limited to, "industry, business strategy, accounting policies, who the officers and directors of the company are, what corporate governance structures are in place and finally the firm's financial

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[419] *GEO Latin America and the Caribbean: Environment Outlook 2003* (UNEP, Costa Rica 2003) 226

[420] Baker, Tom & Griffith, Sean, J., *Ensuring Corporate Misconduct: How Liability Insurance Undermines Shareholder Litigation* (University of Chicago Press, USA 2010) 94

statements."[421] Underwriters within the current private limited liability companies therefore had to have made the requisite risk assessments towards investments and would have addressed their minds to the corporate governance best practices of such companies.

Collection of data

Extensive research was undertaken that included but was not limited to: visit to the location of the insurance facility: review of archived statements and cases and discussions with management of the local branch company. Also the use of guided discussions, comparative analyses on media and non-media sources; telephone contacts and associated correspondences formed part of the collection of data on this company. While the research was being undertaken, the media generated information and posted regular updates about this matter. Every effort was made to analyse the 'live' discussions and or debates among stakeholders locally and regionally about the contagion effects of this corporate failure and the efforts made by the various governments at recovery from financial loss.

While in St. Vincent and the Grenadines, visits were undertaken to where the offices of the insurance facility were located. Unfortunately, the building was closed and there were no signs of workers. Several months were spent in reviewing archived statements and cases that highlighted the plight of some stakeholders. Several attempts were made to have discussions with management of the local branch company. This proved futile. Discussions were also raised with some government officials and legal professionals as to the functioning about this company. The measured response was that there was an unprecedented crisis unfolding. The analyses on media and non-media sources were germane to this thesis.

[421] *Ibid,* 86

4.2 The impact of a corporate governance related crisis in St. Vincent and the Grenadines

Nearly a decade ago, there were a number of reports coming out of the Caribbean that were indicative of what some referenced as "trouble in paradise."[422] The latter terminology alluded to a group of islands in the Caribbean inclusive of Trinidad and Tobago and St. Vincent and the Grenadines from where the 'trouble' emanated and the private limited liability companies limited by shares was at the heart of the matter. To be specific, in 2009, within Caribbean and its geo-space, its financial sector was 'shaken' separate and apart from the world's global financial crises. The contagion effect was felt in all fifteen CARICOM states save and except countries such as Jamaica and Haiti.

Funds were taken from the public and were made up of deposit like investments products that were deemed contributory to already impoverished nations and this further impacted the gross domestic product of various islands within the Caribbean region. The conventional insurance policies and pension schemes were entangled with a series of complex investment-focused decisions within the private limited liability companies. The monies garnered from stakeholders that included institutional investors and premium holders were then channeled through to other companies and real estate development initiatives. Some cited that there might have been a knock-on effect of the global financial crisis that contributed to loss in value of investments. The decisions to invest monies from the stakeholder communities were those resulting from the corporate governance practices of the insurance companies.

The contagion effect was felt by the widest cross section of stakeholders such as depositors, investors, policyholders, individuals and corporate citizens and national insurance and pension schemes and the building societies as well as credit unions. Up to the time of writing, there was still some unravelling of the complex nature of the company headquartered in Trinidad and Tobago. The Anglo American model of

[422] *www.capital-chronicle.com/2009/02/trouble-in-paradise-cl-financial.html* - accessed on 4 October 2017

corporate governance was used critical to the entire process of which corporate governance practices was constituted. Governments within the CARICOM region made attempts at containing the contagion through various interventions. There were no satisfactory resolutions at the time of writing.

Timely interventions

Corporate governance best practices within CL Financial Limited were predominant and influenced corporate governance best practices within all the other businesses that it controlled. There were intergroup corporate governance issues emanating from those practices that touched and concerned the directing and control of all the entities. It does appear that in every which way, there were lack, disregard or an absence of best practices. Once CL Financial was illiquid, it appeared that all the other entities were illiquid in terms of assets as well.

With the deterioration of global economic conditions in 2008, many of the companies within the CL Financial Limited grouping faced liquidity and solvency pressures. Corporate governance best practices became essential to the functioning of Methanol Holdings, one of the largest methanol producers in the world and a big contributor of dividends to CL Financial Limited, suffered a collapse in methanol prices. Real estate investments in Florida held by regional BAICO and CLICO affiliates turned 'sour'. As news of such difficulties spread, withdrawal requests from policyholders increased, and shortfalls in the statutory funds of many insurance entities became acute.

The Trinidad and Tobago authorities intervened in the affairs of CL Financial Limited in January 2009 and announced a financial support package for three domestic subsidiaries: CLICO, British American Company (Trinidad) Limited (BA), and CIB. In emphasising the announcement, the Central Bank identified the key factors leading to the intervention as:

- "Excessive related-party transactions that carried significant contagion risks,
- "An aggressive high interest rate resource mobilization strategy which financed equally high risk investments, and,
- "Very high leveraging of the CL Financials' assets that constrained the potential amount of cash, which raised the sale of assets."[423]

The Central Bank indicated that it was aware of these deficiencies but had been "stymied by the inevitable challenge of change and by inadequacies in the legislative framework which do not give the Bank the authority to demand these changes."[424] St. Vincent like many other nation states across CARICOM recognised that this was a systemic shock and paid close attention to the outcome of the arrangement between CL Financial and the Bank of Trinidad and Tobago.

The news items were scattered within the public domain. As part of the government's intervention, an additional agreement was reached with the shareholders of CL Financial. Under the January 2009 "memorandum of understanding"[425] (MoU) with the government, the shareholders of CL Financial agreed to take additional steps to correct the financial condition of CIB, CLICO Trinidad, and BA (British American Insurance (Trinidad) Company by selling its stake in "Republic Bank"[426], the company "Methanol Holdings Trinidad,"[427] and Caribbean Money Market Brokers - TT and any other assets as necessary.

The Central Bank assumed control of CIB, CLF agreed to sell assets to meet the statutory fund requirements for CLICO Trinidad and BAICO Trinidad, and the government agreed to provide loan financing to meet those requirements. The

[423] *Memorandum of Understanding (MoU) between the Government of the Republic of Trinidad and Tobago (GROTT) and CL Financial Limited (CLF)* – 30 January, 2009
[424] *Ibid*
[425] www.newsday.co.tt/news/0,95143.html - accessed on 17 October 2014
[426] www.republictt.com/about/company-overview- accessed on 1 September 2015
[427] www.ttmethanol.com/ - accessed on 1 September 2015

government injected an initial US$191 million. To date the situation has accelerated with renewed discussions and deals orchestrated by the Central Bank of Trinidad and Tobago and CLICO.

British American Insurance Company in St. Vincent realized stagnated growth as a result of the difficulties experienced by CL Financial/CLICO debacle. The influence on the system of corporate governance within the private limited liability company was overwhelming. The difficulties of CLICO were initially perceived to be a liquidity problem, which would be resolved as assets were sold and as the economy recovered. The objective stated at the time of the intervention was to "return CLICO to its original moorings." [428] The intervention of government at this stage demonstrated clearly that the scope and magnitude of the company's corporate governance agenda had to change in order to respond appropriately to this unprecedented crisis.

Clearly the response in St. Vincent and the Grenadines from British American Insurance to its policyholders and other stakeholders was dependent on the initial corporate response from Trinidad and Tobago. Annuity holders from both countries were encouraged to roll over policies, and were made to the extent possible. In June 2010, the then government announced that repaying principal only to CLICO policyholders would require a further injection of capital. This was clearly that case where state intervention as an external phenomenon characterised part of the nature of corporate governance of private companies.

A Select Committee was charged with recommending a number of preferred solutions to stakeholders within the wider CARICOM region ultimately. For instance, solutions were sought for the repayment of CLICO's traditional and non-traditional insurance

[428] *Ewart S. Williams: Banks' liquidity challenges in Trinidad and Tobago"* - Comments by Ewart S. Williams, Governor of the Central Bank of Trinidad and Tobago for the CIB/CLICO Media Conference, Port of Spain Trinidad and Tobago, 30 January 2009

liability products; a financial reorganization plan for CLF that demonstrated financial stability and ensures full satisfaction of commercial and inter-company debts; and a clear path and timetable on how the Trinidad and Tobago government would exit its loan capital position and restore public confidence. In the meantime, agitation amongst institutional and individual investors/shareholders in St. Vincent and the Grenadines remained at an all time 'high'. While there were many who remained 'under the radar', the informal debates took place all through the many months. Sporadic pockets of agitators within the media fuelled by some political angst could not go unnoticed.

In line with the Committee's recommendation, the September "2010 budget speech in Trinidad and Tobago"[429] announced a restructuring plan that would pay all investors in full up to a threshold (TT$75,000 or US$12,000) and pay the remainder over 20 years with no interest. Payments by CLICO to holders of non-traditional insurance products stopped at that time. The traditional insurance businesses of CLICO and BAICO would be combined and divested. The plan to restructure payments met strong opposition from some policyholders in St. Vincent and the Grenadines as well as in Trinidad and Tobago and the rest of the affected Caribbean nation states.

After a review, sentiments signalled that moving forward with modifications to provide a liquidity support window for credit unions and a compassionate window for vulnerable individuals was in keeping with good governance of the situation. The reform process began in St. Vincent and the Grenadines with the "Financial Services Authority"[430]and its call for board restructure and emphasis on "qualification of directors."[431] In 2012 a regional Financial Analyst reiterated what many have been

[429] *The Ministry of Finance: Strengthening Efficiency, Addressing the Challenges: Budget Statement 2010* (Caribbean Paper & Printed Products Ltd., Trinidad and Tobago 1993)
[430] *Appendix 2(11)* – Communication from the Financial Services Authority on minimum requirements for boards post financial crisis
[431] *Ibid*

saying for years "of corporate governance"[432] in ensuring the highest level of transparency and accountability of financial institutions.

In retrospect, CL Financial Statement of Accounts through its "2007 Annual Report,"[433] the last one that was published prior to 2009, declared the consolidated assets of Colonial Life Financials were about US$16 billion—equal to some 30 per cent of the entire Caribbean region's Gross Domestic Product. Some policyholders were not fully aware of this fact. Discussions with some policyholders proved this point. As a result, some paid little attention except to the fact that they were saving monies with an institution that was representative of commitment to financial security within the Caribbean region, still. In addition to having no liabilities, the interesting thing about the Vincentian British American Insurance Company Limited it was revealed that it had no assets except to the extent that such assets were specifically pledged to meet the liabilities of the policies issued in St Vincent and the Grenadines.

Further comparative analyses suggest that at one point the company in Trinidad and Tobago had assets exceeding US $100 billion. As at 30 September 2010 it had "assets of TT $ 100,666,256."[434]For a company as asset rich as CL Financials, this was quite commendable for a company to be traced back to its early beginnings to the Colonial Life Insurance Company the latter, which was established in 1937. The Companies Acts of Trinidad and Tobago that governed this company have undergone several amendments to date. This is the same historical document shared with other former colonies that were once British.

It should not be forgotten that the private limited liability company limited by shares remained a creature of British and now Caribbean legislation for more than a century.

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[432] *www.vincyview.com/2012/01/12/dr-henry-said-the-lack-of-good-governance-was-a-key-factor-in-the-failure-of-some-of-the-world%E2%80%99s-leading-institutions-in-recent-years/* - accessed on 29 August 2019

[433] *www.clico.com/pdf/AR07/CL%2520Financial%2520Annual%2520Report%25202009.pdf* - accessed on 10 October, 2019

[434] *Ibid*, 20

These businesses expanded exponentially. Besides insurance products, CL Financials held companies that supplied services and products that could be grouped according to energy; financial services; the real estate sectors and the manufacture and sale of beverages.

Such was the plight of the Caribbean community as it grappled with the effects of the contagion. Within CARICOM, these countries have had a shared historical and legislative legacy. In the case of St. Vincent and the Grenadines, it could not compare with Trinidad and Tobago in terms of economic development. The former, on the eve of the crisis, which took place in 2009, was classified as a poor country in 2007/2008 with indigence level of 2.9% and a poverty headcount index of 30.2%. However, as time progresses indications were that "even if there is debate over the percentage poor, there are other data that point to the improvement in living conditions."[435] The contagion alluded to could not have occurred at a worst time as there was no rural urban divide. "Genteel poverty" became a widespread phenomenon.

It was as much about the effects of a "credit crisis"[436] as it was about the collapse of a corporate giant - a new breed of conglomerates. The quotations from speeches like, "painful blow to CARICOM,"[437] made by the Prime Ministers within the Caribbean region, "were used with frequency but in keeping with the reality of the effect of the unprecedented crisis". Ultimately, the nature of corporate governance within the state would mirror the results due to the size, composition and interdependence of the private limited liability companies to the island's corporate sector especially in St. Vincent.

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[435] *Final Report – St. Vincent and the Grenadines Country Poverty Assessment 2007/2008* (Kairi Consultants Limited, Trinidad and Tobago) xvi

[436] *www.capital-chronicle.com/2009/04/credit-crisis-in-caribbean-cl-financial.html* - accessed on 19 April 2018

[437] www.nationnews.com/nationnews/news/9367/painful-blow-caricom - 19 April 2018; See *Appendix 5(5)*

Risky environment

Through ethnography, it was reinforced that "law is constantly changing because society changes...and current interests are pushing back against pressures for change." [438] Arguably, the nature of corporate governance was prone to be manipulated amidst a flawed business model as was seen in the decision taken by management within the CL Financial Limited group of companies headquartered in Trinidad and Tobago. The impact was deleterious to the development efforts initiated by regional government. This has to be one of the dark periods on the region's developmental paths. Of necessity, account was taken of "interaction between the driving forces of development and economic, political, social and environmental trends as well as well as decisions taken during that period by authorities, business and citizens."[439]

In St. Vincent and the Grenadines, the impact of the contagion was even more significant for individuals within other corporate entities caught in the debacle. There was the Building and Loan Association, which was regulated by the Building Societies Act 1941; and the Credit Unions which were regulated by the Co-operative Societies Act 1999. Institutional investor like the National Insurance Scheme invested was regulated under the National Insurance Act 2007. In other words, these entities were generally credit worthy but were also affected by the contagion emanating across porous borders. The shareholder and/or individual felt helpless for many months.

Upon further questioning and discussions on the matter, there seems to be some confusion by some stakeholders as to whether they invested heavily with the correctly named company. There were two companies that could be passed off for the other, as one company was the British American Insurance Company that was legally

[438] Gordon, Robert. M & Horwitz, Morton, *Law, Society and History: Themes in the Legal Sociology and Legal History of Lawrence M. Friedman* (Cambridge University Press, UK 2011) 3

[439] *GEO Latin America and the Caribbean: Environment Outlook 2003* (UNEP, Costa Rica 2003) 226

registered in the Bahamas but was registered and operated from Trinidad and Tobago. There was a difference, which may have gone unnoticed "because British American was a Bahamian company but all its back offices arrangements and trade were done in Trinidad and under the suzerainty, obviously, of CL Financing, a company in Trinidad and Tobago, where its body, mind and soul was resident. So that there is a case for the contribution from British American but not to the same extent as there is in respect of CLICO Trinidad."[440]

Here is the point of contradiction that many persons claimed. There was indeed a company that was a branch of the British American Insurance Company (Trinidad) Limited legally registered in St. Vincent and the Grenadines as the British American Insurance Company Limited. Some claimed that policyholders and other stakeholders were effectively dealing at some point with an entity that was not legally entitled to do business in St. Vincent and the Grenadines. As an Associate member of CARICOM and a more established offshore financial jurisdiction, the "British Virgin Islands Financial Services Commission"[441] in 2009 issued a "warning against CL Group Ltd."[442] It appears to be unclear as to which corporate entity was targeted.

One of the major institutional investors in the state was mindful of such a distinction among companies. The Building and Loan Association gave recognition to two distinct entities that existed namely, "the British American Insurance Company (Trinidad) Limited...and British American Insurance Company Limited (BAICO) Limited, a Bahamian company which owned and operated branches in the OECS."[443] BAICO Trinidad was mentioned as being part of the Investment portfolio of the

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[440] www.jamaica-gleaner.com/gleaner/20120327/business/business3.html -19 April, 2018 – Prime Minister of St. Vincent Dr. Ralph Gonsalves also said, "Trinidad and Tobago contravene the CARICOM treaty and allow oil rich twin island republic to treat its nationals favourably following the collapse of Colonial Life Insurance Company and subsidiary, British American Insurance Co. Ltd (BAICO)"

[441] *www.bvifsc.vg/* - accessed 18 February 2019

[442] *www.bvifsc.vg/News/tabid/160/ArticleType/ArticleView/ArticleID/60/language/en-US/Default.aspx* - accessed 18 - 21 September 2019

[443] *Saint Vincent Building & Loan Association 70th Annual Report of the Directors and Statement of Accounts* (December 31, 2010) 56 - 57.

Building and Loan Association. Some stakeholders made mention of the existence of a British American Insurance Company - the Bahamian Company, but this was wound up and was insolvent. Its branches were placed under judicial management during 2009.

Administration of the British American Company in St. Vincent

At all material times the different stages within the transaction process were strictly adhered to as would be explained. The administration of British American Insurance Company Limited on St. Vincent was comprised of a sales and administrative unit stationed on the island. A group service company namely the British American Insurance Company from Trinidad and Tobago supported them. It was discovered that the British American Insurance Company Limited on St. Vincent received application forms for insurance products. Policyholders were told that they would then be sent to British American Insurance Company Trinidad and Tobago. This was done on a weekly basis where they were processed. A copy of all successful application forms was returned to the local office where they were kept. British American Insurance Company (Trinidad and Tobago) also retained cheques issued on the "Branch" bank accounts.

Duplicate copies of such documentation were then sent to British American Insurance Company Trinidad and Tobago, where the claims were processed, adjusted and approved, where appropriate. Cheques in respect of the payment of policyholder claims were issued by British American Insurance Company Trinidad and Tobago, and sent to British American Insurance Company Limited on St. Vincent for onward distribution to policyholders. British American Insurance Company Limited on St. Vincent made a number of small value claims payments, which were reimbursed out of the British American Insurance Company head office account.

Financial Records

'QuickBooks' was accounting software into which British American Insurance Company Limited (St. Vincent) staff input data relating to the payment of local expenses and very limited payroll (security staff). Information supporting these transactions was sent to British American Insurance Company Trinidad and Tobago for duplication on their accounting system on a weekly or monthly basis. British American Insurance Company Trinidad and Tobago maintained a set of records for British American Insurance Company Limited (St Vincent) that included the information contained on QuickBooks but also other transactions including payment of head office and central expenses, claims, premium refunds, annuities and maturing policies and loans.

The Administrative Supervisor was the main accounting resource in British American Insurance Company Limited (St Vincent) who oversees and maintains control of the daily operations, for example, the recording and issuance of cheques and the issuance of policy documentation, and provided information to British American Insurance Company Trinidad and Tobago. The management of British American Insurance Company Limited (St Vincent) was sent credit control reports and was responsible for the collection of overdue premiums. Bank accounts of the British American Insurance Company Limited (St Vincent) operated four bank accounts:

- One account, known as the Home Office account, which was an Eastern Caribbean (EC) Dollar denominated account with the Royal Bank of Trinidad and Tobago Bank Caribbean Limited in St Vincent.

- Three accounts were also known as the District Accounts with First Caribbean International Bank.

- Two accounts were denominated in EC Dollars and one was in United States Dollars.

The Home Office bank account was primarily used by BAICO Trinidad and Tobago for the receipt of monies deposited which was used by British American Insurance Company Limited (St Vincent) to lodge cash received directly into the office. This underscores a symbiotic relationship between the parent company and its branch. (British American Insurance Company Limited Trinidad and Tobago supported all the transactions made through British American Insurance Company Limited (St Vincent) to CLICO/CL Financial). These intergroup transactions were received by CL Financial Limited ultimately.

The role of the Shareholder domiciled in St. Vincent and the Grenadines

There was the claim made that there was evidence of deal making and compromise by CL Financials, CLICO and BAICO. There were the organized public forum and discussions on the role of the shareholder locally. While the discussions raged especially among those who sought to make the issue a political one, the understanding of the role of shareholders locally provoked further debates. Government sought to persuade individuals who had a stake in the British American Insurance Company Limited to be patient and to wait on the outcome of the report of the judicial manager. The entire network of companies in CARICOM was placed under judicial management. In St. Vincent the report did little to quell the fears of the stakeholder community.

Corporate governance executed in the main company will in effect be the corporate governance exemplified in the branch of the company. While the branch in St. Vincent and the Grenadines was not directly in the deal making or were represented at board levels, the decisions made by shareholders at CL Financials affected the direction and control of the British American Insurance Company Limited in St. Vincent and the Grenadines. Its operations, decisions and execution of its daily corporate governance practices were affected by the results of any deal making, investment and or other operations executed by shareholders in CL Financial Limited located miles away in sister island of Trinidad and Tobago.

If followed as far as was possible, and coupled with the rights conferred through the unanimous shareholder agreement, it would be challenging to assess whether corporate governance was evaded or avoided. The other point is established in Salomon v Salomon that of separate legal personality. The company at law was a juristic person, distinct and separate from its directors even if they were the hands and feet of the company with whom they had worked. If and only if some form of litigation was to be levelled against this current company, the basic principle of separate legal personality was the very same on which the English company law was premised.

Upon incorporation, the corporate governance of each corporate entity becomes established notwithstanding that corporate governance in St. Vincent did not begin as a creature of legislation. With respect to this notion of separate legal identity that the company possesses upon incorporation, its corporate governance remained bound inextricably to this notion. As such any lack, disregard or absence of best practices must be addressed accordingly. The established rule in Salomon v Salomon provided a precedent that a shareholder could not be held liable for debts over and above their capital contribution to the company. The question is whether the same principle can serve as a precedent when addressing the lack, disregard or absence of best practices. The matter to be addressed is whether shareholders or directors could be held liable for bad practices that result in financial loss to a company.

According to the Cadbury Report, corporate governance in the context of the private limited liability company limited is a system by which companies are directed and control. Corporate governance within the private limited liability company limited by shares is the sum total of those external influences upon the system as to how; why, when and where such companies were directed and controlled. Such influences include but were not limited to a country's cultural, social and political philosophy.

The aforementioned influences help to shape the quality and capability of the internal corporate environment of the company irrespective of its physical location. That internal environment ought to be an enabling one for best practices but it can also be one that has a laissez faire approach towards its own corporate governance. Hence, the lack, absence or disregard of corporate governance best practices will be detrimental to its own financial growth and contributory to the economic development of the nation state in which the private companies are located.

The various boards within the private limited liability companies limited by shares were free to drive their companies forward. It was expected by governments that the exercise of that freedom within the legislative framework would have bestowed a climate that fostered effective accountability. This was the quintessence of best practices of corporate governance. It was not just the majority shareholder or paid director but at law, all directors remain the responsible agents for the stewardship of the assets of the company; the monitoring the activities of this company so that it operated according to its constitution. Although international best practices were prevalent, the CL Financial group disintegrated and created systemic failure.

The challenge its directors had was that they neglected to pay particular attention as to how, "the widespread impact of the CL Financial failure within the Caribbean has compelled market participants to gain awareness about the financial risks to which they are exposed when they make investment decisions within the Caribbean where financial conglomerates have grown in terms of size and prominence."[444] The countries of the Caribbean included, "the Bahamas, Barbados; ECCU; Guyana and Trinidad and Tobago."[445]

The fact that "judicial management" became an imperative for the affected companies within the Caribbean proved once again that the region was not inoculated from the

[444] *Caribbean Centre for Money and Finance, Newsletter* - Vol X11 No 3 (March 2012) 1
[445] *Caribbean Centre for Money and Finance, Newsletter* - Vol V1 No1 (January 2013) 2- 3

magnitude of corporate collapses. For instance, the "case of Jamaica;"[446] in Antigua and Barbuda, the collapse of the Stanford Group was described by journalists as this: "In recent years, individuals who have had their ears close to the ground in CARICOM's financial accounting, business, professional, and other expert circles, could not avoid being aware of the sordid doubts and deep misgivings swirling around corporate governance at the Stanford Financial Group."[447] The "difficulties of CLICO here demonstrate a lack of corporate governance and a weakness on the part of people who are supposed to oversee the corporations."[448]

The CLF and Stanford cases would suggest that a good rule for the conservative investor is to avoid private companies whose "governance structures may be weak if they exist at all."[449] Further, DaCosta et al in their assessment of recent financial failures in the Caribbean identified "imprudent behaviour"[450] within the context of that rapid growth of business within a holding company structure. Similarly, they noted the departure from primary business lines and the liquidity challenges that "erupted in a fiscal storm."[451] The common theme that runs through all of these collapses among other things was that the private limited liability company was a prominent financial vehicle.

The disregard, lack or absence of corporate governance was evident in all of these cases especially related to the "insurance companies"[452] that were at the heart of the

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[446] Tennant, David, *Lessons learnt by the survivors of Jamaica's financial sector crisis, Savings and Development Vol 111 No 1* (2006) 5 - 22

[447] *www.idsguyana.org/articles/prof-clive-thomas/global-crisis/60-the-stanford-financial-group-scandals-and-scams.html* - accessed 1 September, 2015 and 12 January 2017

[448] *www.broadstreetjournalbarbados.com/2011-03-22/clico-and-corporate-governance* - accessed 30 August, 2015 and 27 March 2017

[449] *www.businessinsightcaribbean.com/documents/1086.pdf* - accessed on 31 August, 2015 and 8 May 2017

[450] Da Costa, Michael, Grenade, Kari, Polius, Tracy, *The Caribbean: Rethinking Policy Frameworks in the wake of the recent financial failures* (Da Costa Associates/CBB/CCMF 2012) 2

[451] *Ibid*

[452] *www.caribbean360.com/news/bailout-for-cl-financial-before-tt-parliament; www.bnamericas.com/news/insurance/CL_Financial_Roundup:_Guyana,_Bahamas,_Trinida*

financial crises. Interestingly, it is the same structure, under a different name, the "Sun Group Inc., bought 100% of the shares of CLICO International General Insurance Ltd in February 2012 and immediately took full control of the company."[453] In retrospect, "a handbook on what corporate governance is not;"[454]serves to remind of what constitutes the new thinking on what aspects of corporate governance that were highlighted.

In St. Vincent and the Grenadines was another emerging financial crisis consequential to CLICO that challenged the legislative framework of Vincentian company law. The St. Vincent and the Grenadines Financial Services Authority advised that its interpretation and adherence to best practices of corporate governance was contingent on "international best practices"[455]as espoused by the OECD and commented on by Paul Davies. The latter was adamant that company law addresses three main problems associated with principal/agent and the associated relationships specific to board composition.

It does appear that in this current financial crisis, board composition and effectiveness may have created angst coupled with the business model and hence the situation is what it has become. This current financial crisis was likened to one that was never experienced previously and that, "There are incidences of such poor practices in a number of systematically important financial services entities in St. Vincent and the Grenadines which if they continue to persist could result in losses to shareholders, depositors and the public [as] a whole."[456]

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d_*_Tobago; and *jamaica-gleaner.com/gleaner/20110405/business/business1.html* - accessed on 29 November 2014 and last accessed 15 April 2018

[453] *thenewtoday.gd/local-news/2014/05/13/sun-group-launches-grenada/* - accessed 30 August, 2015

[454]*www.guardian.co.tt/news/2011/11/24/clicohcu-inquiry-handbook-what-corporate-governance-not* - accessed 30 August, 2015

[455]*OECD Principles of Corporate Governance* (OECD Publications Service, France 2004); See also Davies, Paul, *The Board of Directors: Composition, Structure, Duties and Powers* (OECD Publication, Sweden, 2000); See also Hansmann, Henry, Kraakman, Reinier, *The End of History for Corporate Law* (Harvard Law School, Discussion Paper No 280, 3/2000)

[456] *Ibid*

Visit to the site of the British American Insurance Company Limited, then what?

Its office was located at the LA Lewis Building at James Street in capital city Kingstown, St. Vincent and the Grenadines. This site was visited in 2012 but access was not possible. Normal business has ceased at the time of the study undertaken. There were nine members of staff. They were employed through British American Insurance Company Limited, with their employment contracts held at British American Insurance Company Trinidad and Tobago. It was not possible to get a copy of any of those contracts. Local sales agents were known to sell policies and did so within an atmosphere that was quite competitive. They were employed as independent contractors and were not salaried employees of British American Insurance Company.

That Anglo American Model, but whose interests were protected, if at all?

The management of the CLICO/BAICO had to be in the best interests of the shareholders of the company. Within the Anglo American Model of corporate governance, the protection of those interests was critical. The interventions by governments and takeovers and acquisitions or anticipated acquisitions hold well for the Anglo American Model. The shareholders' best interests' were always measured against those who managed the company.

In the complicated cases brought against shareholder of the CL Financial Group, the workings of the Anglo American Model of corporate governance allowed for due process of the law. This was where as a shareholder of the same class such that, "the shareholders of CL Financial get to retain assets with a value estimated at $1.6 billion, with the Government recovering an estimated $15.1 billion from the sale of CLF assets and third-party creditors being settled to the tune of $16.3 billion"[457] would benefit along with him. Due to the nature of this matter, there was heightened media coverage throughout the region and internationally.

[457] *www.guardian.co.tt/news/2013-07-26/big-benifit* - accessed 11 October 2019

The matter of disclosure and transparency were also critical to the Anglo American Model on corporate governance. Relationships had to be managed throughout. There were executive management and shareholders given the crises. There was the notion that risk and what appeared to be fraudulent activities within a series of private limited liability companies. Management was unable to prevent such problems for a number of reasons. The controlled environment that should have existed was not evident.

The scale of commercial activities across more than half of one hundred companies in more than twenty countries without proper controls, disclosure and transparency erupted in this contagion. The role of the audit committee was critical to this process in that it was spearheaded by the board of directors and charged with such responsibilities. They functioned according to the mandate at law as an oversight body for financial reporting and disclosure. Some board members were part of this committee as well as independent outside directors and a qualifying financial export who understood the functioning of the private limited liability company limited by shares. They were to 'ensure that the interests of shareholders are properly protected in relation to financial reporting and internal control.'

It was unclear whether there was a strong oversight body such as an audit committee within the grouping of CLICO/BAICO. Such a liaison should have existed between the board, external auditors, internal auditors, the finance director and others. This proper functioning of this committee would have a safeguarding effect by ensuring that all financial statements of the company were released to the shareholders and other stakeholders most accurately. It was unclear whether the members of the audit committee had the requisite knowledge on the matters that touched and concerned internal controls.

Consistent with the narrowest of definitions of corporate governance, there was a bias towards shareholder primacy as opposed to stakeholders' benefits within the

corporate entity. Stakeholders generally have recourse through contractual agreements other than reliance on corporate decision-making processes within the company. Sometimes such decisions and resulting activities are unpredictable. The shareholders within the private limited liability companies limited by shares carry the risks associated with investments. It was argued that shareholders must of necessity have the primary as stakeholders within the three dimensional organs of the company.

Given the mandate and emphasis on foreign direct investments, the present "Government remains committed to the further development of the International Financial Services Sector as a viable component of its economic diversification thrust."[458] Comparatively speaking, it was a small but significant number of private limited liability companies limited by shares that were responsible for the contagion and the damaging effects on the nature of corporate governance within the state. These companies were registered in St. Vincent and the Grenadines and in Trinidad and Tobago.

While the company in Trinidad and Tobago could not be classified otherwise, its ownership structure and its relationship to the company in St. Vincent and the Grenadines was held accountable for the existing nature of corporate governance in St. Vincent and the Grenadines. The collapse of the institutions of shareholders, directors and the company in meetings could not evade the effects of what some called the two edged sword of possible risk and fraud.

The Shareholder

The shareholder's right was to exercise ownership rights to the shares contained in the company and to protect that investment and this was key to the Anglo American Model of corporate governance with emphasis on its unitary board. The interest of the

[458] *National Report - St. Vincent and the Grenadines - Third International Conference on Small Island Developing States* (Ministry of Health, Wellness and the Environment, St. Vincent and the Grenadines July 2013) 16

shareholder remained paramount. Ownership of shares and the ability of the owner of those shares to protect such investment were clearly demonstrated in this particular situation with CLICO/BAICO. However, the challenge arose when a separation of ownership of shares and the management of how those shares were invested created an imbalance. Ownership separate from those who controlled the entity was fundamental to corporate governance best practices. Over time, the owner of shares became the controller of the management to the extent that dominance was the normal occurrence.

Share ownership structure – dispersed or concentrated?

The "shareholder"[459] had the right afforded him at law to monitor and control the company but with discretion and in so doing, to exercise fiduciary responsibilities. Share ownership should have been widely dispersed but due to the complexity in structure in this case, share ownership was not considered widely dispersed. Even though institutional shareholders had a strong presence, the majority shareholder was still the majority shareholder that was critical to the functioning of the many companies. The unanimous shareholder agreement is discussed in greater details subsequently in this chapter.

Institutional shareholders although impacted on the efficiency of the Anglo American model, in this case it did not make a difference to the composition of the institutional investor. They were representative of smaller investors but not to the point where there was no major challenge to the majority shareholder or to distort efficiency of the Anglo American model. There was no challenge to any managerial misconduct to date. This might prove to be quite controversial even by institutional investors who have lost significant financial worth. The question still remains as to whether this challenge would lead to matters that pertain to managerial accountability. It did appear that the fixed term strategies commensurate with fixed term annuities and other products drove a number of institutional shareholders to relax their influence

[459] See Chapter One for "Explanation of terms – shareholders"

and challenges that could have been made towards greater managerial accountability. Actions such as selling of shareholding were preferred to engage in monitoring and or supervision of management by institutional shareholders. There was another observation in what could be called a trade off between institutional shareholders in that role and the role of investor of funds.

Many institutional shareholders were lax in reconciling both roles given that the private limited liability company went further and accumulated additional assets through listed companies. On one hand they were institutional investors and were unable to reconcile such roles with being investors of funds. Profit maximization was their primary focus but when faced with the challenges of mismanagement of the funds they invested, they choose to sell rather than to hold management to account. They may not have been motivated to do so without additional support.

Shareholders needed to be protected at all material times. The corporate directors and managers remained accountable to their shareholders especially the majority shareholder. Shareholders worked assiduously as monitors over the manager and senior executives of the company in St. Vincent and the Grenadines and others. This was made possible through the statutory rights available and those acquired at common law.

The company in meeting is another major organ of the company where shareholders have the right to control the management of the company. This remained their statutory right to vote on decisions at the Annual General Meetings. Shareholders were informed of the future and previous activities of the company. Copies of accounts as well as the new fiscal information for the previous year or years were presented. They asked questions of the board and the executive management.

Shareholders are responsible for the election of the board of directors and at law this mechanism provides for a check on managerial actions of the board of directors and executive management. Shareholders participated in discussions that touch and concern the welfare of the company and voted on important affairs that related to the company. Up to 2009 a record of these were recorded in the minutes of the meetings and compiled in booklet form with the substantive and detailed statement of financial accounts yearly.

To place a restraint on mismanagement of the company and to protect their interests, the shareholder's right to vote at the Annual General Meeting remained crucial. Especially so, the minority shareholder also has rights that were categorically clear given the financial distress experienced through this company. The number of minority shareholders cannot be determined given the complexity of transactions. Given the crisis it was presumed that these three main mechanisms of cumulate voting, appraisal rights and shareholder's derivative action were utilized at some point. In this instance, a classic case did see a suit against "directors who were also shareholders"[460] being started in the Trinidad and Tobago courts. In addition, judicial intervention mentioned elsewhere in this chapter was believed to be a critical element in good corporate governance practices.

4.3 The critical role of the Unanimous Shareholder Agreement

The use of the "unanimous shareholder agreement"[461] when discussed provoked a further awareness on the associated laws. News came that CL Financial Group was

[460] *www.guardian.co.tt/business/2013-01-30/duprey-named-lawsuit-against-bipa* - accessed on 7 August 2019; see also *Appendix 2(2)* as the claim was made that Mr. Duprey benefitted personally from being a shareholder in the company of CLICO/BAICO; See also *Appendix* 2 (8) for Assets for CLICO in excess of $11 billion dollars; See also *Appendix 2 (12)* for additional information on assets apparently used by shareholder. The information was in the public domain and used to highlight the allocation of some of the funds of the company. Although this was mentioned in the newspapers, there were statements from Ministers of the government in Trinidad and Tobago to corroborate the unfolding and erupting issue of corporate governance best practices gone awry amidst international and domestic financial turmoil.

[461] Trinidad and Tobago Companies Act 1995, s. 137

attempting to salvage its building – Lascelles deMercado head office located in New Kingston while limited information surfaced about the plight of stakeholders. The impression was that CL Financials brokered other deals elsewhere in the Caribbean and through its complex networks.

Although not harmonized, company law throughout the region generally provide for explanations of corporate behaviour so that, interpretation of the causes and effects of alleged corporate misconduct and the impact on nature of the corporate governance can still be scrutinized effectively and primarily so for both Trinidad and Tobago and St. Vincent and the Grenadines. It must be remembered though, that the legal notion still exist with respect to the Ltd as possessing its own 'legal persona' and "was regarded as a person in law, it can only function through the humans who are running the business in which the company is involved."[462]

Alleged "fraud and misconduct" [463] have been written, with respect to the CLICO/BAICO/CLF affair. What was not clear, still, was whether at law, exactly who or what was to be held accountable for corporate misconduct if at all. This was further compounded by ministerial "statements"[464] being made about "intra group funding;"[465] accrued mutual benefits; economic efficiency of CLICO and the recent call by major shareholder to give back the company to the person who started it in the first place. It was more than a presumption that there was a lack, disregard or absence of corporate governance best practices. It was quite remarkable that similar difficulty did arise in current discussions as to the exact relationship between shareholders and

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[462] Dine, Janet, Koutsias, Marios, *Company Law* (Palgrave Macmillan publishers, UK 2014) 10

[463] *www.trinidadexpress.com/news/Statement-From-The-Office-Of-THE-Attorney-General-on-CL-Financial-Group-181152451.html* - accessed 9 July 2019

[464] *www.bahamaislandsinfo.com/index.php?option=com_content&view=article&catid=34:Bahamas%20National%20News&id=2474:prime-minister-gives-statement-on-clico-bahamas-situation&Itemid=147* - accessed on 10 November 2013 and 9 July 2017

[465] www.guardian.co.tt/business-guardian/2012-08-15/dookeran-comes-clean-clico-bailout - accessed 21 October, 2013; see also www.clfhcuenquiry.org/Core/Core%20Bundle%20Item%208/8a-22.pdf - accessed 2 September, 2015 and 9 July 2017

this legal fiction - the company itself. Under English law, to which the Caribbean adhered for more than two centuries, definitions proved to be intractable where it has been described previously as "term[s] of polite invective;"[466] "a mere nominee;"[467] "a mere fraud,"[468] an "agent,"[469]and "a trustee."[470] The matter rested on the same question raised by many over the years, "to whom are directors' duty owed?"[471]

One should not forget that according to black letter law, the company at law does not belong to its major shareholder or a director or its Chief Executive Officer. Shareholders invested or raised capital for the purpose of insurance business venture and those shareholders at law have a great measure of "immunity."[472] In the case of Trinidad and Tobago, the exception was to shareholders within an "unlimited liability company."[473] In the instance case with the private limited liability company in Trinidad and Tobago and its branch in St. Vincent and the Grenadines, the role of the shareholders remained a critical component to this study.

The analyses provided perspectives on the law and economics with respect to a person being the "largest single shareholder."[474] It is quite remarkable that currently, there has been a call by the largest single shareholder of CLICO TT, to 'give him back his company.' One must remember that the company does not belong to the individual but rather share ownership determined the structure of shareholding. Control of a company by a single shareholder creates a particular point of analysis among companies that are privately held. A majority shareholder can achieve passage of resolution in their favour in as much as there was a majority vote. Such a shareholder

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[466] *I.R.C. v Sansom [1921] 2 K.B. 492 @ 514 (C.A)*
[467]*Broderip v. Salomon [1895] 2 Ch. 323 @ 330*
[468] *Ibid, 331*
[469] *Ibid 338*
[470] *Ibid, 339*
[471]Mantysaari, Petri, *Comparative Corporate Governance: Shareholders as a Rule Maker* (Springer Berlin - Germany 2005) 167
[472] *Op. cit.* [St. Vincent Companies Act*] s. 56; Op. cit.* [Trinidad Companies Act] *s. 58*
[473] [Trinidad Companies Act] *s. 58*
[474]*www.stabroeknews.com/2013/news/regional/07/26/duprey-to-benefit-financially-from-clico-deal/* - accessed in 19 July 2019

can influence minority shareholders and or at best this is done through a unanimous shareholder agreement. The person who makes a minority investment into a company does so at his/her own risk and at the risk of a controlling shareholder.

Additional comparative analyses point to the fact that "unanimous shareholder agreements"[475] may be entered into, as was the case with the "CLICO GROUP of companies."[476] Therefore, whether the shareholder's agreement prevailed over and effectively amended the Articles of Association was critical. For instance, "remuneration"[477] of officers was subject to the unanimous shareholder agreements as well as bylaws and articles. If the "act or the unanimous shareholder agreements required a greater number of votes,"[478] this should still be subject to the unanimous shareholder agreements. The role of the unanimous shareholder agreements was therefore significant. "If a company or guarantor of an obligation of the company, that company or guarantor cannot assert against the company or any person of the company"[479]that may have rights under the unanimous shareholder agreements, the company's bylaws and its articles.

Laws of two countries

St. Vincent and the Grenadines and Trinidad and Tobago are analysed to show that similar provisions are made with respect to the unanimous shareholder agreements The only difference is with respect to identified sections but the construction is generally similar or the same in intent and meaning. For the purposes of avoiding duplication, references in this first instance would be predominantly to the Companies Act of Trinidad and Tobago. The "shares issued"[480] are also subject to the unanimous shareholder agreements as well as "amendments of the bylaws"[481] were also subject

[475] See *fn 457, s. 58; s.135*
[476] *www.afraraymond.files.wordpress.com/2010/03/mou21.pdf* (Memorandum of Understanding 21) as per filed - accessed 5 May, 2019 – unstable link
[477] See *fn 460, s. 104*; *Op. cit*. [Trinidad Companies Act] *s. 106*
[478] *Op. cit.* [Trinidad Companies Act] s.10 ss. 1
[479] *Ibid, s. 25 (a)*
[480] *Ibid, s. 33 ss.1*
[481] *Ibid, s. 66 ss 1*

to the unanimous shareholder agreements Within the unanimous shareholder agreements, there was provision for "elections or appointment of directors"[482] by classes of creditors or employees; and most importantly for the “management of companies.”[483]

The “designation of officers”[484] are also subject to the unanimous shareholder agreements unless otherwise provided for the “directors fiduciary responsibilities”[485] and duty of care to the company. It is also critical that "every director and officer 'shall comply' with"[486] the unanimous shareholder agreements. It may be deemed strong language that is used which may 'breed litigation' but 'shall comply' denotes a mandatory obligation. The question arises though, as to whether compliance could be demanded or mandated.

Amendments of bylaws

With respect to Vincentian Company law, “amendments of bylaws;”[487] the “articles or the unanimous shareholder agreements to provide for election or appointment of directors;”[488] the “designation of officers;”[489]the delegation of “borrowing powers”[490] are all subject to the unanimous shareholder agreements Other vital areas that touch and concern management of the company are “remuneration;”[491] “annual financial returns to be published;”[492] the unanimous shareholder agreements to “form part of the company records;”[493] “shareholders has access to a copy”[494] of the unanimous shareholder agreements, “an order can be made to restrain the conduct complained of,

[482] *Ibid, s. 71 ss. 8*
[483] *Ibid, s. 60 ss. 1*
[484] *Ibid, s. 97*
[485] *Ibid, s. 98*
[486] *Ibid s. 99 ss.5*
[487] St. Vincent Companies Act 1994 s. 64
[488] *Ibid, s. 69 ss. 8*
[489] *Ibid, s. 95*
[490] *Ibid, s. 96*
[491] *Ibid s. 104*
[492] *Ibid s. 148 ss c*
[493] *Ibid, s. 177 ss. 1*
[494] *Ibid, s. 190 ss. 1*

and or to regulate the company's affairs to amend"[495] the unanimous shareholder agreements "a person can apply to the court to have a restraining order if in conduct they do not comply with"[496] the unanimous shareholder agreements ; and that the unanimous shareholder agreements dictates that "a certificate issued by the company can be signed by a director."[497]

Through the use of the unanimous shareholder agreements there is a fetter or interference with the discretion of directors in the exercise of their powers to manage the private limited liability company. As privy to the unanimous shareholder agreements, the shareholders then become fiduciaries having accrued rights, powers, duties and the liabilities of the directors. Alternative to this is the Articles of Association. These too may in whole or in part, place restrictions on the powers of directors to manage the business and the affairs of the company. What is operative in the CLICO/BAICO scenario was the consistency of the historical role played by the Articles of Association as per Companies Acts in St. Vincent and the Grenadines and Trinidad and Tobago. This was inherited from the English system and the determinant is that shareholders do not automatically become fiduciaries with respect to decisions on matters restricted by the Articles.

The only contract among members is a statutory one where the "company itself is included by reference to the registered documents" and to no other documents. The articles of association supposedly 'gave' contractual effect by the law to subscribers. The need for other regulation within company law was sufficient to bolster the claims of the nexus of contracts. It is also sufficient to acknowledge that the "unanimous shareholder agreements "[498]was one of the vehicles used by CLICO/BAICO with the effect at stabilizing a group of companies in the financial interests of government, shareholders and other stakeholders.

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[495] *Ibid, s. 241 ss. 3 (a)*
[496] *Ibid, s. 248*
[497] *Ibid, s. 500*
[498]Trinidad and Tobago Companies Act 1995 - s. 136, s.137 - Unanimous Shareholder Agreements

Articles of Association

In trying to understand some aspects of corporate governance, the articles of association carry with them the procedural outline on how companies were to be directed and controlled. Attention is now drawn to this common law device. The constitutions of these private limited liability companies were comprised of bylaws, unanimous shareholder agreement and regulations. Coupled with this is the unanimous shareholder agreements alluded to earlier. Comparative analyses of both the Companies Law of Trinidad and Tobago and St. Vincent and the Grenadines demonstrated that there were consistencies and similarities between these instruments that provided guidance on who controls and directs the company. CL Financials utilized both the unanimous shareholder agreements and the articles fully as they pertain to "joint ventures."[499] The idea was that a strong economic entity within the Caribbean region could not be enabled otherwise.

Articles being subject to amendments would necessitate "resolutions" to be passed. It is implied that an amendment would normally take effect from the date that it is registered by the Registrar and not before. This is a specific statutory mandated procedure. The members of CLF/BAICO did enter into several shareholders agreement and the question arises as to whether the shareholders agreement prevail over and could effectively amend the Articles of Association. The "courts has no jurisdiction to rectify Articles of Association of a company although they do not accord with what is proved to have been the concurrent intention of all signatories therein at the moment of signature."[500]

Verification of information became convoluted at times given that the current status of the crisis was still within the courts, as to the financial viability of the entity that was once CL Financial Limited to which the British American Insurance Company Limited belonged. Similar to other entities, in St. Vincent the British American

[499] www.ccmf-uwi.org/files/publications/companies_profiles/CL_Financial_Limited.pdf - accessed on 29 August 2019 – Available in pdf format

[500] *Scott v Frank F. Scott (London) Limited [1940] Ch 794*

Insurance Company Limited was subject to "Judicial management."[501] Again, the media was very much responsible for extracting pertinent pieces of alleged financial misconduct, giving their own judgment.

The OECS and its leaders were responsible for drafting a "rescue plan" so that there was a containment of further crises. Structured discussions were conducted comprehensively with some who claimed to be policyholders and other members of the general public throughout St. Vincent and the Grenadines. As the crisis unfolded, it affected many stakeholders (individual and institutional). Information about "genteel poverty" and the status of the crisis was readily available on a weekly basis in some instances and were accessible through electronic and printed media.

Gap in scholarship

There was a gap in scholarship on the nature of corporate governance within the private limited liability companies limited by shares in St. Vincent and the Grenadines. Some publications were about corporate governance generally. As far as is known, with specific reference to private companies in St. Vincent, there were no written materials about any established causal link between the private limited liability Company limited by shares, "genteel poverty" and the bad practices of corporate governance. There was an absence of a similar study detailing the Vincentian experience given the contagion of the CL Financial Limited Company.

If it was attempted, it was difficult to segregate the corporate entities as being independent of each other so that there was a symbiotic relationship between CL Financial Limited/British American Insurance Company and Colonial Life Insurance Company. They were legally and legitimately established in member states of the ECCU and the OECS. They were part of the network of companies and it became quite challenging to dismiss the 'evidences' that pointed to the lack, disregard and

[501]This was done for several companies Judicial Management for St. Vincent see fn 386 for document containing comments on judicial management

absence of corporate governance best practices and the resultant effects among them. Shareholders, directors and the company in meetings that constituted the private limited liability companies limited by shares benefitted from intra group investments over the period under review. The reassessment of corporate governance models and best practices within this company, offered a greater perspective on the nature of corporate governance in the company itself and by extension in the country.

The question as to who controlled what size of the shares, what was the value of those shares and by whom was the company supervised appeared to be a matter of guesswork upon closer analysis. Clearly lines of demarcation were blurred. A corporate governance statement appeared to be a mismatch. The closest to finding such a philosophical and workable objective on good governance of this company was within the mention of the words, "COMMITMENT to...good corporate governance; to balance the interest of Shareholders with those of other Stakeholders;"[502] and further "to continue to develop and institutionalize corporate governance..."[503] Beyond this it was anyone's guess as to who were the responsible agents for setting aright the corporate governance practices policies and principles. The statements for CL Financial Limited are replicated among its subsidiaries and its branches.

The paradigm of the Business model

It has been mentioned that the business model used by CL Financial was one that was flawed. The Prime Minister of St. Vincent and the Grenadines commenting on the issue where CL Financials was practically holding for ransom, states and financial institutions within the OECS/CARICOM/the UK and where ever its tentacles extended, stated that,

"...I mean we are not talking here about one million, two million, we are talking in the case of the Eastern Caribbean Currency Union (ECCU) of in the region of EC$2

[502] *Op. cit*. [*Annual Report of CL Financial Limited] 4*
[503] *Ibid, 19*

billion (US$800 million) in liabilities in CLICO Trinidad, CLICO Barbados and also British American."[504]

He further stated that this could be,

"... translated into serious damage to a lot of people's lives and "a new species of poverty" known as "gentile poverty" that has enveloped this region as a consequence of the insurance debacle."[505]

The 'jury' was still out on whether the extent of damage inflicted would be recoverable and to what extent if at all would corporate governance best practices be reintroduced amidst the stress caused in peoples lives and livelihood.

4.4 Lessons learnt

The significance of the contagion created by CLICO/BAICO under the remit of CL Financial Limited was a corollary to another crisis from the CARICOM state of neighbouring Jamaica. The current situation was said to be "severe...a downturn in the real estate and stock markets rapidly resulted in illiquidity problems in the overexposed life insurance industry."[506] While there were no stock markets in St. Vincent and the Grenadines, it was still true to say that the overexposed life insurance industry through British American Insurance Company Limited was apparently caused by illiquidity problems generated by CLICO that had other companies and investments tied to the stock markets in Trinidad and Tobago. This decision on investment or divestment of funds is a management decision; it is part of the best practices.

Up to the time of writing up this research, many persons continued to doubt whether or not they will see returns as proposed on their 'hard earned money'. Although

[504] *www.jamaica-gleaner.com/gleaner/20120229/business/business7.html#disqus_thread* - accessed on 16 February 2019
[505] *Ibid*
[506] Morris, Verlis, Smith, Sashana Smith, Williams, Horatio, *An Empirical Comparative Analysis of Financial Sector Crises in Asia and the Americas: American Charter of Economics and Finance Vol 1 No. 2* (December 2012) 74

governments in the region attempted to put measures in place to restore confidence in the financial sector, the damage was done. There was the new reality of "genteel poverty" in St. Vincent and the Grenadines that has to be addressed. Discussions were ongoing as to how to prevent any such similar crises within an already impoverished state and how to address poverty related issues to gain the maximum benefit.

During the late nineties the world witnessed the "rise and burst...of the internet bubble."[507] More recently commencing in late 2008 and early 2009 the world saw what became known as the "global financial crisis" [508]which was allegedly triggered by the US "subprime mortgage crisis".[509] The macroeconomic effect on St. Vincent and the Grenadines was devastating. The critical factor though, was that this current financial crisis disclosed severe limitations in the very nature of a company's corporate governance. There was an inability to critically assess the impact of any delimitation placed on the branch British American Insurance Company Limited through to its shareholders and other stakeholders. The modus operandi prevented this and the ability of the company to exercise its own redefinition of corporate governance specific to the nation state even if it was locally registered was under 'siege' by the external management of CLICO.

Parallels to the Vincentian experience and the wider CLICO/BAICO scenario were also drawn from the late nineties "Asian financial crisis"[510] and other jurisdictions. An expressed "real fear," as well as a sense that the current financial crises wreak havoc among the already vulnerable economies of the OECS was evident. This was

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[507] Barfield, Claude, Leiduk, Gunter S, Welfens, J.J. Paul, *Internet, Economic Growth and Globalization: Perspectives on the New Economy in Europe, Japan and the US* (Springer - Verlag, Berlin 2003) 209

[508] Ciro, Tony, *The Global Financial Crisis: Triggers, Responses and Aftermath 2008 - 2009*(MPG Books Group, UK 2012) 1 - 31

[509] Zandi, Mark, *Financial Shock: A 360° look at the Subprime Mortgage Implosion, and How to Avoid the Next Financial Crisis* (Financial Times Press 2008) 9 - 11 for a discussion on what constitutes a subprime mortgage - a definition on page 9 as a 'loan made to someone with a weak or troubled credit history'.

[510]Agenor, Pierre - Richard et al, (Eds) *The Asian Financial Crisis: Causes, Contagion and Consequences* (Cambridge University Press, Cambridge 2006) 1 - 8

expressed in a statement delivered by the Honourable Prime Minister of St. Vincent and the Grenadines on the matter. He stated, "CLICO debacle could threaten CARICOM."[511] Similar to the negative spill offs from "financial contagion" in Asia there was a concern of Prime Ministers of other similar small states as well in that they, "have expressed strong concern for the plight of thousands of policyholders and investors affected across the region while insisting that justice must be done."[512]

Additionally, the lessons from the global financial economic downturn brought with them a debilitating effect on the world economies. When placed against this backdrop, the economies of the OECS were exposed to even more serious systemic financial risks given the decisions by the conglomerate to interpret this downturn as an opportunity for management to invest still. The private limited liability companies limited by shares remained part of the financial system having been started as family concerns. It does appear that ownership of the company may have been critical to the decision making process.

Here, the decisions taken by management to invest may have been influenced from the standpoint of majority shareholders, and others who 'owned' the company. The IMF signalled this within this statement that, "the global economy is in a dangerous new phase. Global activity has weakened and become more uneven, confidence has fallen sharply recently, and downside risks are growing."[513]The systemic shock created by the contagion of CL Financial Limited was representative of a spate of this weakened economic and financial system.

Significantly too, the OECS with their open and fragile economies and shared vulnerabilities were quite adamant that occurrences of financial collapse were

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[511] Appendix 2(8) – Letter from Prime Minister of St. Vincent Ralph E. Gonsalves to CARICOM

[512] *Ibid*

[513] *World Economic Outlook: Slowing Growth, Rising Risks* (International Monetary Fund, Washington DC, USA 2011)

unprecedented. Nearly three years on from the collapse, Prime Minister Dr. Ralph E. Gonsalves insisted that the CL Financial contagion created the situation in St. Vincent and the Grenadines that, "the total exposure amounted to 16 per cent GDP for ECCU countries,"[514] and that it also translated into "serious damage to a lot of people's lives" and "a new species of poverty" known as "genteel poverty"[515] has enveloped this region as a 'consequence of the insurance debacle.' The insurance company is the identified juridical body that bears great significance in this matter.

The British American Insurance Company Limited was a branch of the BAICO/CLICO alliance. The distinguishing element was that all these companies were private limited liability companies limited by shares. "All offices of BAICO in the ECCU are branch offices"[516] of CLICO. The CLICO business (also a shareholder in CL Financials Limited) within the Caribbean region was managed and administered by CL Financial Limited. CLICO remained a "financially troubled insurance company"[517]to many. Just recently attempts to "recapitalised and sell part"[518] has projected the company into the media. St. Vincent and the Grenadines as well as other OECS territories where its branches were located experienced an unprecedented shock.

This was a seminal Caribbean phenomenon as it was afforded a place among the 'accounts' of the region that was referred to as "A history of events."[519] There was a complexity of a number of issues with CL Financial Limited such as ownership structure, size and the range of activities that were connected with the Colonial Life Insurance (Trinidad and Tobago) Limited (CLICO) and its said parent company. Six

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[514] *www.jamaica-gleaner.com/gleaner/20120229/business/business7.html-* last accessed 15 April, 2019

[515] See Chapter One – for Explanation of terms - definition on genteel poverty

[516] *Update on the ECCU response to issues relating to British American Insurance Company and CLICO in the Eastern Caribbean* - accessed on 19 April 2019 (Available as a pdf/Media Release)

[517]*www.guardian.co.tt/business-guardian/2012-09-12/clico-being-undervalued* - accessed on 19 - 23 April, 2019

[518] *www.baico-intl.com/* - accessed on 25 September 2019

[519] *www.guyanachronicle.com/a-history-of-events-clico-guyana/* - accessed 19 April, 2019

years on from the date of its collapse that took place in 2009, the related issues still plague the developmental efforts within the Caribbean region.

"The CLICO meltdown"[520] posed systemic risks not only to Trinidad and Tobago's financial sector but also to St. Vincent and the Grenadines and the wider Caribbean. The effects were felt in all 15 CARICOM states. Only Jamaica and Haiti escaped its contagion effect. In Trinidad and Tobago the structure of its financial system suggests that between 2006 and 2010, "23% to 27% of its insurance companies"[521] account for the structure of its entire financial system.

There was some indication as to the viability of the insurance sector, where in 2010,

> "…despite the subdued economic climate, low interest rates and the inactivity of Colonial Life Insurance Company (Trinidad) Limited (CLICO) and British American Life Assurance Company (Trinidad) Limited (BA), the insurance sector (excluding CLICO and BA) reported growth in both premium income and assets...[but], there was some slippage in the overall performance of the non-life sector."[522] Significantly too, was that Trinidad and Tobago's risk exposure or the "cost net of assets could be as high as 10% of GDP or Trinidad and Tobago $13.6 billion."[523] Further, "Trinidad and Tobago T$7.3 billion already injected"[524] so far by the nation's government by way of a bailout. In St. Vincent and the Grenadines, exposure was "17% - 20% of GDP."[525]

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[520] *www.stabroeknews.com/2009/archives/03/07/insurance-for-7000-teachers-at-risk-in-clico-meltdown-gtu/* - accessed 18 August 2019
[521] *Central Bank of Trinidad and Tobago, Financial Stability Report, Mid Year Review* (Trinidad and Tobago, June 2011) 9
[522] *Ibid*
[523] *www.imf.org/external/pubs/ft/scr/2011/cr1174.pdf*, 3 - accessed on 25 July 2018 and 25 September 2019
[524] *Ibid*
[525] Gonsalves, Ralph, *Budget Speech - Theme: Job Creation, Economic Growth, Financial Stabilisation, Fiscal Re-Balancing And Social Equity At A Time Of Continued Global Economic Uncertainty* (Kingstown, St. Vincent and the Grenadines 2012) 6

The government of St. Vincent and the Grenadines also "sought and received grants ...$57 million to assist St. Vincent and the Grenadines BAICO policy-holders (traditional life and FPA/EPPA)...This number for St. Vincent and the Grenadines will rise to approximately $75 million of the full donation from Trinidad and Tobago of US $150 million (EC$405 million)."[526] The argument could be that the bailout managed by both countries was perhaps contributory to halting an entire meltdown of local economies and by extension, within other CARICOM states.

Based on information coming out of an inquiry in Trinidad and Tobago, it would seem that for years "corporate governance guidelines;" [527] and efficiency considerations were not called into question save and except to the vagaries of deal making; and there may be opportunities for renewed legal approaches with respect to the avoidance and evasion of legislative arrangements or regulations.

Challenges

To begin with, the researched information was challenging to document with some measure of 'finality' even though the time frame was specified. It was still unfolding in the media with governments within the Caribbean region seeking to adhere to a unified approach. Information was available within the public domain via electronic and printed media and this led to further thorough analyses, adjustments and comparisons. Some documents and podcasts had to be revisited on line so as to check for updates.

While on visits to the site, the contextual analyses undertaken were hampered by the fact that arranged visits and interviews with key stakeholders in St. Vincent and the Grenadines did not materialize even after repeated visits. One of the main reasons

[526] *www.thevincentian.com/ulp-view-securing-grants-for-st-vincent-and-the-grenadines-p6060-107.htm* - accessed on 2 September, 2015 and 7 April 2018

[527] www.ctntworld.com/cnews2/index.php?option=com_content&view=article&id=2724:clico-did-not-follow-corporate-governance-guidelines&Itemid=707 - accessed on 30 September 2019

was that there were major partisan political issues coming out of the contagion effects. Consequently, words of caution were issued to the researcher as to how far the current research should or should not go. Several visits to the building that housed British American Insurance Company Limited were undertaken and at those times of the visits, the offices remained closed to the general public. It is likely that normal business has resumed since the last visit to the island was made, given that a "rescue plan"[528] has been arranged to facilitate restoring confidence within the insurance sector.

Beyond results

A Code or Guidelines on Corporate Governance for Unlisted Companies in St. Vincent is deemed necessary to supplement the existing internationally accepted best practices. This should address some issues such as the modus operandi of companies like the insurance companies that should be held at a higher level of accountability. The "soft touch"[529] to legislation and governance issues should inform a balanced approach especially to insurance companies that were engaged with direct contact with stakeholders who invested directly through purchase of financial products. A Code was proposed and forms part of the original thesis presentation.

Secondly, although the government has taken a very serious approach towards redress, the further education of the stakeholders generally about the nature of corporate governance was a felt need. Levels of responsibility and accountability towards insurance companies should be a major part of on-going financial education offered more consistently and freely within the public domain. Further, practitioners within the field of insurance and the legal profession may find it necessary to lead on this as a matter of urgency.

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[528] *www.jamaicagleaner.com/gleaner/20120314/business/business9.html* - accessed 18 July 2019; *www.stabroeknews.com/2009/business/11/06/cleaning-up-the-clico-mess-oecs-seeking-to-salvage-regional-subsidiary/* - accessed on 15 - 23 September 2019

[529] Dempsey, Alison, *Evolutions in Corporate Governance: Towards an Ethical Framework for Business Conduct* (Greenleaf Publishing, Amazon Media - Online 2013) 15.1

The reform of the legislation with respect to regulation and supervision to deal with the private limited liability company limited by shares and especially towards conglomerates should probably be addressed as a matter of priority. Other conglomerates or companies nearing such capacity should be monitored and be a priority of the corporate citizen. Additionally, there is a need for on-going debates and engagements among stakeholder groups about the nature of corporate governance.

The dynamics of the influences from culture, economics and politics should feature greatly so as to give an appreciation of such factors and their contribution to an understanding of all corporate entities. This should be offered as added features within curriculum specifically designed for business ethics; corporate social responsibility; corporate governance; the company; the deed of settlement; the trust and other corporate structures. As part of the on-going education promoted through the education revolution, a greater emphasis on education for board members, shareholders and directors was seen as an imperative.

Local and or regional educational institutions should be encouraged to design and deliver targeted programmes on qualifications for boards of directors to equip them in their jobs. The fiduciary responsibilities of board members as enablers to function, was also priority. It was seen as critical that directors be persons of high integrity, independent in thinking and knowledgeable about financial products and services. When it comes to dealing with the public as it pertains to money, a greater sense of financial accountability and responsibility should be exercised at all cost.

The regulatory framework for the insurance sector

The Insurance Act of 1966 governs the insurance sector in Trinidad and Tobago. Similar provisions are in St. Vincent and the Grenadines. The Central Bank in Trinidad took over supervision of the insurance sector in 2004. To address

shortcomings of the Act, the Central Bank issued Guidelines on matters including corporate governance, prudent lending, and claims handling. Financial returns are required quarterly, and companies are subject to on-site inspections roughly every one and a half [1½] years. Enforcement has been constrained by legal challenges to these Guidelines and the Act.

Similarly according to the Commissioner of International Insurance, the insurance sector in St. Vincent and the Grenadines was under the control of the Offshore Finance Authority. The insurance regime did offer a great deal of flexibility to insurers wishing to conduct international insurance business. The sector was regulated by the International Insurance (Amendment and Consolidation) Act 1998. This came into effect on December 15, 1998 and, the International Insurance Regulations on June 22, 1999.

These legislations were augmented, particularly by the International Business Companies Act 1996, as amended, and the Mutual Funds (Amendment) Act 1998 and generally by the other legislations, which governed the operations of the international financial sector. Together it was felt that these legislations did set the legal framework for the highest quality of regulatory and administrative processes. These were pivotal to fostering and maintaining full market participation, transparency and confidence.

4.5 Conclusion

It was clear that this 'debacle' originating from the private limited liability companies headquartered in Trinidad and Tobago enveloped the entire Caribbean region. The insurance companies and more so the insurance sector in St. Vincent and the Grenadines were severely compromised. There was an unprecedented financial crisis with its contagion that resulted in the loss of several thousands of East Caribbean dollars for a vast majority of Vincentian policyholders and many others who were part of the wider stakeholder community.

This situation has placed many at a disadvantage, which was rightly deemed unique. This species of poverty was called "genteel poverty". The hypothesis claimed that "genteel poverty" was part of the nature of corporate governance in St. Vincent, which was the result of a lack, disregard or absence of corporate governance best practices within the insurance companies. The CL Financial Company Limited headquartered in neighbouring Trinidad and Tobago, with its complex structure of private limited liability companies limited by shares has a separate and independent legal personality from its shareholders.

Nonetheless, the company at law can create a moral hazard for its stakeholders and if proved, can be held liable. Whether the directors and shareholders can be held liable for acts done by the company will be a matter for the court to decide within the interpretation of the British company laws and UK Company laws. The rights, obligations and or liabilities of this company may be held separate from its shareholders. Whether shareholders pursued economic purposes without any exposure or "risks or liabilities in one's personal capacity"[530]were also matters for the courts.

Issues examined in cases such as Adams v Cape Industries established at common law and developed through case law may surface again. These would be issues such as "equitable remedies"[531] for agency; the matter of fraud; the company being used as a façade or sham; group enterprise and injustice or unfairness. Nonetheless although a few exceptions may exist, the rule established in Salomon v Salomon[532] of separate legal personality remained as an uncompromising precedent. The issue of "piercing

[530] *Ayton Ltd v Popely [2005] EWHC 810 (Ch); see also* Lowry, John, Reisberg, Arad, *Pettet's Company Law: Company Law and Corporate Finance (*4th edn. Pearson Publication, UK 2012*)*
[531] Oh, Peter B., '*Veil Piercing Unbound' (2013) 93 B.U.L. Rev. 89*
[532] *[1897] AC 22*

the veil of incorporation"[533] and to what extent this may be used was also a matter that should occupy the minds of the legal experts.

The matter of the regulatory and supervisory capacity and capability of the insurance sector was being addressed through a series of discussions and legislative reform. In addition, there were a number of inter-ministerial and inter governmental dialogue on the statutory regulations and reform for the corporate sector generally. A Code on corporate governance was non-existent for unlisted companies. The researcher has proposed a corporate governance Code for these companies. This was submitted as part of the Appendices.

[533] See UK Companies Act 2006 s. 993 on fraudulent trading; Officers in default s. 1121; shadow director s. 251; Group reporting s. 399, s. 409 - all to serve as precedent and guide to companies within CARICOM; Trinidad and Tobago Bankruptcy and Insolvency Act 2007; UK Insolvency Act 1986 s. 214 attributes unlimited liability to any director of a company in the situation of wrongful trading; UK Employment Rights Act 1996 s. 218 ss. 6; UK Taxation International and Other Provisions Act 2010; also Finance Act 2015 Part 3

CHAPTER FIVE

OBSERVATIONS, ANALYSES AND CONCLUSIONS

"A firm is inherently fragile if its value added emanates more from conceptual as distinct from physical assets... Trust and reputation can vanish overnight, a factory cannot." - Greenspan, Alan (Chairman: US Federal Reserve - March 2002)

5.1 Introduction

This original contribution to the debate about the nature of "corporate governance"[534] best practices was motivated by a need to provide another perspective generally about company law in St. Vincent and the Grenadines. These issues were explored over the period 1845 to 2013. The choice of topic had more to do with gaining a better understanding of law in motion within the Vincentian corporate experience. This further elucidates the existence of the prevailing complex corporate governance environment that became complicated, having been generated externally.

The private limited liability company limited by shares remains an evolutionary phenomenon. There were several factors that impacted its stakeholder community who are beneficiaries. The effect of country level forces on corporate governance was multifaceted at best. These were such that the stakeholder (institutional shareholders; individual shareholders, directors, management and staff of the private limited liability company) community remained unfazed by an unprecedented crisis detailed in Chapter Four. It could be that this was a psychological modus operandi where the human will to succeed against the odds became entrenched.

There was always the quest for a better way of life for Caribbean peoples even from the days of slavery. The pursuit of emancipation probably best explains how an officious stakeholder is able to continue to add value to the company just by remaining part of this august body. It is after all a British juridical construct, 'built to last.' There were observable emancipative values and civic entitlements to the

[534] See Chapter One (*fn* 1)

stakeholder. Institutional or otherwise, stakeholders continued to be encouraged, to stay motivated and enabling within the corporate environment. Directors, shareholders and other stakeholders continue to participate in the private limited company for its resourcefulness. Its nature of the company and its corporate governance is as complex as society itself, the same 'fabric' from which it is composed. It is more challenging to dissect it, as there comes a point when acceptance of some if not its entire rule bound principles have to be accepted.

The results of the hypothesis show a positive correlation between a lack, disregard or absence of best practices to genteel poverty, which negatively impacted the gross domestic product of several small islands with the CARICOM grouping. In other words many stakeholders (institutional and individual alike) are poorer. Corporate governance has a multiplicity of factors that are time tested. The procedures and practices served as a framework to guide corporate performance and enhance shareholder primacy, but the interpretation and application of these are confined to such interpretation within the socio-economic context. At the end of the day, the 'bread and butter' issues are those that occupy the minds of all stakeholders.

Corporate governance in its entirety is evolutionary and its components are still to be understood in terms of why and how an entity as the versatile private company could withstand such an unprecedented contagion. There is an integrated framework within corporate governance that offers a more encompassing, complete and theoretically richer picture of what constitutes those best practices. The evidence gathered through an unprecedented contagion caused by a lack, disregard or absence of best practices is to be extended to assess national drivers (regulators, successive governments and hybrid of models and theories) for the broader corporate governance interpretations. The evaluation offered a perspective about the strengths, weaknesses, opportunities and threats displayed by the private limited liability company limited by shares.

That evaluation utilised several research methods that borrowed from disciplines other than law. This narrative was constrained at best. Peoples' lives and livelihood were exposed. It is within that subcategory of insurance companies varying analyses are presented in this study. Lessons were drawn not from within the island of St. Vincent but from a particular conglomerate located inside of Trinidad and Tobago but nonetheless part of the Caribbean region. Historical and legislative legacies characterised the beleaguered private companies.

To begin with there were particular historical interests where value laden best practices appeared to be established initially in early corporate constructs on St. Vincent. Those philanthropic endeavours are deemed to be the constituents of what is now appreciated as corporate social responsibility. Corporate governance and corporate social responsibility cannot be considered as synonymous but rather the latter was just one of the best practices of companies. The company is still the company.

The precise legal meaning of the word "company"[535] was historically problematic. In the Vincentian legislative context it cannot be overlooked and its definitive scope is used here interchangeably where it is a "body corporate;"[536] and as such, a "'company' means a body corporate that is incorporated or continued under this Act."[537]Stakeholders were subject to much dynamism in the maintenance of corporate governance procedures and practices within that same construct - the private company. This was not the only type of company on the island, but the magnitude and scope of a financial contagion endured was not confined to these two islands (Trinidad and St. Vincent) nor was this an isolated case.

[535] *Re Stanley* [1906] 1 Ch 131, 134
[536] St. Vincent Company Act 1994 s. 543; Trinidad and Tobago Company Act 1995 s. 4
[537] *Ibid*

Strategies used by successive governments on repositioning these private companies to the "forefront"[538] of national economic development were commendable. It was probably the main reason why several attempts were being made to seek redress in light of an unprecedented financial contagion emanating from within such a construct. It was through its versatility and complexities in networking across the region, that the private limited liability company (companies) warranted another analysis. The value of the shareholder and shareholding; the genesis of the company; protection of liberties and rights of all "stakeholders"[539] were relevant. The use of the word Caribbean corporate governance at times did not do justice to smaller islands like St. Vincent. Maybe because of its size and population and therefore a more thorough and robust exploration of its corporate environment is generally left to be deduced from what obtained in the larger islands.

Corporate governance best practices were always keys to the success of businesses especially in "Small Island developing states"[540]like St. Vincent and the Grenadines. Trinidad and Tobago is the larger of the two and more prosperous economically. It has the natural resource of oil, which is a highly sought commodity. However, there was a contradiction about membership of the company (shareholders assembly or shareholding)/number of "shareholders"[541] that may have lead one to believe that best practices could be more easily executed and appreciated.

This was the case in point within two case studies (Chapter Three and Chapter Four) included in this analysis. They had one major thing in common. They were both directed controlled either by individuals or families that were products of consanguinity or related through marriage. They held the controlling shareholding interests. Within both case studies, it was revealed that there was no problem of

[538] See Chapter One
[539] See Figure 1(5)
[540] See *fn* 43 where mention was made about these states (St. Vincent and the Grenadines inclusive) within the context of poverty assessment.
[541] See Appendix 2(10) - UK Companies Acts applicable to St. Vincent companies from 1800 – 2013 - [see also applicable historical *Table A]*

maintaining relationships between and among board members and or shareholders. This was a characteristic feature within unlisted companies. It was from examination of those who were supposed to control and direct the companies that lessons were drawn on the lack, disregard or absence of best practices.

These practices were not just about companies complying with formal rules and existing legislation. They developed to the stage of establishing consistency on the delivery of services emanating from the internal mechanisms within the company; demonstrated positive attitudes to be displayed by directors and staff to all stakeholders internal and external to the company; and a controlled approach that added more value to the business and eventually an enhanced reputation that was to lead to customer loyalty. The reputation of some businesses grew and this became an attractive devise especially to external stakeholders.

The succession planning of the business was also augmented. While it holds true that unlisted companies had little codified guidance about good corporate governance, there was always some form of corporate governance procedural guideline and awareness from a historical standpoint. British company laws and the UK Companies Acts, case law and other naturally occurring best practices were available directly or indirectly to stakeholders. There were other similar organisations that functioned within early corporate St. Vincent and were discernible by way of their own constitutional framework.

After more than one and a half centuries, the UK Companies Act 2006 made provisions for simplification on private companies; the application of the unanimous shareholder agreement and the procedure on sale of shares among other pertinent issues. There were other policy documents on dispute resolution among stakeholders external and internal to the private company, and so there was an expectation that aspects of the concept of corporate governance best practices was inevitable. Even the occurrences of other financial contagions especially within the region should have

alerted other private companies to seek clarification of corporate governance best practices.

Having said that, there was a marked difference between both companies presented in the form of case studies. One was successful and the other was not and this disconnect was primarily because success is not acquired by 'chance'. Corporate governance best practices were predicated on a combination of factors. There was cultural diversity and this is still prevalent up to modern times, countries within the Caribbean geopolitical landscape were once colonies and the associated commonalities of historical legacies manifested in municipal governance and legislative jurisprudence.

These remain part of a colonial construct now inherited by Caribbean islands. Nonetheless, a growing stakeholder population had to make the choice to accept directors and management teams from private companies. These persons who were placed in the direction and control of such companies had a major qualification. They had to 'fit' or have the right business ethos and acumen. Either developed elsewhere on the job they found themselves positioned within the correct 'market.' Corporate governance best practices did help some companies to achieve maximum levels of success at a faster rate. The aforementioned assisted and ensured that a private limited liability company remained attractive especially to its beneficiary stakeholders.

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The East Caribbean Currency Union, the East Caribbean Security Exchange, the Organisation of Eastern Caribbean States and CARICOM are a few examples of institutions that seek to strengthen a cohesive nationalism and "regionalism"[542]among the corporate sectors and peoples of the Commonwealth Caribbean. Both St. Vincent and the Grenadines and Trinidad and Tobago are signatories to these regional groupings. Emphases remain on the private limited liability companies given their versatility specific to economic diversification within this context. Private companies

[542] Hall, Kenneth & Chuck-A-Sang, Myrtle, *Caribbean Integration from Crisis to Transformation and Repositioning* (Trafford Publishing, USA 2012) 282 - 283

generally were likely to respond to challenges having regard to their status within the aforementioned remit. This response is likely to remain amidst the reality of constantly shrinking regional resources both economic and otherwise. The subcategory of private companies for insurance purposes of necessity must rethink their modus operandi and pay particular attention to the ongoing call for company law reform. By extension this is also a call for a reform of corporate governance procedures and practices. Noticeably, the political will is ever present in tandem with the rising importance of the private company. It cannot be denied that across the region, governments have always encouraged a review on company law but with emphasis on "harmonization rather than uniformity."[543] This process presents with tremendous challenges subject to the format and substantive Company Acts themselves. There are variations within these formats and the country specific applicable matters they contain.

The concept of the private limited liability company limited by shares was a novel one. Its genesis on the island of St. Vincent may have had very little to do with being a creature of the UK Companies Act 1907. However, it was a response by families pressured by a number of issues to transition from partnerships to private limited liability companies. It must be from this autochthonous version or 'root' that such family value laden corporate governance best practices emerged. The company is a legal entity and could not be owned by individuals. Irrespective of the family values on best practices, this could not supersede the inevitable operation of the law that led companies to incorporation. The British based literature applicable to colonies and former colonies is not ambiguous. Immediately upon incorporation a private limited liability company limited by shares coagulates with its corporate governance mechanism. There were exceptions of course to 'that incorporation status' of companies so constituted. Whether the company called itself a 'private company' prior to the enactment of the UK Companies Act 1907, in this instance, the reality was that the company did exist and did engage in best practices. The rest of the justification of this incongruity must lie outside of these arguments for now.

[543] Burgess, Andrew, *Commonwealth Caribbean Company Law* (Routledge, UK 2013) 14

The return to an assessment of share ownership in early corporate St. Vincent is pertinent here. The spread of shareholding was predominantly among family members from whom the idea about business was first presumably orchestrated. In this real sense, the private company grew to become more than a collective family oriented concern but as a resourceful vehicle to be used by the state, later on in its evolution. It was used to promote and encourage investment and employment among the wider stakeholder population. It was not that the actual family oriented company was used but the flexibility of the type of company itself was promoted to effect its cause used by government and policy makers for the wider and more nationalistic economic enfranchisement. Employment and investment were encouraged from within the Caribbean region and internationally through the vehicle of the same British construct – the private limited liability company limited by shares. This is why networks of companies (examples found within Chapter Four) were so encouraged.

Objectivity about corporate governance

At best, the research objectively tested whether corporate governance best practices addressed their adaptability and application to a post emancipation society and the commensurate roles played by the private limited liability companies. Positioned within a post colonial, modern emerging economy, corporate governance practices erupted and were 'evolving' at the time of the research. Whether the sum total of factors within a colony could negative best practices as opposed to a similar private limited liability company with the same legislative procedural outlines operating in Great Britain was probably too broad a test. The culture of a country or an island, diversity of choice of shareholders; the constraint of shareholding, qualifications of directors and a host of other factors influenced corporate governance best practices. What was critical to arriving at some measure of objectivity was assessing that the same Models of corporate governance did exist and continues to exist. The famous Table A, the constitution so called of all British based Model on corporate governance is timeless.

In the colonies as was in Great Britain, the same 'default' on corporate governance and limited liability exist. The infamous Table A is that 'default' that could be amended to suit the needs and versatility of the shareholders and other stakeholders. Also, while the UK Company Act served as the 'default' on companies, even in the Caribbean, each island had its own particular set of internal variables that 'triggered' its legislative drafters. This is possibly and or precisely why there is no single Company Act to serve as one size fits all for the Caribbean region.

Remember, several small sovereign states (former colonies) are members of CARICOM. This is not a critique of that notable grouping of former colonies and associated states but rather an objective observation as to the absence of a Caribbean Company (Law) Act or such similar construct. On this matter of objective assessments of the private limited liability companies on the various islands it was the sizes of companies that reflected appreciable differences. Having said that, it has to be concluded that best practices were standards that allowed for the British company positioned physically in Great Britain or on a colony far removed.

Lived experiences: a contributory factor

As a shareholder of a public liability company and having had 'lived experiences' within the co-operative societies, credit unions and other financial institutions, these provided a greater depth and understanding of the nature of corporate governance best practices. Additionally, these co-operative societies as well as private companies and other juridical bodies were part of the financial sector on the island. It was through a category of the private limited liability that was negatively affected by the "unprecedented financial crisis that arose in 2009."[544] The role of the shareholder was purchaser of shares. They raised capital in the process of time in every which way and contributed to the capital base of each juridical body. The shareholder needed others in most cases to act on their behalf in a relationship for mutual benefits. However, legislative provision was for directors to carry out functions such as decision -

[544] See Chapter Four – CLICO/BAICO that formed the basis of this case study and detailed the crisis

making, management and supervision of the company by using the financial resources garnered from shareholders. This relationship deemed part of the corporate governance practice was critical to the perpetual existence of companies, co-operative, building and loan societies and to the nature of corporate governance generally.

The procedures, practices and structure of corporate governance could not be executed without the social interactions between stakeholders (shareholders inclusive) across committees and the company in meetings. A small percentage of the private limited liability companies on St. Vincent did contribute to a variant of poverty called genteel poverty but only as a result of a contagion that originated outside of the island. This was from similar specie of the private limited liability company limited by shares known as insurance companies. "Genteel poverty"[545] was a variant of poverty that existed in the already impoverished state of St. Vincent and the Grenadines.

The contagion originated from neighbouring Trinidad and Tobago where one of its conglomerates CL Financial Limited, a holding company behaved like an unruly corporate beast. There was no fetter placed on this conglomerate, which stated that it was too big to fail. By all intents and purposes, it did fail. The gross domestic product of St. Vincent during the period 2009 through to 2013 realised a negative impact estimated at 16% - 20% that compounded the diverse nature of its impoverishment as a result of the aforementioned.

5.2 Critical issues

Path dependency

There was an issue of path dependency or reliance placed by the population on a monocrop economy. This was done for over a century, which led to an

[545] See Chapter One – Definition of terms – Genteel Poverty

underdevelopment of the private sector. The private company was therefore a viable alternative to further promote and channel economic efficiency and productivity for many stakeholders. Maybe there was also a lack of entrepreneurial skills among stakeholders within a monocrop state and 'economy' that held families captive to a more stable source of income as part of the wider plantation economy. It emerged from crops such as bananas, arrowroot and other staple food crops.

However, this aspect of entrepreneurialism could not be explored further as a direct contributory factor in keeping with the thesis statement. What was disturbing were the implications made as to the more recent decline in the "banana industry."[546] The question was whether the reality matched the sentiments expressed. For certain though, the incorporation of the private limited liability company continued to be encouraged as another mechanism used to diversify around bananas.

Correlation between the Gross domestic product and corporate governance practices

Corporate governance practices were pivotal to the "gross domestic product"[547] of St. Vincent. When referring to the crisis then, Prime Minister Dr. Ralph Gonsalves, described the situation as thus,

"…The Eastern Caribbean Currency Union (ECCU) consists of the six independent countries of the OECS plus Anguilla and Montserrat. The CLICO-BAICO debacle has caused an exposure in insurance liabilities of EC $2 billion (US $800 million) or roughly 16 per cent of the Gross Domestic Product (GDP) of the ECCU."[548]

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[546] See Appendix 2(3) – An article entitled: Europe's trade policy has sold the Caribbean banana industry down the river, exacerbating drug trafficking and poverty.
[547] See Appendix 2(9) Letter to CARICOM, Dr. Ralph Gonsalves wrote to H. E. Mr. Irwin La Rocque on the Strategic Directions for CARICOM, February 09, 2012
[548] *Ibid*

St. Vincent and the Grenadines remained part of this "ECCU"[549] which was a monetary union of states within the Caribbean region for the purpose of fund consolidation within those member states that contributed to the fund. There was a broad arrangement since 1983 such that the union provided for financial stability and economic development within the Caribbean region. Up to 2013 within this union, the Eastern Caribbean Central Bank "provides support and actively monitors developments primarily in the credit unions and insurance sectors."[550] The private limited liability company limited by shares was used for the purpose of insurance. The insurance companies were therefore private limited liability companies.

In St. Vincent for instance, this small category of private companies was contributory to the negative impact on the gross domestic product of the island through a lack, disregard and absence of corporate governance best practices. There was however a distinction to be made such that those practices which impacted on the nation's gross domestic product, originated from outside of St Vincent through the same category of companies. This was because the insurance company in St. Vincent was part of the conglomerate – C L Financial Limited where a major liquidity crisis erupted from within and among similar companies whose corporate governance best practices were compromised. Were they not compromised in one way or the other, an unprecedented financial crisis could not have arisen.

The insurance company at the heart of the debacle

With their historical legacies and conjoined legal jurisdictions, private companies were used simultaneously and at times conjoined on both islands in the case of insurance companies. Corporate governance was therefore primarily directed at the wider stakeholder society in an attempt to justify the existence of the private company. The private companies that purported to be insurance companies were

[549] Beek, Van Frits, et al, *The Eastern Caribbean Currency Union: Institutions, Performance and Policy Issues* (International Monetary Fund Publication, Washington, 2000) 1
[550] www.eccb-centralbank.org/p/financial-system-of-the-eccu - accessed on 6 November 2013 and 21 March, 2018

constituents of a conglomerate and for all intents and purposes functioned as part of the whole in terms of their corporate governance best practices.

As such, in every which way, the corporate governance best practices in British American Insurance Company Limited on St. Vincent and the Grenadines were those of Colonial Life Insurance Company located in Trinidad and Tobago and also part of the corporate group and networks. This arrangement created the conditions for the insurance company in St. Vincent to be susceptible to the effects of the contagion originating out of similar insurance companies in Trinidad and Tobago and vice versa. In both islands and within their private limited liability companies limited by shares, the Anglo American model of corporate governance predominated with emphases on consensus on decision making through reliance on one - tier boards.

This was primarily so until 2011 in the case of St. Vincent and the Grenadines. Post crisis, a call was made by the legislature in St. Vincent and the Grenadines for the inclusion of the two –tiered boards borrowed from German corporate law. Only those aspects from German corporate law that appeared to facilitate functionality of affected juridical bodies within the crisis were marked for piecemeal amendment to the prevailing company. The jury was still out on whether this amalgam or hybrid was workable. There was generally harmonised legislation within and among the private limited liability companies in the banking and insurance sectors that allowed for accessibility that facilitated business transactions across porous borders within CARICOM and the OECS.

The far - reaching implications and impact of the small category of private limited liability companies was surprising. The majority of domestic companies were geared towards the provision of products and services and remained tied to the growth of the domestic economy. In St. Vincent, the case of the British American Insurance Company through which the contagion occurred, was tied to the domestic economy but also operated within the international sphere of the economy. This was

contributory to the overall financial sector on the island and an example of a corporate entity that is part of the "dichotomous"[551] regulatory regime. Size did matter in this sense. A mere 0.01% of the private limited liability companies in St. Vincent was the insurance company over the entire number of years that reshaped corporate governance best practices for all times.

5.3 Summarising: Observations

The data was analysed using summarizing, tabular and comments formats. There was no other quantifiable format to filter the data given the nature of the research. Some themes emerged a priori in that, the generalization was that, a lack, disregard or absence of corporate governance best practices inevitably contributed to poverty among stakeholders. This meant that stakeholders were left in worst off positions than when they first became part premium folders of insurance policies within the company.

Absence of a corporate governance Code

Justification for a Code

The Corporate governance "Code"[552] for unlisted companies was one major outcome of this research. It was not an original focus but as the research progress, the need became obvious. In the case of St. Vincent, among the many themes that emerged 'a posteriori' was the absence of a corporate governance Code that brought about the following concerns:

- A lack of needed guidance on direction, control and governance of financial matters within the private limited liability companies,

[551] Regulated and or supervised by both the Commercial and Intellectual Property Office and the Financial Services Authority as related by officers from both entities. Information obtained through visits to the island – Visits to St. Vincent and the Grenadines: 2012 and 2013.
[552] See Appendix 5(6) – Code for Corporate Governance in St. Vincent

- Guidelines on best practices were not to be limited to listed companies only so that a Code was needed to establish a framework to add value to the companies and their respective businesses.
- Close to 10,000 businesses should not be left further, to a chanced existence in terms of procedures and processes as to how they were to be directed and controlled.
- The exercise of common sense of purpose and in observation and application of such guidance when creating a Code on good governance.
- Practical and pragmatic principles of good governance were not addressed without a Code.
- Companies' impact economic growth and employment – they go unrecognised and should not be allowed to function without a Code.
- The fallout from the crises that surround British American Insurance Company and Colonial Life Insurance Company – both private limited liability companies was estimated at $375 million or roughly 29% of gross domestic product during the years 2009 through to 2011. Forms of corporate governance redress and other corporate governance issues could best be guided through a Code on governance.
- There was a lack of value for shareholders, who needed to be protected, as their dependence on good corporate governance was critical.
- There was an absence of a balance of interest between founding families with success of companies with those that needed experiences to further set guidelines for future economic endeavours.
- A long-term success of the company was at stake as well as the ability to attract external investment and bolster investors' confidence at the micro and macro levels.

The development of a Code could be taken further through a robust consultation process within the stakeholder communities as well as to be debated in the local parliament. Thereafter, a publication of the Code for further community input is an imperative. In these ways, there could be greater awareness about the relevance of a Code post the financial contagion of 2009. The case is to be put to the beneficiaries in

the public domain. Discussions about the emerging themes within corporate governance and their importance are to be highlighted.

Comments about the "corporate governance assessment tool"[553]

This assessment was about the levels of compliance on corporate governance best practices observable in St. Vincent and the Grenadines. An adaptation from the OECD's Corporate Governance Assessment Tool was utilized for the purposes of evaluation of performance on six areas based on applicable legislation in use in St. Vincent and widely accepted international principles. Six major areas were assessed [as far as was practicable]. They were:

1) Roles of Board members
2) The composition of the Board
3) The assigned tasks of Board members
4) The processes of the Board
5) Disclosure and Transparency mechanisms
6) Relations with shareholders

Please note that the British American Insurance Company Limited was under judicial management/considered as per Level of maturity as: Undecided

The summary of findings

Mention must be made of the maturity levels that were examined such as:

Level 1: Complying with legal baseline
Level 2: Understanding the need to professionalize corporate governance

[553] See Appendix 1 (5A) Corporate Governance Assessment Tool where St. Vincent is compliant with the legal baseline on corporate governance.

Level 3: Significant concrete steps
Level 4: Advanced governance practice.

Level of maturity for Vincentian companies was generally Level 1: – Complying with the legal baseline

Therefore according to this assessment tool, the level of corporate governance maturity for Vincentian private limited liability companies within the domestic sector was that there was basic compliance within the legal baseline.

This was an original assessment and had limitations given that the material (raw data was subjected to a number of natural and manmade manipulation due to /loss of some information over time/disrepair/other). Some specific details were given as per itemized in Appendix 1(5). Nonetheless sufficient results suggested that there was room for improvement within the field of corporate governance within the domestic companies. The idea was that companies were to aspire to Level 4 where the target was: Advanced governance practice. As far as was known, testing for corporate governance compliance within unlisted private limited liability companies limited by shares on St. Vincent was never done.

It was challenging to get data to properly assess the private limited liability companies that were considered international companies for a number of legitimate reasons. They were subjected to higher standards of tests. The regulations and current legislation itself were subject to levels of 'legislative probity.' There was a limited placed on examination of records specific to directors and the requisite Register.

5.4 Justification for corporate governance best practices formula

There was a justification for the inclusion of a formula to calculate corporate governance best practices. This computation was based on a "unique assessment" by the researcher on the effects of corporate governance practices post financial

contagion and offered a pragmatic approach when evaluating whether there was evidence of a lack, disregard or absence of best practices. The formula made the statement that best practices were the positive result indicators of the performance of the company interacting with an enabling environment.

Bp = r (poC, Ee)

Source:

Originality of compilation by researcher known as:

The DCI Frederick Corporate Governance best practices formula @ 2019

Bp = best practices, r = result indicators; poC = performance of the company; Ee = enabling environment. Through several research methods employed in this study, the observable characteristics of the corporate entity lent themselves to the interpretation of stakeholders' interaction within the private limited liability company limited by shares. Generally, these companies allowed for pragmatic approaches on legislated corporate governance practices. However, best practices were positive results of the whole spectrum of interactions not just by the company but also with stakeholders both internal and external to the company.

It was that positive interplay of corporate interactions that was highly effective. Directors controlled the functioning of the legal person (the company), which was a body corporate (body of persons) with separate legal personality. It was evident that the company in meeting elected through mandatory clauses in the bylaws, the persons to control and direct the corporate person. This body corporate did not operate in isolation but had its legal personality impacted by socio-cultural, socio – political and socio-economic influences. Generally, it is legally capable of ownership of real property and personal property as it was equipped to function with juristic and

corporate authority. It could buy and sell, mortgage or lease property and there were consequences to its actions just as if it (the company) was a person. However, the corporate person although recognizable by law, could not reason as if it was a non-legal or natural person.

While it was true that procedural guidelines were laid down in the legislation, interactions in and among stakeholders changed over time. However, once the company recognized this and acted to either counteracted bad practices or to uphold its best practices, it was on these matters that corporate governance turned. The difference came about when persons were able to be positively expressive and appreciated that enabling environment. Also the pertinent question was whether there were competing forces within a specific environment that was not enabling.

As the assessment of corporate governance is carried out using the formula, the factors that influenced the behaviour of shareholders and other stakeholders are to be interpreted, respectfully by borrowing from the discipline of psychology. They both have much in common. The discipline of law was about the regulation of human behaviour while the discipline of psychology explained human behaviour. Both of these disciplines made assumptions about what caused people to act or behave in a certain manner.

In the quest for the explanation about the reality of the events that led to corporate governance best practices in the context of the formula, aspects of psychology and law must conjoin to give the best alternative to an expression of corporate governance best practices in quantifiable and qualitative terms. This is made good for effective communication and execution of corporate governance best practices. It was this aspect that was critical in corporate governance best practices over the years within the private company.

If only for a small but principal theme, for corporate governance to be effective it must consist of a whole expression that was requisite for its execution all together. The juristic personality of the company is endowed with corporate governance and is itself an integral concept that was not made of 'parts', but corresponded to all the activities of the company wholly and howsoever they were constituted generally but became statute driven immediately upon incorporation. Corporate governance continued within given time scales and manifested within an enabling corporate environment.

5.5 The phases of development of the two organs of the company

As early as the seventeenth century, within British company laws it became necessary to have a separate board of directors to direct a company through its delegated powers. The occurrence of this was incremental and the legacy of this was evident in early corporate St. Vincent. Just as the investor (shareholder) of the early nineteenth century became attracted to the corporate form as opposed to partnership, it does appear that there were lessons to be learnt.

The corporate form as opposed to partnership recognised that,

> "... the management [and] control of the company would be allocated to the board, and the stock holders ...would share in the profits. Separation of ownership and control was from the earliest period a key aspect of the corporate form."[554]

[554] Vasudev, M.P., & Watson, Susan, (Eds) *Corporate Governance after the Financial Crisis* (Edward Elgar Publishing Limited, UK 2012) 51; see also Bartman, M. S, (Ed) *European Company Law in Accelerated Progress* (Kluwer Law International Publication Netherlands, 2006) 56 - mention being made of the discussions by Berle and Means on their debate about corporate governance. The distinction that existed seems to be blurred as corporate governance evolves. Also Murray, Peter; Poole, David; Jones, Grant (Eds) *Contemporary Issues in Management and Organisational Behaviour* (Cengage Learning Australia 2005) 215; See the discussions on the foundations of capitalism from 1776 - 1880 about the separation of management from ownership (the agency) in Caroll, Archie, Lapartito, J. Kenneth, Post, James, Werhane, H. Patricia, Goodpaster, E. Kenneth, *Corporate Responsibility: The American Experience* (Cambridge University Press, USA 2012) 39 - 40.

It was this demarcation between those who controlled and those who directed the company that was so critical to those who recognised that this construct was more beneficial. It did not follow that they (both investors/shareholders and directors) were necessarily drawn from the same pool of individuals. Partnership hinged on joint venture and upholds the principle of partnering of control and direction on the whole corporate structure (partnership); while the corporate governance of the company balanced between powers that were mandated by statute to both control and direct the affairs of 'business' within this newer corporate form (a company with its separate personality).

Corporate governance was also about the balance of power within the private limited liability company. In order to maintain this proper balance of power it must be the subject of procedures and relationships between and among all stakeholders of the company. If at anytime there was a demonstrable lack, disregard or an absence of best practices, there would be an imbalance of power that would undermine the fundamental principles on which the company revolves. This would lead to chaos within the company that was set up for the purpose of profit maximisation even as early as the seventeenth century. As analysed in Chapter Four, there was an imbalance in power and the result was a lack, disregard and absence of corporate governance best practices. The same was also true of every private limited liability company either established or incorporated along the spectrum of establishment or incorporation and registration.

Re-evaluating the Organs of the company

The board of directors and the shareholder assembly (company in meetings) are the two most powerful organs of the company. Policy formation and implementation; formulation of objectives and executing them through strategic directions are those tasks associated with the board of directors. A director is appointed by the members to carry out the assigned tasks by the company. A company secretary is appointed by the

For differentiation in German law as per organs of its companies that reflect the organ theory, which is not part of UK Company law in this form.

board of directors to assist them in their day - to - day function of the company. In some cases a Chief Executive Officer manages the entity. At all material times while the aforementioned were features of the private limited liability company duly discernable in the case studies.

The other organ was that of the company in meetings (shareholder assembly or members of the company). They were essentially investors or in some instances entrepreneurs who are not tasked with interfering in the company's internal affairs save and except there were compelling reasons. Members at the annual general meeting and the extraordinary general meeting and there were several indications that companies were adherents to this organ.

Inherited principles about these two major organs of the company had their sound precedence in British laws. The early companies adhered to this rule and all other companies still adhered to the dictum. There were changes to the assumption that the "general meeting of all shareholders as the supreme organ of the company [that] occurred in the nineteenth century in the UK."[555] The view then, was that the "board of directors in many instances were but a mere agent of the company"[556] and were subject to the control of the shareholders especially at the general meeting.

The more modern private limited liability companies limited by shares had lessons to learn from this seminal case that holds precedence to this day in company law. This issue then was of agency, which has been clearly answered, in the seminal "Salomon's case"[557] since 1897. In the High court, the case of "Broderip v Salomon"[558], it was Vaughn Williams J who said that Mr. Broderip's claim was valid. He said that the company had a right of indemnity against Mr. Salomon and that the signatories of the

[555] Mäntysaari, Petri, *Comparative Corporate Governance: Shareholders as a Rule-maker* (Springer Berlin - Heidelberg, Germany 2005) 251
[556] *Ibid*
[557] *Salomon v A. Salomon & Co Ltd [1897] AC 22*
[558] *Broderip v Salomon [1893]*

memorandum were mere dummies. He claimed that the company was just Mr. Salomon in another form, an alias, and his agent.

It was the Court of Appeal that confirmed Vaughn Williams J's decisions against Mr. Salomon on the grounds that he had abused the privileges of incorporation and limited liability. If corporate governance best practices were to be added as a separate legal issue, respectfully this would have added to its prominence as it continues to provide for animated debates in some quarters. Parliament then, had intended only to confer the aforementioned privileges on 'independent bona fide shareholders, who had minds and wills of their own and were no dummies or puppets'. The point was this, the distinction between those who directed and those who controlled the company was reflective of the legislative mandate laid down in the Companies Act 1862. Since 1845 on St. Vincent those who directed the process and those who controlled corporations or juridical entities remained clearly separate and identifiable.

Under English Law the historic Table A is referenced substantively elsewhere in this text, but mentioned here to express the view that such a normative procedure for directors was codified and expressly part of the corporate governance of the company. Viewed then as a 'modern doctrine' it was expressly stated in Shaw & Sons (Salford) Ltd v Shaw [1935] 2 KB 113 by Greer LJ as per,

> "… a company is an entity distinct apart from its shareholders and its directors. Some of its powers may according to its articles, be exercised by directors ... certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise these powers. "[559]

The more modern private limited liability companies limited by shares may do well to continue to exercise their legislative mandates on corporate governance practices in

[559] *Quin & Axtens v Salmon* [1909] AC 442

light of the aforementioned. The discussions now turned on two major phases of the private limited liability company on St. Vincent. Periodic references are made to Trinidad and Tobago but not substantially so given that the thesis presentation is primarily about those companies on St. Vincent and the Grenadines.

First phase: 1845 - 1945

The manner in which a Vincentian company (or Trinidadian company for that matter) was directed and controlled was largely outlined in their specific company's constitution shaped historically and legislatively by the British company laws and the UK Companies Acts. This was by virtue of being former colonies of Great Britain and due to legislation that created uniformity in purpose and intent. The problems that were encountered on the islands stemmed from the synergy between shareholders and directors or in some cases management of those limited corporate resources. Additionally, there were diverse layers of management especially the day – to - day execution of direction and control of the company. This was done largely under the management of the chief executive officer or a general manager in most instances who spearheaded daily management of such businesses.

To compound matters, the existence of the allowable unanimous shareholder agreement among shareholders was one vehicle used for pragmatism in an entrepreneurial spirit. The objectivity of such an agreement was questionable at times given the context of the socio cultural and socio economic dynamic of the larger stakeholder society. This undoubtedly compromised best practices of corporate governance. While an aid to flexibility on business expansion, the unanimous shareholder agreement was not always a mechanism that served the best interest of the majority of stakeholders. It may be that such agreement was in need of a review as to its philosophical perspective as part of corporate governance practices.

Second phase: 1945 – 2013

During this time period, the composition of boards of directors generally followed the same procedure for appointment. Historically, there was some balance of power between directors and "shareholders."[560] The board was held accountable by the company in meetings, for successful performance of the company. Its responsibility and power would not be delegated at will as the modern operation dictated, "directors powers derive from the company itself."[561] Continuing in the tradition of the United Kingdom Company Acts "boards are subject to law."[562] Board members generally needed a sufficiency of skills and understanding to review and challenge management and to "safeguard long - term interests of the"[563] company. This was the same view held by local private companies. The board of directors continued to select the chief executive officer who in turn, delegated function to the board and supervises the day - to - day management of the company; provided feedback to management on the strategies of the company; compensated senior executives; monitored performances and risks and ensured accountability.

Historically, two major pillars on which corporate governance of the company stood were inclusiveness and accountability. The board was responsible for these. Further, in order to consolidate good governance, historically in Great Britain and replicated in colonies like St. Vincent and the Grenadines, the boards participated in the processes of inclusiveness and accountability. In order to execute these functions, the board reasserted itself by having a voice in the decision making process and exercised its role with respect to these processes (accountability and inclusiveness).

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[560] Dine, Janet, *The Governance of Corporate Groups* (Cambridge University Press, UK 2004) 35
[561] *Ibid*
[562] St. Vincent Companies Act 1994, s. 65; s 141; St. Vincent Companies Act Cap 143*, By Law 1 Art. 4;* Dine, Janet, Koutsias, Marios, *The Nature of Corporate Governance* (Edward Elgar Publishing, UK 2013) 142
[563] www.oecd.org/daf/ca/49081438.pdf - accessed 30 June 2019

Other functions of the board were those that led to its credibility as a viable organ of the company. It was the board, by using other skill sets were able to exercise a measured approach on selection, accountability and replacement of authorities, ascertained its size; the structure for and of its management; qualification of its members in keeping with the law; levels of independence and commitment to the objectives of the business venture which were all critical components of corporate governance within the entire company.

There was another matter of efficiency of the subcategory of the private limited liability company under review. Here was the challenge with regards to that particular subcategory, where companies external to St. Vincent in the form of its complexity of corporate governance practices, directed and controlled from across borders. The subcategory was less dependent on existing regulations and resource management capacity in house and placed greater reliance on external corporate practices.

The challenge was that the subcategory of companies lacked capacity due to its management structure and was stripped of its ability to implement its own qualitative and carefully crafted aspects of efficiency. The precursor to the contagion within this period was that a subcategory of the private limited liability company being directed and controlled from across geographical borders compromised all aspects of efficiency allowable. The balance of power shifted from country based to external.

During this phase, another feature noticeable within the existing corporate governance structure or system was that boards of less encumbered private limited liability companies were responsible for "annual returns; and annual reports;" [564] the acceptance of "special resolutions;" [565] to discuss matters that allowed for accountability and transparency; to question decisions of management or the Chief Executive Officer charged with the day to day functioning of the company; to make

[564] Op. cit. [Trinidad and Tobago Companies Act] s. 151 instructive
[565] Ibid, [St. Vincent and the Grenadines Companies Act] *s. 98*

projections for the entire company; to make "amendments to the constitution of the company - articles of association;"[566] to review original articles in keeping with the overall mandate of the company thereby changing the entire focus of the company. This was generally in response to the economic and social issues of the times in which companies were incorporated. There was an exception to the aforementioned since an unprecedented contagion tarnished an otherwise compliant corporate governance environment within the state of St. Vincent and the Grenadines.

Finally, in a general sense the Organization of Economic Co-operation and Development was built on European initiatives post world wars, "outlined a number of principles"[567] for the boards of companies. Boards were to act in an ethical manner with good faith, care, due diligence and in the best interest of the company and its shareholders. These principles were also codified in "the model by-laws and existing company law"[568] locally and in "company laws"[569] in Trinidad and Tobago. It took a strange departure from the aforementioned to have created a platform on which a financial contagion manifested itself.

5.6 Re-evaluation of Table A and Model Articles of Association

With respect to a distinct separation between shareholders and directors, this developed over time. This was likely due to the fact that there was an assumption that the company in general meeting was the supreme organ while the board of directors acted as its agent and was subject to the shareholders in meeting. A case of persuasive precedence to law makers in St. Vincent and Trinidad and Tobago should be one where "decisions of the UK Court of Appeal"[570]prevailed. On this matter

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[566] *Ibid, s. 177*

[567] *www.oecd.org/corporate/* - accessed 11 September 2019where the emphasis on "good governance to build an environment of trust, transparency and accountability necessary for fostering long – term investment, financial stability and business integrity, thereby supporting stronger growth and more inclusive societies."

[568] St. Vincent Companies Act 1994; St. Vincent Companies Act Cap. 143: By-Law No.1, Art. 4 - *11*

[569] Companies Act 1995(TT) s. 151 – 157

[570] *Automatic Self-Cleansing Filter Syndicate Co v Cunningham* [1906] *2 Ch. 34*

directors were not agents of the shareholders and were not bound to implement any of their shareholders resolutions. Whether this was a matter that occupied the minds of those within the subcategory of the private limited liability company that fell prey to the financial contagion is debatable.

The division of powers between the board and the shareholder in their general meetings depended on how the "articles of association (which replaced the old memorandum and articles) were constructed as well as other fundamental changes that impacted corporate governance."[571] This also was persuasive precedence to companies in St. Vincent (and it follows a similar pattern in Trinidad and Tobago). In the instant case already mentioned, the court ruled that if the powers of management was vested in the board, then the general meeting could not interfere with such duly constituted exercise.

The contractual nature of the Articles imposed such restrictions since members had agreed that the directors and they alone should direct and control the affairs of the company. This matter was mandated in the current bylaws of private limited liability companies limited by shares articulated elsewhere. There appeared to be disengagement sometimes. It was that those who were assigned the tasks of

[571] Articles of Association replaced the memorandum and articles as per UK legislation previous to St. Vincent Companies Act 1994 (CA 1994)/Trinidad and Tobago Companies Act 1995. There were a number of changes reflected in the 'new' Companies Act 1994 that did not form part of the substantive analyses, but were legislative provisions that sought to guide corporate governance procedure and practices. Further, these stipulations were those of the British legislature to enhance the functioning of the company in the UK as well as former colonies whose legislature remained 'tied' to this legacy of British laws and UK Companies Acts. Some of these changes are mentioned and or summarized as follows: the distinction between public and private companies was removed and reflected in the Companies Act 1994; statutory prohibitions were placed on insider trading and takeover bids; the rules on auditing and accounting became more detailed in the CA 1994; provisions on amalgamation of companies; protection of minority shareholders, derivative action and remedies; directors duties, their powers and liabilities were codified; test for solvency as to whether a dividend may be payable; an outline as to how to deal with share capital and provisions for capital reductions that may be permitted; the issued shares are to be fully paid up was a requirement and the matter of a substitution of a system of no par value shares for a nominal or par value sort of arrangement; the ultra vires rule and constructive notice were abolished as well as an investing of the capacity of individuals in companies generally.

management were not necessarily those who could direct and control said companies. It must be borne in mind that management and corporate governance were not synonymous terminologies.

As could be appreciated, it was not until the "House of Lords gave its ruling"[572] that this decision received general acceptance. This was specific to corporate governance best practices. The ruling as far as is known has prevailed and remained pervasive in the modern approach that touch and concern companies in St. Vincent and the Grenadines. This was noted across both phases of corporate governance development and as hereinafter discussed.

Again, Greer L J was instructive in that,

> "...The only way in which the general body of shareholders can control the exercise of powers by the articles in the directors is by altering the articles, or, if opportunity arises under the articles, by refusing to re-elect the directors of whose actions they disapprove. They cannot themselves usurp the powers which by the articles are vested in the directors any more than the directors can usurp the powers vested by the articles in the general body of shareholders."[573]

Although seen by some as surprising and contradictory, the judge's interpretation was no trite law. Company law procedural guidelines or its corporate governance best practices were laid down in a default Model Articles of Association for companies limited by shares as well as other types of companies. St. Vincent and the Grenadines has incorporated this default Model Article from its inception to modern times. Now, there may be need for further amendments with respect to the Supervisory Committee borrowed from German law if at all were included here. Also, a separate policy decision and or document may have to be taken to apply provisions borrowed from

[572] See fn 560
[573] *Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB 113

German law (a two tier board structure) to the private limited liability company limited by shares. As far as was known, this hybrid on board composition is relatively new and has not yet been fully tested. As stated previously, this remained part of the local legislation that governed private limited liability companies for this local legal jurisprudence. The discussions now turned towards differences in corporate governance procedure and practice applicable to companies over the span of their development within the state of St. Vincent.

Differences as to applicable Model Articles

For instance, companies that were incorporated on or after 28 April 2013 adhered to "Model Articles"[574] for private companies limited by shares. Also, for companies that were incorporated prior to 28 April 2013, there were "Model Articles"[575] for such companies limited by shares. Again, the aforementioned were applicable to all private limited liability companies limited by shares on St. Vincent and the Grenadines. These prescribed practices appeared to have allowed for greatest synergy between companies on both islands of Trinidad and Tobago and St. Vincent and the Grenadines and facilitated the operative business model that accommodated insurance purposes.

As the amendments of UK Company Acts took effect, former colonies responded by adhering as far as was possible. For instance, the Model Articles were also amended by the "Mental Health (Discrimination) Act 2013."[576] The provisions to terminate the services of a director on the grounds that he or she was mentally ill were removed. If however any provision for amendment was already in the Articles, then the company merely had to amend those Articles through the adoption of the newer Model Articles. The operation was one of compliance with the dictates of British company laws and more specifically the UK Companies Acts. This was expedient so to do.

[574] See UK Model Articles for private companies limited by shares on or after 28 April 2013 – Appendix 5(1)
[575] See UK Model Articles for private companies limited by shares prior to April 2013 – Appendix 5(2)
[576] See UK Mental Health (Discrimination) Act 2013 s. 3, para. 18 (e)

There was another major question that would have arisen as to which version was applicable to former colonies that had these procedural guidance on corporate governance through the default Table A. This was with regards to removal of directors on the grounds of mental incapacity. In the developmental phases of company law within the OECS and CARICOM, from 1845 or thereafter when Model Articles were introduced through the UK Companies Act 2006 and up to the more modern amended version of Model Articles, they were applicable by default to companies referenced in Appendix 5(1) and or Appendix 5(2) as mentioned previously. On the other hand, the older versions of the Model Articles were also applicable as default to all those companies that were incorporated between 1 October 2009 and 27 April 2013 inclusive. The point is that at no point was there a lack of legislative guidance on corporate governance best practices. The challenge for private companies within the aforementioned geographical location was the implementation of these practices by some stakeholders.

The importance of Table A cannot be over emphasized. It is at the heart of the corporate governance framework for all British companies and those on the islands that followed the British company laws and the UK Company Acts. This prescribed format for Model Articles for companies that were limited by shares remained within the legislation for more than two centuries. This was noted through a comparative analysis of company laws for St. Vincent and Trinidad and Tobago as member states of the OECS and CARICOM.

The importance of a distinction has to be made here. Corporate governance best practices could be found as outlined within Articles of Association. The UK Companies Act 2006 makes provisions for a model set of articles and once companies adopt these they can do so with only slight amendments. These are subject to

"amendments or modifications."[577] Guidance to Vincentian companies is also sought from Companies (Model Articles) Regulations 2008 [SI 2008/3229] once the company registered previously under Companies Act 2006 and had not adopted articles of its own. There seems to be more than a suggestion that power is delegated to shareholder under the model articles here, and that they gain the edge on power as opposed to old law.

The matter of Table A revisited

Under Companies Act 1985 and the versions previous to this date, a prescribed format of Table A existed and is also known as Articles of Association. Here again were prescriptions of procedure and practices or the company's corporate governance. The first prescribed format was made in the Joint Stock Companies Act 1856 was called Table B and would have been available to the first established company on St. Vincent – John Hazell Sons and Company Limited.

This Table B was one that was preceded by what was then called a Memorandum of Association called Form A. However, in the Companies Act 1862, the articles were first referred to as Table A. There was now a special focus on continuing with the naming of Articles from 1906, 1908, 1929, and 1948 with amendments in 1967, 1976, 1980, 1981, 1985, 2000 and 2007. There are changes that would become necessary. Once such changes take place after the date of incorporation, such changes may not be applicable to the company. Effective 2006, Table A is called "Model of Articles."[578]

There are several " versions of Table A"[579] and applicable to all companies limited by shares within and among former colonies of Great Britain as was noted in the

[577] UK Companies Act 2006 s. 20 (1) (a), (b) – the version applicable to private companies limited by shares
[578] UK Companies Act 2006 s. 19
[579] See Appendix a4 – Versions of *Table A* for all private limited liability companies 1856 - 2013

company laws of St. Vincent and the Grenadines and Trinidad and Tobago specifically. The notable difference between Table A and Model Articles, the latter is not applicable as of automatic right but is contingent on special resolution for its adoption. What is in practice up to 2013 was the issuance of the default Table A to companies that sought incorporation in St. Vincent and the Grenadines.

Finally, there should not be an issue with the Table A and the Model Articles of Association; the latter was introduced by the UK Companies (Model Articles) Regulations 2008 and pursuant to Companies Act 2006 section 20. The Model Articles of Association provided for all private companies limited by shares. What impacted the small private companies in countries that adapted the UK Company Laws and the British company Acts remained critical to their own local legislature and the understanding of their implications.

The main provisions of the changes to the UK company laws were not necessarily applicable to St. Vincent wholesale, as it had developed its own company legislation modelled on those of the UK. The analysis revealed that there were contrasts. Some examples were those of the "annual general meetings"[580] this was still applicable; the "secretary"[581] of the company; the reserve powers held by "shareholders"[582]; how "directors"[583] may delegate; the decision making by members and "liability of members"[584]; written resolutions but in the case of St. Vincent, "dissenting to resolutions"[585]; the "Chairman's casting vote"[586]; communication through "electronic medium"[587] and "indemnity and insurance."[588] In other words, procedurally the

[580] St. Vincent *Companies Act 1994 s.*79 provided for annual meetings of the company
[581] *Ibid, s.* 59 where every company shall have a secretary and multiple assistants
[582] *Ibid, s.* 134*, s.* 135*,* Hansmann, Henry, Pargendler, Mariana*, The Evolution of Shareholder Voting Rights*: *Separation of Ownership and Consumption,* Vol 123 No 4. *Yale Law Journal*, January 2014
[583] *Ibid, s.* 95*, s.* 96
[584] *Ibid, s.* 161 in this sense 'liability of members' and their decisions
[585] *Ibid, s.* 98
[586] *Ibid, s.* 71*; s.* 125*; s.* 129
[587] *Ibid, s.* 188
[588] *Ibid, s.* 101*, s.* 102*, s.* 103

proscribed corporate governance remained as solid guidelines and any lack, disregard or absent of those best practices were attributable to those responsible for actual execution of said practices.

Private limited liability companies limited by shares prior to the UK Companies Act 1907

There was a claim made by the first company as being the 'first house' and a private limited liability company on the island. The company in meetings substantiated these claims. Management constituted seven or eight directors who were also shareholders. In Great Britain, the size of the entity was relative in comparison to similar businesses that made their way onto the financial landscape St. Vincent. In the UK, a private company was known to have minimum of three members and or variable but was as likely to be as effective in the conduct of its businesses as those with members in excess of twenty.

When it came to decision-making, the principle was established for many years. Historically, Lord Wilberforce, in the case Howard Smith Ltd [589] so that 'directors within their management powers, may take decisions against the wishes of the majority of shareholders and indeed the majority of shareholders cannot control them in the exercise of these powers while they remain in office...' although there may have been attempts to alter the practice, this essentially remained good law at the time.

The "directors"[590]that constituted management were recognised as fundamental to corporate governance as well as "shareholders"[591] within all types of businesses and

[589] *Howard Smith Ltd. v Ampol Petroleum Ltd [1974] AC 821*
[590] *Op. cit*. [St. Vincent Companies Act] s.58; Rambarran, Mangal, *An Introduction to Company Law in the Commonwealth Caribbean* (Canoe Press, UWI, Kingston, Jamaica, 1995) 68;
[591]Paul L. Davies, *Gower's Principles of Modern Company Law* (6th edn Sweet and Maxwell, UK 1999) 328 - 356

with no exception within the "family owned businesses."[592] In the first company on St. Vincent, this might have been an 'incongruity' as directors were the shareholders. Whether the first company appeared not to be incorporation, "the principle of legally limiting the financial liabilities of persons investing in business ventures"[593] was laid down in British Parliament in the 1800s. The company remained, according to its records a private limited liability company limited by shares. It was established at the time period (1845) of one hundred years prior to the centenary celebrations. This was alluded to in the minutes of the meeting held in 1945.

One of the acts of the directors was to pay the sum for a "conversion from partnership to becoming a private limited liability company"[594]. As far as is known, there are no records as to whom this fee was paid. Nonetheless, the functionalities of the company were detailed in one of its organs (company in meeting) of which a transcript is available.

The argument is in favour of similar companies that followed the British legal traditions. It is respectfully submitted that some measure of "limited liability from 1837" [595] was possible. From 1837 thereafter, "in the ensuing 17 years, 50 companies"[596]were formed as testimony to the availability of some measure of 'restriction on members liability'. It was quite interesting to note that this historical information about the existence of private limited liability companies limited by shares within the UK was not included and or repeated in at least, the seventh edition of Gower's Principles of Modern Company Law.

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[592] *International Monetary Fund, Staff Country Report 2007, No 07/97* (International Monetary Fund publication, USA 2007) S.41

[593]Gerald A. Cole, *Management Theory and Practise* (6th edn South Western Cengage Learning, UK 2008) 98

[594] See Appendix 1(6) – where a transcript from the meetings showed that a fee was paid as per incurred upon transitioning from partnership to private limited liability status. In the absence of clarification as to whom was this paid, speculation and presumptions suffice. It may have been payable to an existing authority (no available records for this entity) to satisfy registration and or incorporation.

[595] UK Chartered Companies Act 1837, s. IV

[596] Gower, L. C. B., *The Principles of Modern Company Law* (3rd edn Steven and Sons, UK 1969) 41

The discussion here bears heavily on British company laws and the UK Company Acts that were in the 'throes of struggle' for legislative recognition. There was legal confusion as to the legislative premise on which companies were to access corporate advantages. In 1834 there was the introduction of the Trading Companies Act in the UK, which was pre the establishment of the John Hazell Sons and Company. That Act provided for a slight extension of corporate priviledge. The Crown gave letters patent and resulting incorporation except limited liability. A measure of corporate governance practices and procedures were undoubtedly included therein. The legislature was keen on this as was noted in one case by "Lord Eldon in *Van Sandau v Moore (1825) 1 Russell* 441, p. 472"[597] as stated.

Gower informed the discussions to substantiate the claims made here for an acceptance that the John Hazell Sons and Company was duly established and must be considered an incorporated company according to British law. There was public registration of members, a preservation of personal liability once they parted with their shares three years thereafter. However there were problems foreseen by the Board of Trade. Then in 1837, problems arose about the law of partnership and this matter laid the foundation for an Act that year – the Chartered Companies Act 1837. Personal liability of each member was subject to "letters patent to a specified amount per share."[598]The question was whether this was the practice that was used to justify the John Hazell Sons and Company to give a payment for its limited liability status per se. It appeared that this was the practice going back years. This was no fraudulent company based on the readings of the minutes of the said John Hazell Sons and Company. It is quite regrettable that some records were lost given natural and manmade occurrences in a small island devoid of the necessary and safe haven for all documents and other valuables. To 'steady' the hands guiding the corporate agenda for one of the greatest nations on earth – Great Britain; there was the appointment of Gladstone who was the President of the Board of Trade in 1843.

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[597] Ibid

[598] Ibid

The formation of the Joint Stock Companies Act in 1844 was the occurrence of virtuosity. This was undoubtedly the basis on which company law stands. This substantively transcends time and impacted corporate governance practices. John Hazell Sons and Company was informed as to the lines of demarcation of private partnerships and joint stocks held by any company in the UK and applicable to them. Their decision, the members or shareholders decision to make the transition was inevitable. They knew the consequences of their actions if they held on to a partnership that would become obsolete and at best cumbersome according to British laws and the UK Companies Acts. There was more than a notion that incorporation was possible. Whether the fee paid was for its incorporation by registration, the unseen, age old (unavailable not because of trivial reasons) records held the secrets.

While the substantive discussions were not on the "deed of settlement,"[599] there was mention made by Gower of its significance in relation to its place in satisfaction of one of the requirements of early corporate practices. A Registrar of Companies was not mentioned in the minutes of John Hazell Sons and Company but certainly there was one possibly located in the UK. It is possible that payment made by John Hazell Sons and Company was made to that particular office but the paper trail is obscure. The Companies Clauses Consolidation Act in 1845 was pertinent. The rigours of its explanations are beyond the scope of this exercise but it paved the way for a number of provisions on limited liability eventually and the distinctions on incorporation itself. Those concepts sometimes strike at the illogicality of both limited liability and incorporation. The question though is whether such attempts at "illogical reasoning" could transfer to whether corporate governance arises immediately upon incorporation.

Gower has had an indefatigable reputation for recording accurate historical information on Company Acts and the British company laws. Additionally, the UK

[599] Ibid, 42

Parliament struggled with the concept of limited liability with respect to "chartered banks established with only a limited liability...."[600]and "other businesses."[601] For emphasis, an established company as John Hazell Sons and Company must be accepted as authentic and maintain its rightful place in the history of company law in St. Vincent and the Grenadines. This should not be taken as an affront to the local authorities in St. Vincent but should be regarded as a consolidation of the findings that were preserved by one of the historical organs of the company. The records of the John Hazell Sons and Company in meeting remains unchallenged.

John Hazell Sons and Company was a private limited liability company limited by shares and shared some similarities with the British private company. The private limited liability company struggled for relevance amidst private lobbying for years. In 1890 (forty five years after the first Vincentian private limited liability company was established), Great Britain introduced another of its "Companies Acts,"[602] which was geared generally at the existing public companies. Two years on in 1892 there was much debate about the implementation of the said Act. Parliament debated the merits and demerits of such public companies and it was evident that at that time, there was no legislation for private limited liability limited by shares.

There was no clear line of demarcation about what would constitute the private limited liability company limited by shares. The latter developed incrementally as the need arose for companies that were more adaptable to the needs of the private families/purposes rather than for the public concerns. Thereafter the private limited liability company limited by shares was introduced in Britain by way of the UK Companies Act 1907. The use of the word 'private' conveyed the meaning that the public was dealing with a new phenomenon of a company that was distinguishable from those well established for public purposes.

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[600] *Parliamentary History and Review containing Reports of the Proceedings of the Two Houses of Parliament during the session of 1826 with critical remarks on the Principal Measures of the Session* (Longman, Rees, Orme, Brown and Green, UK 1826) 202

[601] *Ibid*

[602] UK Winding Up Companies Act 1890; see also *HC Deb 10 March 1892 Vol 2 cc527-8*

As stated elsewhere the first company on record at the Commercial and Intellectual Property Office in St. Vincent was registered in 1909. The establishment of John Hazell Sons and Company Limited pre dated even the formation of the local Registrar of Company on the island – the Commercial and Intellectual Property Office. No one knew the exact "number of private limited liability companies"[603] that existed in the 1800s in St. Vincent. The identification of a regulatory body or domestic companies was not "until 2003"[604] through a number of consultative processes that led to the enactment of " several laws."[605] On the other hand it was not until the 1990s that private companies within the international sector began to be recognised as viable economic entities for St. Vincent.

Understanding corporate governance best practices: another perspective

First phase: 1845 – 1945

Upon careful reflection of early corporate St. Vincent and the incubation of the private limited liability company limited by shares, the "shareholder value principle also known as the shareholder primacy principle or the shareholder wealth maximization norm"[606]was of critical importance. Shareholders voluntarily contracted

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[603] *Colony of St. Vincent, Annual Blue Book 1940* (Unknown publishers, UK 1940) 250 – St. Vincent Agricultural Credit and Loan Bank, Limited (Private) registered under "The Companies Act, 1874." Savings Department incorporated in 1909, National Archives UK.

[604] The Commerce and Intellectual Property Office (CIPO) - Commerce and Intellectual Property Office Act, No. 43 of 2003.

[605] St. Vincent Companies Act 1994; St. Vincent Companies Regulations 1996; St. Vincent Registration of Business Names Act Cap. 111; St. Vincent Registration of Business Names Fees Regulations 1981; St. Vincent Societies Act Cap 330; St. Vincent Trade Marks Act 2003*;* St. Vincent Trade Marks Regulations 2004; St. Vincent Patents Act Cap 110; St. Vincent Patents (Amendment) Rules 1998; Registration of United Kingdom Patents Act Cap 112; Registration of United Kingdom Patent (Amendment) Rules No. 29 of 2001; St. Vincent Copyright Act 2003; St. Vincent Geographical Indications Act 2004

[606] *The UK's Company Law Review Steering Group* (CLRSG) did refer to this principle as the shareholder value: Company Law Review Steering Group, Department of Trade and Industry, Modern Company Law for a Competitive Economy: The Strategic Framework, 1999 @ 37; See Bainbridge, Stephen, *Director Primacy and Shareholder Disempowerment, Vol 199 Harvard Law Review* for general discussions on the value of the shareholder primacy; see also Bainbridge, Stephen, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green, Vol 50 Washington and Lee Law Review* @ 1423 (1993)

with each other to be the source of capital for these companies. This trend continued for well over a century.

The shareholder primacy approach was established practice. This was a statutory obligation and such an approach often gave shareholders the power to intercede directly and quite frequently in corporate decision-making. Shareholders have legislative mandate to amend corporate charters, participate in shareholder referenda on business decisions and attend regular corporate board elections all in their own interests and the safeguard of their financial input into these private companies.

Second phase: 1945 – 2013

Even before the global financial crisis in 2008, the doctrine of shareholder primacy has been under scrutiny. Within the context of the contagion among the insurance companies in 2009 in CARICOM, the complexity on management structures arises in corporate groups. There was a response to management of private companies like the insurance companies. These were provided for with the introduction of a hybrid of German law with its two – tiered board structured and the existing one-tiered board. The latter was as a result of the inherited and imposed British company law and the UK Companies Acts. The elements borrowed from German law were offered as the best - case scenario. Without public consultation but through parliament, the proposal was that with the management of private companies under this hybrid of British and German corporate laws; managers and managing directors will have the same powers.

The shareholders will continue to contribute to capitalise such entities. German corporate law dictated that in this two – tiered board structure, the lower tier consisted of a supervisory committee whose membership was elected periodically by the shareholders and the workforces of the company in the proportion of two-thirds shareholder representatives and one third employee representatives. A few exceptions that existed in the mining and steel companies in Germany do not apply in the case of

St. Vincent and the Grenadines. Here again, in practice, corporate governance best practices must allow for management by the board, which would be subjected to the supervision of a supervisory committee to which it must report on a periodic basis.

Another phenomenon and requirement within German law was that supervisory committee members would be forbidden to undertake management of these private limited liability companies but the constitution of the company may require approval from the said supervisory committee for particular transactions. These included but not limited to borrowing or the establishment of branches overseas especially so within the CARICOM and OECS regions. By law, it would be the supervisory committee that would fix remuneration of management and could dismiss them accordingly.

Therefore, in St. Vincent shareholder primacy would be subject to a further imposed control exerted by an existing unitary board and the two –tiered boards representative of both the Anglo-American and German models of corporate governance post 2013. As a result, there would likely be drawbacks to the notion of shareholder primacy given that corporate decisions and strategy must be sifted through a longer process. These may transition into reaching more short - term goals within the private company in arriving at hasty corporate decisions characterized by short term incentives and bonuses to meet certain targets.

If there were any likelihood of other significant and overwhelming changes to take place, it would come from within the companies. However, regulations and other amended company laws with emphases on corporate governance best practices may not be sufficient to combat a genuine change away from the shareholder primacy approach. This can only start from within a company through its internal corporate culture and environment as part of its overall strategy on the best approach towards corporate governance best practices.

An appreciation and acceptance of the domestic private company

Despite its official language, institutions and historical experiences, St. Vincent developed a distinct set of characteristics that propelled it towards its drive for economic diversity. In support of the aforementioned, the private company with its mandate on corporate governance best practices was seen as a catalyst for change. Many argued that there should be more engagement on financial matters within corporate entities but this is a contentious issue played out in the media and is outside of the remit of the current thesis. One could not forget that from the pages of history that, Great Britain - a former colonizer - operated a "mercantilist model."[607] This system organised productive activity to obtain economic self - sufficiency and short - term gains through favourable trade balances.

St. Vincent like Trinidad was part of that "economic exchange" generally until emancipation. Still grappling with economic reality, the period of emancipation in time was realised as a result of the abolition of slavery in the nineteenth century. In the British Caribbean (to which Trinidad and St. Vincent belong), this came about around 1834, when a law was passed by the British Parliament to abolish slavery through the empire….[608] This was a breakpoint, an era that allowed for transitioning to new realism – one in which stakeholders were willing participants. Although the company evolved over time, the ownership of shares in a company and a stake in an alternative form of economic exchange was welcomed news.

It was the adeptness of such states that allowed for effective and efficient regulatory and supervisory mechanisms to be put in place when it comes to the harnessing of economic activity. There was room for improvement all around. See for example

[607] Findlay, Ronald et al, Eli Heckscher, *International Trade and Economic History* (Massachusetts Institute of Technology, US 2006) 243

[608] Meditz, W. Sandra, Hanratty, M. Dennis, (Eds) *Caribbean Islands: A Country Study (*Washington, 1987*)* – accessed 23 - 27 February, 2019 – Section on The Post-Emancipation Societies – *www.countrystudies.us/caribbean-islands/* - accessed 18 March 2019

states like the Isle of Man, the Cayman Islands, Bermuda and especially "Guernsey"[609] in terms of size and their regulatory and supervisory capabilities when compared to other countries within the commercial capital of the world. There is hope yet.

The reformation on corporate governance was contextualized within the dynamic and multicultural intermixture that influenced the perceptions and practices throughout the life cycles of insurance companies and other categories of juridical bodies locally in St. Vincent and in the "wider Caribbean."[610] As far as was known there has not been much progress made since 2003 on accelerating a Caribbean perspective on corporate governance. Individual countries within the region created their own corporate agenda over time.

Unlike other states that were affected, and more specifically in Trinidad and Tobago, there were no metals to be extracted from St. Vincent and no "oil and gas discoveries."[611] Some expressed fears of a further collapse or economic stagnation within the region, if more robust and timely steps are not taken to correct major defects in corporate governance within the private companies. For instance, the local inflection of the English language did not create any distortions in the printed and electronic communication among stakeholders of companies. From the days of a plantation society to the more modern society up to and including 2013, adult literacy

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[609] See the following verified by the Guernsey regulators as bona fide as of 8/5/12 for what the jurisdiction of Guernsey holds: *www.guernseyregistry.com* - accessed on 14 April, 2019
www.dixcart.com/articles/2012/01/09/in172-key-features-of-guernsey-company-law-and-the-guernsey-registry.htm - accessed on 8 May 2019 to 14 April, 2019
www.ardelholdings.com/file/57/ardel-company-management.pdf - accessed on 8 May 2019
www.collasday.com/Assets-F2CMS/Bulletin-Board-Issue-16-14.pdf - accessed on 14 April, 2019
www.careyolsen.com/downloads/publications/incorporating_a_guernsey_company.pdf - accessed on14 April, 2019
www.tridenttrust.com/PDFs/TGUE-C-KF.pdf - accessed on 14 March 2019
www.mondaq.com/article.asp?articleid=86326 - accessed 14 October, 2019

[610] *Report on the Caribbean Corporate Governance Forum* (A Working Document) 30 – 43, ECCB Headquarters, St. Kitts, 3 – 5 September, 2003

[611] Velculescu, Delia, Rizavi, Saqib, *Trinidad and Tobago: The Energy Boom and Proposals for a Sustainable Fiscal Policy* (International Monetary Fund, Washington 2005) 3

was improved. An " adult literacy rate at 89 per cent"[612] remained a significant achievement against the backdrop of conditions imposed on a small state that was once a colony with additional pre-emancipation legacies.

As more companies became incorporated over time, there was a general 'sluggish but quiet' understanding and acceptance of the roles and responsibilities of shareholders and stakeholders. A significant gain among these beneficiaries on becoming literate was especially felt among the rural communities that were partially alienated from those communities that tended to be more literate and located in and around the main commercial centre.

For obvious reasons, the commercial centre in Kingstown provided the platform for commercial and other exchanges among inhabitants more readily than the rural areas. This was among travellers and seafarers. The concept of company and its benefits were later taught to those who 'escaped' from plantation society. A more gradual infiltrated and ordered indoctrination' by an education system from the British educators was visible and domiciled on the island. The ensuing discussion turned on general analyses.

5.7 General observations and analyses

Chapter Three and Chapter Four presented case studies on private limited liability companies that served different purposes. Chapter Three detailed the first company on the island. This was a multipurpose company that provided for household and other items for domestic use in construction, farming and other areas. In Chapter Four, this company was one that was used for insurance purposes but was a cross border phenomenon that was tied to other insurance companies. It was at one time deemed

[612] *IMF Country Report 14/360 - St. Vincent and the Grenadines: Request for Disbursement Under The Rapid Credit Facility And Purchase Under The Rapid Financing Instrument - Staff Report; Press Release* (International Monetary Fund Publication Services, USA December 2014) 13

"too big to fail". Its impact on corporate governance practices in St. Vincent and the Grenadines was disruptive at best. Although the local insurance company was one registered in St. Vincent, it was so significant that it had to be included as a case study to show contrast to other types of existing private limited liability companies limited by shares.

The British American Insurance Company Limited, which constituted Chapter Three, was one of the many insurance companies on the island. Its supervision and regulation was conjoined between the Ministry of Finance and the International Financial Services Authority up to 2011. In 2012, supervision of international insurance companies remained conjoined with the Financial Services Authority. This created a dichotomous regulatory and supervisory regime for insurance companies that conduct businesses locally and across borders or deemed international companies.

Anticipated success of the businesses discussed so far was laid out along procedural lines in the bylaws and other local legislation. This was the main purpose for the historical instruments that contained detailed guidelines as to corporate governance best practices. The intent was to create such a system or systems whereby the direction and control of a company or companies would be guaranteed. The human element comes in with a subjectivity that should have been curbed by those who were entrusted with such a mandate to direct and control the affairs of businesses entrusted to them.

For all intent and purposes there was another attempt by member states of CARICOM/OECS (namely St. Vincent and the Grenadines) to reposition the private limited liability company within the forefront of economical development. There was not an intended overemphasis on the collaboration in business networks between two of its member states – St. Vincent and the Grenadines and Trinidad and Tobago. Both countries had a diversity of natural and manmade resources. In the case of St. Vincent and the Grenadines comparatively speaking, it was an impoverished nation. The local

government financial and economic policies were to improve its national financial portfolio for its citizens especially for its growing working class.

Succession planning was part of the process but to date, given the varied business models both companies ended up with different outcomes. The first case study focused on the John Hazell Sons and Company Limited, which was established in 1845 according to the minutes of its centenary celebrations. For more than half of a century, this was the only company on the island and was established at the point of the nation's history before the national company law registry. The latter was established in the early 1900s with a repository at the vault in the Registry of the Court House. Its current nomenclature is the Commercial and Intellectual Property Office when registration of companies takes place. The role of this office was discussed previously. Since John Hazell Sons and Company Limited was a local company, some of its records were eventually housed at this Office. There was an amalgamation of this company eventually.

The second case study was about British American Insurance Company Limited. This was part of its parent company the Colonial Life Financial Company. The principal purpose was that of insurance. The BAICO was part of the insurance industry since 1961 within the region but was acquired by CL Financial in 1998. The Colonial Life Insurance Company was the predecessor to the CL Financial that held all its companies across the Caribbean region and beyond. It was from this group of companies that purported to conduct intra regional insurance business that the nature of corporate governance was compromised. Not only that, but the unprecedented financial contagion did little to divorce itself from the significant negative impact on the corporate governance system of St. Vincent that was established since 1845.

Both case studies indicated how companies functioned as private limited liability companies for different purposes. The point of distinction though, was whether the British American Insurance Company Limited could be isolated from its position as

being part of a corporate group that transcended national borders. While it appeared as a separate identifiable company it could not act independently and therefore was treated as representative of a group of insurance companies. It was linked in purpose to all other insurance companies within the CL Group namely: Colonial Life Insurance Company; British American Insurance companies; Colonial and General Insurance Company Limited and CLICO International Life Insurance Company Limited.

In practice, the British American Insurance Company Limited never operated independently and therefore its corporate governance best practices were representative of those of all other insurance companies under the umbrella of C L Financial. The applicable legislation for regulation and supervision was the English Company laws and the UK Companies Acts. Since the financial crises was so debilitating to all corporate structures under the CL Financial Group, this was indicative of the weaknesses that existed within the prevailing legislation. There were several attempts by regional governments to rescue the ailing private limited liability companies. The conglomerate was so huge and with such a diverse and complex corporate governance structure, that this "rescue mission" was so mobilised in order to prevent a destabilising effect on the entire financial sector of the Caribbean region.

Contrasts

What was unique about this situation between these two companies was that one was had its headquarters in another island across borders. Accessibility to and from either island by land, sea or air was not a problem. However, access to substantive records by the management of the British American Insurance Company appeared to be limited. The purpose for each company was diverse from the other. John Hazell Sons and Company Limited was directed and controlled by directors and management that had a 'face'. This was not so within the British American Insurance Company Limited. Based on the report of the judicial manager, those who directed and controlled this company were also domiciled abroad. In function, even though it was

incorporated as a local company, its operations were those of a foreign - based company.

The John Hazell Sons and Company was a transition from a partnership to a company in 1845. BAICO was a company that was handed to a beneficiary member of the same pioneer family in 1937. The historical analyses point to both companies as being pioneers in their own right. Both companies were started with shares being purchased by the family. Both companies adhered to the same English company jurisprudence. The lack, disregard or absence of corporate governance best practices could be interpreted as follows:

- ✓ When there was a lack of best practices, such was a lack of execution of those practices. In reality, those who effect the changes were those who presumably lacked the prerequisite knowledge of the procedural outline that existed in the legislation.

- ✓ When there was a disregard of best practices, it would appear that the responsible stakeholders were aware of the procedural outlines on corporate governance but they chose instead to demonstrate indifference to an execution of best practices.

- ✓ The absence of corporate governance best practices could only occur if and only if there was either misunderstanding, articulated ignorance of what exists and or lack of knowledge completely.

The point has to be made though, that the legislation on corporate governance was organic and grew out of a set of circumstances. English or British law even up to today remain all about responding to questions or of finding solutions to explain problems. In the instance, the research on a financial contagion was not a prerequisite to find a solution to corporate governance best practices. Based on precedence, the legislation does exist. Therefore, the response to the current contagion falls within the purview of application and amendments of what exist and existed. There could be no attempt to try and justify why the financial crisis occurred in this current age.

However as one reflected, the inherited British legislation that governs corporations and or the private limited liability company limited by shares developed out of such justification of why financial scandals occurred. As the case may be corporate law continues to emerge from legal derivations through court cases, text writers, and commentators. The current substantive corporate law and their hybrids were never by efforts to produce them but rather by 'accident' in the transactions that took place and the reasoning to solve or gave a solution. Herein lies the solution to this current financial crisis and others that may arise hereafter.

The long-term success of the business was always paramount within the two case studies that were presented. St. Vincent and the Grenadines adhered largely to the established and recognizable international best practices on corporate governance for many years. The companies in question although not listed on the UK Stock Exchange adhered as well to those principles as outlined on good corporate governance charter articulated by the Institute of Directors and the Organization for Economic Cooperation and Development. There was an absence of a Code on Corporate Governance for Vincentian companies. As such the nature of corporate governance on island was largely influenced by international best practices as alluded to earlier.

Critical too was that the island's entrepreneurial and prudent management styles were bolstered by the concept of an existing Code external to its small but growing corporate sector. There was emphasis somewhat on leadership, corporate effectiveness; accountability of staff; remuneration for officers and strengthening of relations with shareholders once they were identified. In some companies, the law provided for non-disclosure of registered names of shareholders. Up to the time of writing, the 'comply and explain' approach utilized in the UK for its own application of its Code on corporate governance was embraced in a general 'spirit' or sense within and among private limited liability companies limited by shares on St. Vincent.

Here was a theoretical notion that provided many with an understanding that this was merely a general mandate on corporate governance. As such, there was not a St. Vincent and the Grenadines Corporate Governance Code in existence either and specific to the unlisted companies.

The argument for such a Code becomes more relevant given that a higher standard of accountability and responsibility rests with management, supervision and regulation especially of insurance companies. This was because they were served as depositors of stakeholders' funds and the corporate citizenry would require a greater sense of accountability. Especially so within the insurance companies, corporate governance was largely procedural and prescriptive and this was the manner by which the shareholders controlled their assets. Shareholders used the chief executive officer as a control mechanism valve on a day - to - day basis. Positioned between themselves (shareholders) and the chief executive officer or a general manager was the board of directors. It followed therefore that the board of directors, the chief executive officer and the executives, constituted management of the company.

In general, it can be concluded that the existing nature of corporate governance in St. Vincent and the Grenadines had more to do with:

- Whether people in general perceived the private limited liability company limited by shares as having its own separate legal personality;
- Whether such companies as insurance companies operated in the interest of officers, shareholders or in stakeholders' personal interests and if so how was this explained to stakeholders;
- Whether corporate governance was understood as the comprehensive constituents of the management and control of the private limited liability company limited by shares;
- Whether some constituents of management of such juridical entities were knowledgeable enough about the responsibilities of corporate governance;

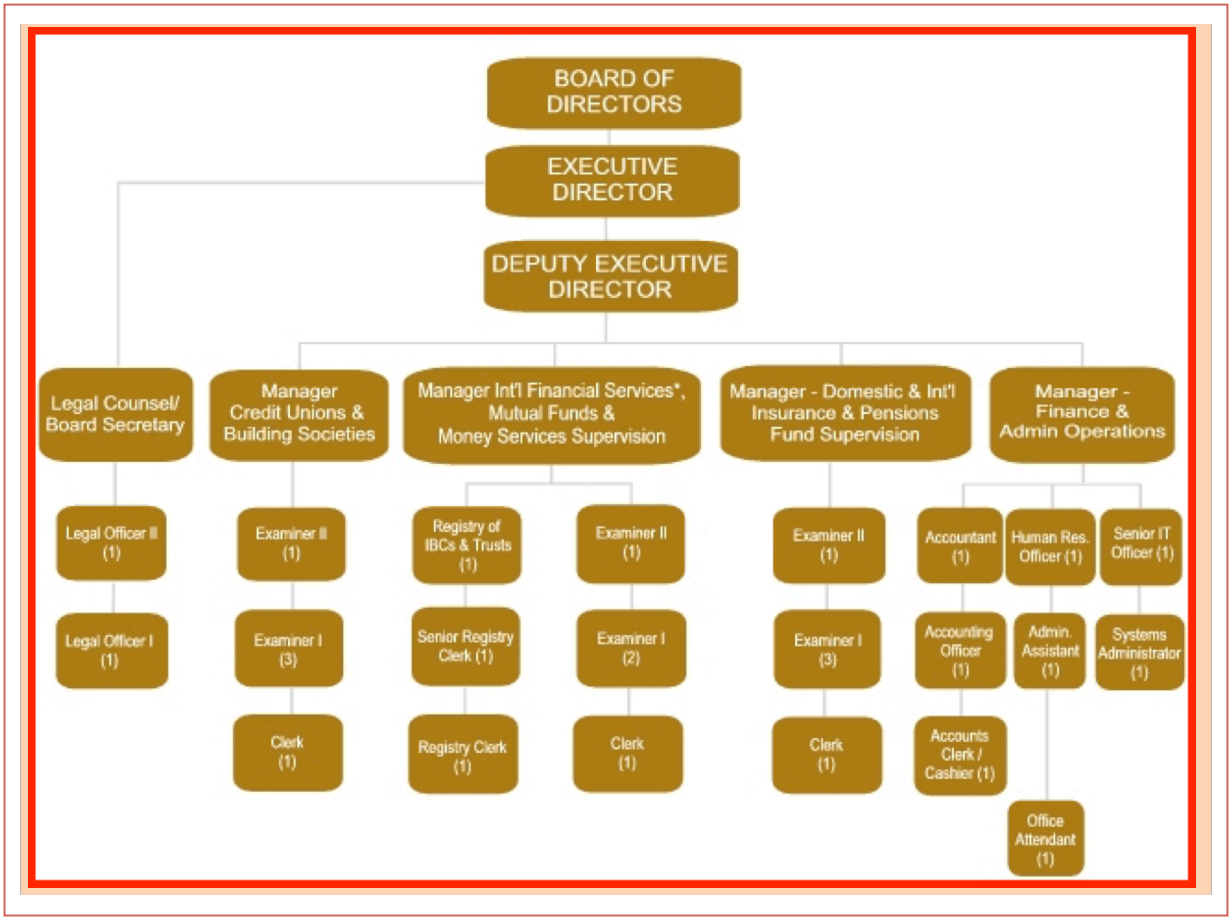
- Whether an understanding of corporate governance processes facilitated anything else but a collection of funds;

- To whose benefit were corporate activities performed and if so how were these prescribed and facilitated as corporate governance best practices;

- Integrity, inclusiveness and continuous improvement were core values that characterized corporate governance continually generally from the establishment of the company through to incorporation, amalgamation of these companies

Figure 4:1

Organisational Structure for the Financial Services Authority in St. Vincent and the Grenadines



Source: Financial Services Authority, Kingstown, St. Vincent and the Grenadines 2012 - 2013

The organisational structure of the one of the regulatory bodies for companies in St. Vincent is displayed. According to the information extracted from that body, the named "Financial Services Authority"[613] that came into being in 2011, the financial sector as of February 2013 was diverse. Created by Parliament, this regulatory body was to "manage, direct, control and supervise the international financial services industry and domestic non-bank institutions"[614] in St. Vincent and the Grenadines. The organizational chart showed a well - structured list of officers with assigned titles. The domestic and international insurance companies were assigned a manager with Examiner II, Examiner I and a Clerk as a full compliment of officers. There was a domestic sector that comprised of six banks, one building society, five credit unions and thirteen motor and general insurance companies. Four of the insurance companies operated locally while nine were spread across the CARICOM region. The services offered by these nine companies were long term and life insurance.

The international finance sector comprised five banks, two international insurance companies, one international insurance broker, one insurance manager, one hundred and thirty Trusts, seven thousand international business companies, five hundred and sixty five CTDs; forty limited liability companies, one hundred and twenty mutual Funds and seventeen Registered Agents. Clearly, the financial services sector was a clear reminder of the government's policy on making this sector a prominent part of its investment development strategy. The legislation on private limited liability companies and other financial institutions were subject to comprehensive overhaul in 1996. This was when this sector was repositioned at the forefront of economic development.

Among other activities, the FSA claimed to have had a rigorous and vigilant oversight through its regulatory mechanisms on entities that exhibited best practices within their individual business operations and policies. The private limited liability companies

[613] St. Vincent and the Grenadines Financial Services Authority Act 2011
[614] *www.svgfsa.com/industry.html* - accessed in December 7, 2017 and 15 February, 2018

within this sector were so held. To bolster its regime on regulation additional laws were introduced and or amended over the years including and up to 2013. They were:

- The International Business Companies Act Chapter 149
- Exchange of Information Act 2008
- Proceeds of Crime Money Laundering (Prevention) Act 2001 (Act No. 39 of 2001)
- Proceeds of Crime Money Laundering (Prevention) Amendment Act (No. 25 of 2002)
- Proceeds of Crime Money Laundering Regulations 2002 (S R & O No. 39 of 2002)
- Amendments to the Proceeds of Crime Money Laundering Regulations (S R & O No. 29 of 2002)
- Financial Intelligence Unit Act 2001 (No. 38 of 2001)
- The Financial Intelligence Unit (Amendment) Act 2001 (No. 24 of 2002)
- International Trust (Amendment) Act (No. 27 of 2002)
- Exchange of Information Order S R & O 2002 No. 48
- International Banks Act 2004 (No. 40 of 2004)
- International Banks (Amendment) Regulations 2002 (S R & O No. 31 of 2002)
- United Nations Anti Terrorism Measures Act 2002 (No. 34 of 2002)
- The Proceed of Crime and Money Laundering (Prevention) Act (POCA) 2013

All of above sought to strengthen the nation's legislative and administrative input in the private limited liability companies and others, in keeping with existing international standards on combatting money laundering and terrorist financing The

Proceed of Crime and Money Laundering (Prevention) Act (POCA) 2013 was even more specific. It criminalized the laundering of the proceeds of serious crime. It outlined the procedure on assets confiscation, how property was recovered and cooperation with overseas authorities. The authority was equipped to report any suspicious financial activity to the "Financial Intelligence Unit."[615] POCA provided for a National Anti Money Laundering Committee (NAMLC).

The above served as mechanisms by the Financial Services Authority augur well for mutual reinforcement. However, the question arises as to the appropriateness of regulatory and supervisory structures that may or may not have existed. Regulation was directed at all financial institutions regardless to the admixture of businesses. The domestic and international private limited liability companies specialized in a particular business activity. The distinction between institutional and functional regulation was blurred. The regulation of insurance company meant the same thing as regulation of the business of insurance. This may continue to be an issue on policy and up for debate as the nature of supervision and regulation was positioned to change beyond 2013.

The second competent authority that regulated the private limited liability companies limited by shares was the "Commercial and Intellectual Property Office."[616] Their mandate was not limited to but included the aforementioned companies and constituted for their administration and regulatory framework. The overall objective was to provide support needed for the development of commerce generated domestically.

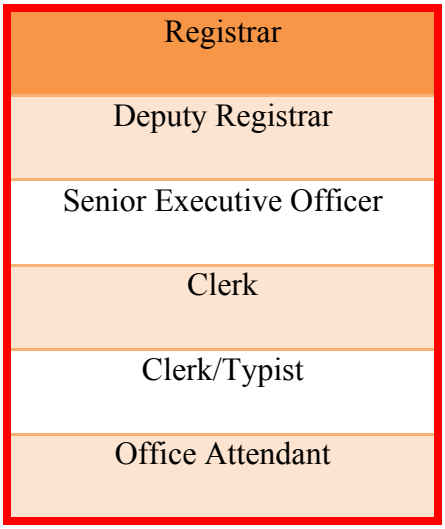
Figure 4(2)

See overleaf

[615] St. Vincent and the Grenadines Financial Services Unit Act 2001
[616] St. Vincent and the Grenadines Commercial and Intellectual Property Act No 43 of 2003

Figure 4(2)

Organizational Structure of Commercial and Intellectual Property Office



Source: Commercial and Intellectual Property Office,
Kingstown, St. Vincent and the Grenadines – 2012 - 2013

The insurance companies as well as all private limited liability companies limited by shares were well under the purview of the legislation administered by CIPO. There were a plethora of applicable laws from the inception of the Authority and to the current period such as:

- Companies Act, 1994
- Companies Regulations, 1996
- Registration of Business Names Act, Cap. 111
- Registration of Business Names Fees Regulations, 1981
- Societies Act, Cap. 330

- Trade Marks Act, 2003
- Trade Marks Regulations, 2004
- Patents Act, Cap. 110
- Patents (Amendment) Rules, 1998
- Registration of United Kingdom Patents Act, Cap. 112
- Registration of United Kingdom Patent (Amendment) Rules, No. 29 of 2001
- Copyright Act, 2003
- Geographical Indications Act, 2004

The formation of both the Financial Services Authority and the Commercial and Intellectual Property Office fell well within the period of study (1845 to 2013). However, the services of these regulatory authorities were unavailable to the private limited liability companies limited by shares for the periods of 1845 to 2003 and 2011 due to legislative enactments of the Commercial and Intellectual Property Office and the Financial Services Authority respectively. It must be reiterated that corporate governance within the aforementioned private companies was not without guidance. International best practices established and promoted by several international organizations and found within British company laws and UK Companies Acts.

A dichotomy in regulatory regime

Arguments for a dichotomy in regulatory regime (in favour of a unified regulatory body)

Concerns were raised in some local circles that questioned the ability of the fragmentation on regulation of the financial sector. The argument suggested that an overall risk assessment was lacking on the status of the private limited liability companies like the insurance companies that operated domestically and internationally; or even on a consolidated basis. There was the notion expressed that a

dichotomy in regulation provided for an inability to ensure regulation was seamless and free of gaps. It was felt that there was a group wide risk within these companies that could not have been addressed adequately given that specialists' regulators were an imperative within the insurance sector. The observation was also made when products and services within the insurance companies were blurred.

Different regulators had slightly different approaches to regulation of the same activity for different stakeholders. Once a unified regulator and supervisor, the function of the office when streamlined was likely to help improve and achieve a competitive neutrality. A unified approach to regulation allowed for more flexibility. The effectiveness of the current system of separate regulators appeared to be impeded by 'turf wars' or even a desire to 'pass the buck'. Doubts were expressed even when there were enabling legislation on jurisdictions especially within the insurance sector and the insurance companies. There was reason enough to assess the generation of economies of scale under a unified approach to supervision and regulation.

The larger the regulatory authority the more it permitted a more focused and detailed analysis through specialisation of labour and a more qualitative utilization of its inputs. A unified approach could implement cost cutting measures on shared infrastructure, administration and the support systems, some of which were already in place. Information technologies was definitely cost effective and accounted for less duplication of research and efforts at information gathering.

The accountability of regulation was probably one of the best arguments in favour of having a unified approach. It proved challenging to hold multiple regulatory bodies accountable for their own performance when put against their statutory objectives especially with regards to the cost of regulation; for their policies on discipline within the sector as well as for regulatory failures.

Arguments about the dichotomous regulatory regime

Parliament saw the need to persist with multiple regulators. This was done through regulatory co-ordination and both bodies "(CIPO and FSA)"[617] were strengthened through the amendments of their existing regulations up to 2013. There was an expressed view that this will continue given the nature of economic development for the island state as well as in keeping with world economic trends and the ease with which business was to be done through the private limited liability companies limited by shares.

A couple of factors were analysed as critical and formed the basis to strengthen the argument in favour of such unified approach. There was a noticeable increase on regulation within the financial sectors especially within CARICOM given that lessons were learnt from similar financial failures. The borrowing of ideas from the Swiss and the US on their blending of functional regulation with umbrella supervision produced positive results. In the case of the US, the American Bankers Association and its bid to financial modernization, used the "Gramm-Leach-Bliley Act"[618] for over sixty years the regulation of its financial institutions were divided among a number of diverse agencies. The insurance companies were among the vast number of financial institutions that adhered to the principles on blended regulatory approach referred to previously.

In a similar situation with the government of Switzerland experiencing "positive real growth in gross premiums across both the life and non-life insurance sectors," this could be attributed to its approach on regulation of the sector. The example of Swiss government was used so as to draw historical parallels on their input into the

[617] Commercial Intellectual Property Office and Financial Services Authority, separate entities located in capital, Kingstown, St. Vincent and the Grenadines

[618] *American Bankers Association Financial Modernization: The Gramm-Leach-Bliley Act Summary*, November 12, 1999

formation of the "international financial sector"[619] and the associated corporate governance practices in 1976 in St. Vincent. Separate regulators as reflected in the Vincentian economy reflect the fact that equally compelling arguments persist against unified supervision and regulation. There were a number of objectives noted that ranged from safeguarding systemic risk to shielding individual consumers from duplicitous practices within the private limited liability companies limited by shares. It was felt that a single regulator might not have a clear focus on the objectives and justification for regulation of these companies and might not be able to adequately differentiate between different types and usages made by and through the private limited liability companies limited by shares.

Further, if there was a single unified regulator, it may suffer from some measure of diseconomies of scale. A source of inefficiency could occur as a result of a unified agency, which may have an effective regulatory monopoly. This in turn may give rise to the type of inefficiencies that usually correlate with monopolies. One concern about monopoly regulators was that of functionality that could be inflexible and bureaucratic than separate specialized agencies. Another source of diseconomy of scales had to do with a tendency for unified agencies to be assigned an ever-increasing range of functions that may be referred to as having the 'Christmas –tree effect.'(a regulator possessing the whole range of services to be effective holistically and at all material times).

The critics argued that unified regulation could not be large enough to produce economies of scope in any significant way and less significant than economies of scale. It was noted that a number of factors vary markedly such as cultures, focus and the skills of regulators. In light of this, it was not an underestimation that most of the risks at insurance companies were generally on the liability side. Further, within the public domain and among the wider cross section of stakeholders, there was a tendency to assume that all creditors within the private limited liability companies limited by shares, regulated by a given regulator could receive an equal proportion of

[619] *www.svgfsa.com/industry.html* - accessed on 10 - 19 February, 2019

protection that generates moral hazard. Therefore, depositors as well as creditors of all insurance companies regulated by the same regulatory authority could expect to be treated generally in a comparable manner.

Finally, the change process itself could present with a serious disadvantage if a decision was made to create a unified approach to regulation and a single regulatory agency within the state. To begin with, once this was up for discussion a series of events could lead to the creation of a unified agency regardless of whether it would be appropriate to create. Another risk associated here was that of amendment to existing legislation to create such a unified agency and this would create opportunity for exploitation by special interest groups. Additionally, a reduction in regulatory capacity could be realized through the loss of key personnel and the matter of the management of the process itself could be derailed.

Towards a modern trend

There was the sense that the size of the largest limited liability companies limited by shares was a critical factor within a more modern era and a boost to economic activity within the Caribbean post 2000. With holdings across the world as was the case with CL Financial Holdings this has been a subject of discussions as it was deemed "too big to fail." There was talk of a rise in market and political power, which lasted for a few years. There was some diversification carried to an extreme brought into existence the conglomerate company that led to the acquisition and operation of subsidiaries that were often in unrelated fields.

The holding company, with the conglomerate – CL Financial in this instance, acted as a kind of internal stock market. It allocated funds to its subsidiaries on the basis of financial performance. The decline of the conglomerate did cast doubt upon the competency level of management and hence its corporate governance best practices spread across the diverse and unrelated operations. The empirical evidence from

CARICOM suggests that this largest privately held conglomerate was less successful financially and that other companies that had a clear product-market focus based on organizational strengths and competencies. The corporate failure was phenomenal and did not stem from an imperative of modern technology and lacked the capacity for innovating industrial processes to enter the international market place.

The private limited liability company limited by shares continues to grow and should be encouraged to do so as it caters to the contemporary economy that calls for an intricate interaction of executives, experts and an extensive staff of a new breed of employees. The interesting dynamic of change amidst the failure of this conglomerate was that there was room for smaller private limited liability companies limited by shares to respond to stakeholders in more meaningful ways. For instance, these smaller companies could respond to the kinds of goods and services that the public seems to want increasingly; those goods and services, which would require resources that only a large company, can master.

Separation of ownership and control: another look

There has always been the question as to who owns and who controls the private limited liability company limited by shares. Given that the company remained a nexus of contracts, and has struggled to maintain its separate legality, a family or a group of friends cannot own it. There was a call in St. Vincent for a hybrid on German and the Anglo American models of corporate governance and this presents with an interesting dialogue on separation of ownership and control.

In the German model of corporate governance and in context of such companies and according to the law, the creation of the two tier boards (Aufsichtsrat) was for "stock corporations"[620]generally. This concept was borrowed and applicable to the private limited liability companies limited by shares on St. Vincent. On the other hand and

[620] Hopt, J. Klaus, Wymeersch, Eddy, *Comparative Corporate Governance* (Gruyter, Walter & Co., Berlin1997) 13

coexisting was the Anglo American model with emphasis on the one tier boards. In St. Vincent the "FSA expects that institutions will adopt the two-tier model in structuring their boards."[621] This was done without rigorous debate on the application of such a hybrid within the private limited liability company limited by shares. This response would seek to solve the problem of the fall out on corporate governance evidenced during the contagion as was presented in Chapter Four. Whether this was workable was yet to be tested.

In Great Britain, from a historical perspective the "attractive features"[622] of the limited liability company were never lost on shareholders. It was viewed as being for the "cumulative social and economic good."[623] The same was true for Vincentian shareholders. Given that the criteria for two tiered or one - tiered boards would form part of the dynamics of 'ownership' and control of the private limited liability companies, the goal should remain the same. Shareholder primacy should not be compromised. Changes were inevitable as was previously well articulated that "changes are emerging in the UK system"[624] as was then.

Among others, Ashworth made the following observations commenting on organization of companies in the nineteenth century. It was felt that these sentiments

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[621] Directors of domestic regulated financial institutions - (with particular reference to insurance companies and credit unions) - minimum requirements for approval and continued approval by the authority (effective 15 may 2013) - Statement from the Financial Services Authority as per Financial Services Authority Act 2011 of St. Vincent and the Grenadines. The financial sector as at the 28th February 2013 was composed of both the domestic and the international financial sectors. The domestic sector consists of six banks; one building society; nine credit unions; thirteen motor and general insurance companies (four local and nine CARICOM) and nine long term and life insurance companies (all CARICOM). The international financial sector consisted of entities other than private limited liability companies - Five banks; two international insurance companies; one international insurance broker; one insurance manager; one hundred and thirty trusts; 7728 IBC's; five hundred and sixty five CTD's; eighteen LLC's; one hundred and twenty seven Mutual funds - Public/Private/Accredited Managers and seventeen Registered Agents

[622] Prasad, Kesho, *Corporate Governance* (Prentice - Hall of India Private Limited, Delhi 2006) 9

[623] Daft, Richard, *Organization Theory and Design* (10th edn. Cengage Learning, USA 2008) 12 - 13

[624] Bach, Stephen (Ed) *Managing Human Resources* (4th edn. Blackwell Publishing Ltd, UK 2005) 26

could be germane to companies within the new hybrid models of corporate governance in St. Vincent in 2011 and beyond. It was agreed that any change to the legislation and to corporate governance was that,

" "It facilitated an increase in scale which in many cases was economically essential; it helped firms to attain a size and position in which they could better accumulate reserves, either to protect themselves in times of bad trade or to contribute to their further expansion; it encouraged more precise and careful accounting, the advantages of which areas as the complexity of business grew; and it led slowly to a greater separation of ownership from management, and hence made it possible to use managerial ability which otherwise could have been neglected."[625]

Finally, the investing public remains as a major source of funds for new or expanding private limited liability companies limited by shares as vehicles of economic activity. Companies continue to grow as their need for funds would also grow. Legal ownership of such companies and their corporate governance would become even more widely dispersed. It now appears that shareholders would continue to be counted into the thousands. Several blocks of shares may be held by wealthy individuals or institutional investors with the effect that dispersion would give have implications for control and ownership of shares as well corporate governance mandate to salaried managers may become the greatest imperative.

Irrespective of the holding of annual general meetings open to all shareholders, some may vote by proxy but the ratification of on-going policy was inevitable. The overriding of outside proposals for change and conformity to a hybrid model on corporate governance for instance could be possible. Whether there would be recourse for dissatisfied shareholders was yet to be seen. It could be argued that such recourse could result in the sale of shares and to invest in private limited liability companies limited by shares whose policies were more in keeping with their desires.

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[625] Ashworth, W., *An Economic History of England 1870 – 1939* (Camelot Press Ltd, UK 1960) 96

Whether enough shareholders could cause the demise of a particular private limited liability company limited by shares was a matter that would definitely impel changes in management or corporate governance policy of such a company. Through the vehicle of the unanimous shareholder agreement also, proxy battles could be attempted and the persuasion of the majority of shareholders to vote against a company's management or to secure some form of representation could be possible. It would almost always be in the manager's interest to keep shareholders updated on policy changes and their implications.

Other issues to be examined but outside of the remit of this thesis were generally contingent on the implementation of the hybrid corporate governance models. A few of them that could serve as research material to name a few were: managerial autonomy; corporate social responsibility; expansion and sphere of corporate operations; employees rights and remuneration, executive management and managerial decision-making. The aforementioned would necessitate more than a passing mention in light of their connectivity to an emerging school of thought and scholarship on how do they relate if at all to the field of corporate governance.

5.8 Conclusion

St. Vincent with its shared historical legacy with other neighbouring states and juridical bodies are members of several groupings one of which was CARICOM. St. Vincent boasted of having progressed to a post emancipation modern emerging economy. Its emphases continually were on economic growth and employment. Several national development plans positioned the private limited liability companies limited by shares to the forefront of the economy. They were situated within the dichotomous regulatory regime of the Financial Services Authority and the Commercial Intellectual Property Office.

Due to the porous borders between and among neighbouring countries, the Caribbean region served as an incubator for juridical bodies used as vehicles for stakeholders' economic, social and political empowerment. The companies' corporate governance best practices were probably known for emphases on procedure, systems and regulations that resonated with British Company laws and the UK Companies Acts.

Given the unprecedented contagion that was highlighted in the case study of Chapter Four, the private limited liability company can be seen as a behemoth that rummaged through the corporate and business landscape of the Caribbean. The private company was not promoted as a market adaptation through private agreements. The whole aspect of boards of directors, shareholders meetings and their rights to vote as well as fiduciary duties and obligations were fundamental to the successful business networks. The Vincentian corporate law with recent emphases on elements of German corporate law and the Anglo-American model of corporate governance will create a hybrid of the structural framework for the private limited liability company beyond 2013. The merits and demerits of each system have been discussed elsewhere.

Legislation to accommodate cross border entrepreneurial spirit was amended incrementally. Yet there were numerous challenges on the choice of management and dispersed ownership of shares through shareholding domestically, regionally and internationally. Having explored the nature of corporate governance within the private limited liability companies limited by shares on St. Vincent, such exploration was not exhaustive by any means. There were still more areas to be explored.

Since the private companies were largely left without an autochthonous code on corporate governance, such a "Code"[626] for unlisted companies was developed and proposed. It adhered to international best practice with a view to providing additional guidance to approximately ten thousand unlisted companies. These companies are important and should not be left without some measure of guidance about their

[626] Appendix 5 (6*)* – Corporate Governance Code for St. Vincent and the Grenadines

viability and sustainability. It has been widely acknowledged that corporate governance was a fundamental to the wider remit of economic development of the country by way of providing a catalyst to bolster investor confidence and to create employment for some members of the stakeholder community.

The principal role of corporate governance best practices remained the same. It was about guidance for the direction and control of the private limited liability company limited by shares. Finally, consideration about the findings of the hypothesis proved correct that a lack, disregard or absence of corporate governance best practices did contribute to genteel poverty, a condition that was imposed on an already impoverished nation. This took place during 2009 but was unprecedented in the history of the private limited liability companies and the country at large. The financial crisis had its origin in Trinidad and Tobago and external to the nation state. Nonetheless, the versatility of the private limited liability company remains procedurally strong against the odds.

There is no doubt that the admixture of British corporate law, with adaptations from German corporate law, constituted the substantive nature of corporate governance on the island of St. Vincent and the Grenadines.

BIBLIOGRAPHY

CASES

Adams V Cape Industries Plc [1990] Ch 433

Automatic Self-Cleansing Filter Syndicate Co V Cunningham [1906] 2 Ch. 34

Ayton Ltd V Popely [2005] EWHC 810 (Ch)

Broderip V. Salomon [1895] 2 Ch. 323

Butters V Mncorca 2012 4 SA 1

Foss V Harbottle (1843) 2 Hare 461; 67 ER 189

Garrard V Hardey (1843) 5 Man. & GR 471

Green V Beesley (1835) 2 Bing N C 108

Howard Smith Ltd. V Ampol Petroleum Ltd [1974] AC 821

I.R.C. V. Sansom [1921] 2 K.B. 492 @ 514 (C.A)

In Smith V Anderson (1880) 15 Ch D 247

Isaac Naaman Legair V RBTT Bank Caribbean Ltd (2011/330) SVGHC

Jemima Bacchus & Kay Bacchus-Browne Of Prospect V RBTT Bank Caribbean Ltd (2011/0254) SVGHC

Linton Lewis V RBTT Bank Caribbean Ltd (2011/280) SVGHC

Nyali Ltd V AG Of Kenya [1995] 1 All ER 646, CA 653

O'Neill V Phillips [1999] 2 All ER 961

Quin & Axtens V Salmon [1909] AC 442

Re A Company (No 00709 Of 1992)

Re Griffin; Ex Parte Board Of Trade (1890) 60 LJQB 235

Re Noel Tedman Holdings Pty Ltd (1967) Qd R 561

Re Stanley [1906] 1 Ch 131

Rudling V Switch (1821) 2 Hag Con 371

Saloman V A. Saloman & Co Ltd [1897*] AC 22*

Scott V Frank F. Scott (London) Limited [1940] Ch 794

Shaw & Sons (Salford) Ltd V Shaw [1935] 2 KB 113

Van Sandan V Moore (1826) 1 Russ Ch 441

Walburn V Ingilby (1832) 1 Myl & K 61 – 77

Investments [Commissioner of Taxation v Word Investments Ltd (2008) 236 CLR 400

LEGISLATION

United Kingdom Chartered Companies Act 1837, S. I. V

Citation Of Ordinances Act 1978

United Kingdom Companies (Consolidation) Act 1908 – First Schedule/Table A: Proceedings At General Meeting

Consolidated Index Of Statutes And Subsidiary Legislation For St. Vincent and the Grenadines

United Kingdom Directors Liability Act 1890

India Companies Act 1956

International Business (Amendment) Regulations 2010

International Business Companies (Amendment And Consolidation) Act 2009

International Business Companies Act 2007

International Business Company Regulations 2008

International Insurance (Amendment) Regulations 2004

International Insurance Act 2009

International Insurance Regulations 1999

Joint Stock Companies Act 1844

Limited Liability Companies Act 2008 (Amendment) 2010

Limited Liability Companies Act 2009

Registration Of United Kingdom Patent (Amendment) Rules No. 29 Of 2001

Registration Of United Kingdom Patents Act Cap 112

St. Vincent And The Grenadines Commercial And Intellectual Property Act No 43 Of 2003

St. Vincent And The Grenadines Financial Services Authority Act 2011

St. Vincent And The Grenadines Financial Services Unit Act 2001 Word

St. Vincent Citation Of Ordinances Act 1978

St. Vincent Commerce And Intellectual Property Office Act, No. 43 Of 2003

St. Vincent Companies (Amendment) Bill 2001

St. Vincent Companies Act 1994; Cap 143, By-Law Article12 (1); 12.2.1 (1)- (5)

St. Vincent Companies Regulations 1996

St. Vincent Copyright Act 2003

St. Vincent Geographical Indications Act 2004

St. Vincent Insurance Act 2003

St. Vincent International Business Companies (Amendment And Consolidation) Act 2007

St. Vincent International Business Companies Act 1996 (As Amended, 2002

St. Vincent International Business Companies Act 2007

St. Vincent Limited Liability Companies Act 2009, Cap 151

St. Vincent Limited Liability Company Act 2008

St. Vincent Patents (Amendment) Rules 1998

St. Vincent Registration Of Business Names Act 1981 Cap 111

St. Vincent Registration Of Business Names Fees Regulations 1981

St. Vincent Registration Of Business Names Fees Regulations 1981

St. Vincent Societies Act Cap 330

St. Vincent Trade Marks Act 2003

St. Vincent Trade Marks Regulations 2004

St. Vincent Patents Act Cap 110

The Limited Liability Act 1855

Trinidad And Tobago Bankruptcy And Insolvency Act 2007

Trinidad And Tobago Companies Act 1995

Trinidad And Tobago Insurance Act (Amended) 2009

Trinidad And Tobago Insurance Act 1980

United Kingdom Chartered Companies Act 1837

United Kingdom Companies (Consolidation) Act 1908

United Kingdom Companies Act 1862

United Kingdom Companies Act 2006

United Kingdom Companies Acts 1907

United Kingdom Company Clauses Consolidation Act 1845

United Kingdom Employment Rights Act 1996

United Kingdom Finance Act 2015

United Kingdom Insolvency Act 1986

United Kingdom Joint Stock Companies Acts 1862 – 1878

United Kingdom Mental Health (Discrimination) Act 2013

United Kingdom Partnership Act 1890

United Kingdom Taxation International And Other Provisions Act 2010

United Kingdom Winding Up Companies Act 1890

United Kingdom Chartered Companies Act 1837

United Kingdom Citation Of Ordinances Act 1978

United Kingdom Companies (Consolidation) Act 1908

United Kingdom Companies (Memorandum And Association) Act 1890

United Kingdom Companies Act 1862

United Kingdom Companies Act 1867, Table A

United Kingdom Companies Act 1900 S.6; Table A - S.R. &O. 1906 No. 596l.15

United Kingdom Companies Act 1907 /(7 Edw, 7 C. 50)

United Kingdom Companies Act 1947

United Kingdom Companies Act 1948

United Kingdom Companies Act 1967

United Kingdom Companies Act 1980; First Schedule Table A, Art. 82, 113

United Kingdom Companies Act 1989

United Kingdom Companies Act 2006

United Kingdom Companies Act, 1874

United Kingdom Joint Stock Companies Act 1856, Table B

United Kingdom Joint Stock Registration Act 1844

United Kingdom Limited Liability Act 1855

United Kingdom Partnership Act 1890

United Kingdom Registration Of United Kingdom Patent (Amendment) Rules No. 29 Of 2001

United Kingdom Registration Of United Kingdom Patents Act Cap 112

International Insurance (Amendment And Consolidation) (SVG) Act 1998

HANSARD/PARLIAMENTARY DEBATES

HC Deb 09 May 1883 Vol 279 c355

HC Deb 10 May 1878 Vol 239 cc1705-12

HC Deb 20 June 1907 Vol 176 cc 638-94 @647 – 650

HC Deb 26 July 1855 Vol 139 cc 1378-97@1381 - 1382

Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines, 26 June 2001 (The Companies (Amendment) Bill 2001) – Amendments to Companies Act No. 8 of 1994

Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines 13th May 2002, (The Companies (Amendment) Bill 2002), Amendments to Companies Act No. 8 of 1994

Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines 22 March 2005, (The Companies (Amendment) Bill 2005), Amendments to Companies Act No. 8 of 1994

Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines 8 June 2005, (The Companies (Amendment) Bill 2005), Amendments to Companies Act No. 8 of 1994

Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines 25 April, 2006 (The Companies (Amendment) Bill 2006), Amendments to Companies Act No. 8 of 1994

Parliamentary History and Review containing Reports of the Proceedings of the Two Houses of Parliament during the session of 1826 with critical remarks on the Principal Measures of the Session (Limited Liability Act 1855 (UK)

HL Deb 23 February 1977 Vol 380 cc179-355

EEC Fifth Directive on Company Law - HL Deb 17 March 1977 Vol 381 cc159-202 @177 – 179

Parliamentary Debates, House of Assembly, Saint Vincent and the Grenadines, 26 June 2001 (The Companies (Amendment) Bill 2001) – Amendments proposed was to amend the Companies Act No. 8 of 1994.

HL Deb 21 October 2004 Vol 665 cc975-7

HC Deb 26 July 1855 Vol 139 cc1378-97@1386 - 1387

HC Deb 01 February 1856 Vol 140 cc110-47

BOOKS

Andenas, Mads, Wooldridge, Frank, European Comparative Company Law (Cambridge University Press, UK 2009)

Andrian, Charles, Political Change in the Third World (Routledge Publishers, UK 2011)

Author, unknown, World Economic Outlook: Slowing Growth, Rising Risks (International Monetary Fund, Washington DC, USA 2011)

Baban, Serwan, M.J., (Ed) Enduring Geohazards in the Caribbean: Moving from the Reactive to the Proactive (University of the West Indies, Jamaica 2009)

Babbie, Earl, The Practise of Social Research (Cengage Learning, USA 2013)

Baker, Tom, Griffith, Sean, J, Ensuring Corporate Misconduct: How Liability Insurance Undermines Shareholder Litigation (University of Chicago Press, USA 2010)

Baker, Tom, Griffith, Sean, J., Ensuring Corporate Misconduct: How Liability Insurance Undermines Shareholder Litigation (University of Chicago Press, USA 2010)

Banakar, Reza, Normativity in Legal Sociology: Methodological Reflections on Law and Regulation in Late Modernity (Springer International Publishing, Switzerland 2015)

Berle, Adolf A., Means, Gardiner C., The Modern Corporation and Private Property (Transaction Publishers, USA 2009) 66

Bernitz, Ulf, Ringe, Wolf-Georg, (Eds) Company Law and Economic Protectionism: New Challenges to European Integration (Oxford University Press, USA 2010)

Berry, David Caribbean Integration Law (Oxford University Press, UK 2014)

Birchwood, Anthony, Goto, Marielle Dr., Issues in Monetary and Fiscal Policy in Small Developing States – A case study of the Caribbean (Commonwealth Secretariat, UK 2011)

Bloomberg, Philip et al., Bloomberg on Corporate Groups (2nd edn. Aspen Publishers, USA 2009)

Blumberg, Philip. I., Strasser, Kurt. A., Georgakopoulous, Nicholas, L., Gouvin, Eric. J., Blumberg on Corporate Groups (2nd edn. Wolters Kluwer Publications, USA 2015)

Boubaker, Sabri, Nguyen, Khuong, Duc (Eds) Corporate Governance in Emerging Markets: Theories, Practices and Cases (Springer Verlag Berlin Heidelberg, USA 2014)

Burks, Melanie, Jane Mills Grounded Theory: A Practical Guide (Sage Publication Ltd., UK 2015)

Calkoen, Willem J.L, The Corporate Governance Review (2nd edn. Law Business Research Limited, UK 2012)

Cameron, Sarah, Focus Caribbean: Grenada, St. Vincent and the Grenadines (Thompson Press Limited, India 2014)

Cane, Peter, Kritzer, Herbert, (Eds) The Oxford Handbook of Empirical Legal Research (Oxford University Press, UK 2010)

Canterbury, Denis C., European Bloc Imperialism (Brill Academic Publishers, Netherlands 2011)

Caroll, Archie, Lapartito, J. Kenneth, Post, James, Werhane, H. Patricia, Goodpaster, E. Kenneth, Corporate Responsibility: The American Experience (Cambridge University Press, USA 2012)

Charmaz, Kathy, Constructing Grounded Theory (2nd edn Sage Publication Ltd, UK 2014)

Ciro, Tony, The Global Financial Crisis: Triggers, Responses and Aftermath 2008 - 2009(MPG Books Group, UK 2012)

Ciro, Tony, The Global Financial Crisis: Triggers, Responses and Aftermath 2008 - 2009(MPG Books Group, UK 2012)

Clandinin, Jean. D., Engaging in Narrative Inquiry: Developing Qualitative Inquiry (Routledge, UK 2013)

Cotterrell, Roger, What is Sociological Jurisprudence: Juristic Thought and Social Inquiry (Routledge, UK 2018)

Cross, Frank B., Miller, Roger Leroy, The Legal Environment of Business: Text and Cases Ethical, Regulatory Global and Corporate Issues (8th edn. South Western, Cengage Learning, USA 2012)

Da Costa, Michael, Grenade, Kari, Polius, Tracy, The Caribbean: Rethinking Policy Frameworks in the wake of the recent financial failures (Da Costa Associates/CBB/CCMF 2012)

DaCosta, Michael, Colonial Origins, Institutions and Economic Performance in the Caribbean: Guyana and Barbados (International Monetary Fund Publication, USA 2017)

Davies, Adrian, The Globalisation of Corporate Governance: The Challenge of Clashing Cultures (Gower Publishing Limited, UK 2011)

Davies, Paul, Introduction to Company Law (Oxford University Press, UK 2010)

De La Torre, Agusto, Ize, Alain, Schmukler, Sergio. L., (Eds) Financial Development in Latin America and the Caribbean: The Road Ahead (The World Bank, Washington DC, USA 2012)

Dempsey, Alison, Evolutions in Corporate Governance: Towards an Ethical Framework for Business Conduct (Greenleaf Publishing, Amazon Media - Online 2013)

Dempsey, Alison, Evolutions in Corporate Governance: Towards an Ethical Framework for Business Conduct (Greenleaf Publishing, Amazon Media - Online 2013)

Dine, J, Koutsias, Marios, Company Law (8th edn. Palgrave McMillan Publishers, UK 2014)

Dine, Janet, Koutsias, Marios, Company Law (8th edn Palgrave McMillan Publishers, UK 2014)

Dine, Janet, Koutsias, Marios, Company Law (Palgrave Macmillan Publishers, UK 2014)

Dine, Janet, Koutsias, Marios, Company Law (Palgrave Macmillan publishers, UK 2014)

Dine, Janet, Koutsias, Marios, The Nature of Corporate Governance (Edward Elgar Publishing Limited, UK 2013)

Dine, Janet, Koutsias, Marios, The Nature of Corporate Governance (Edward Elgar Publishing, UK 2013) 142

Duncan, W. D., (Ed), Joint Ventures Law in Australia, (3rd edn The Federation Press, Sydney, Australia 2012)

Fernando, A.C., (Ed) Corporate Ethics, Governance and Social Responsibility: Precepts and Practices (Dorling Kindersley Pvt. Limited, India 2009)

Fernando, A.C., Business Ethics and Corporate Governance (Dorling Kindersley Pvt. Limited, India 2009)

Fortin, Henri, Ana Cristina Hirata Barros Accounting for Growth in Latin America and the Caribbean: Improving: Improving Corporate Financial Reporting to Support Regional Economic Development (The International Bank for Reconstruction and Development/The World Bank publication, USA 2010)

Fortin, Henri, Barros, Ana, Cristina Hirata, Cutler, Kit, Accounting for Growth in Latin America and the Caribbean: Improving Corporate Financing Reporting to Support Regional Economic Development (The International Bank for Reconstruction and Development/World Bank, USA 2010)

Gordon, Robert. M, Horwitz, Morton, Law, Society and History: Themes in the Legal Sociology and Legal History of Lawrence M. Friedman (Cambridge University Press, UK 2011)

Gordon, Robert. M, Horwitz, Morton, Law, Society and History: Themes in the Legal Sociology and Legal History of Lawrence M. Friedman (Cambridge University Press, UK 2011)

Goyer, Michael, Contingent Capital: Short Term Investors and the Evolution of Corporate Governance in France and Germany (1st edn. Oxford University Press, 2011)

Grosh, Margaret, Bussolo, Maurizio, Freije, Samuel, Understanding the Poverty Impact of the Global Financial Crisis in Latin America and the Caribbean (World Bank Publications, USA 2014)

Guerson, Alejandro, Melina, Giovanni, Public Debt targeting an application to the Caribbean (International Monetary Fund 2011)

H.K Saharay, Company Law (5th edn. Universal Law Publishing Company Pvt. Limited, India 2010)

Hall, Kenneth, Chuck-A-Sang, Myrtle, Caribbean Integration from Crisis to Transformation and Repositioning (Trafford Publishing, USA 2012)

Halliday, Simon, Schmidt, Patrick, Conducting Law and Society Research (Cambridge University Press, UK 2009)

Hill, Charles W.L., Jones, Gareth R., Schilling, Melissa A., Strategic Management Theory: An Integrated Approach (11th edn. Cengage Learning, USA 2015)

Horrigan, Bryan, Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business (Edward Elgar Publishing Ltd, UK 2010)

Horrigan, Byran, Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business (Edward Elgar Publishing, UK 2010)

James, Minahan, Ethnic Groups of the Americas: An Encyclopaedia (ABC-CLO LLC, USA 2013)

Keay, Andrew, Board Accountability in Corporate Governance (Routledge Publishers, UK 2015)

Kershaw, David, Company Law in Context: Text and Materials (2nd edn Oxford University Press, UK 2012)

Kim, Jeong-Hee, Understanding Narrative Inquiry: The Crafting and Analysis of Stories as Research (Sage Publications Inc., USA 2016)

Kotler, P, Caslione, A. J., Chaotics: The Business of Managing and Marketing in the Age of Turbulence (American Management Association/AMACOM USA 2009)

Kumar, V., Reinartz, Werner, Customer Relationship Management: Concept, Strategy and Tools (2nd edn. Springer Verlag Berlin Heidelberg, USA 2012)

Lamb, Charles, Hair, Joseph Jr, McDaniel, Carl, Essentials of Marketing (6th edn. Cengage Learning Inc., USA 2009)

Lowry, John & Reisberg, Arad , Pettet's Company Law: Company Law and Corporate Finance (4th edn. Pearson Education Limited UK 2012)

Lowry, John, Reisberg, Arad, Pettet's Company Law: Company Law and Corporate Finance (4th edn. Pearson Publication, UK 2012)

Malekian, Richard, Customer Loyalty: Costs v Benefits - A Quantitative Approach (Amazon Digital Services Inc., 2009)

Mallin, Christine, Corporate Governance (4th edn. Oxford University Press, UK 2013)

Mallin, Christine, Corporate Governance (Oxford University Press, UK 2010)

Mantysaari, Petri, Comparative Corporate Governance: Shareholders as a Rule Maker (Springer Berlin - Germany 2005)

Meiners, Roger E., Ringleb, A, H., Edwards, Frances L., The Legal Environment of Business (11th edn South Western, Cengage Learning, USA 2012)

Micklitz, Hans W., Anne-Lise Sibony, Fabrizio Esposito (Eds) Research Methods in Consumer Law: A Handbook (Edward Elgar Publishing Limited 2018)

Milman, David, National Corporate Law in a Globalised Market - The UK Experience in Perspective (Edward Elgar Publishing, United Kingdom 2009)

Mitchell, Richard, O'Donnell, Anthony, Marshall, Shelly, Ramsay, Ian, Jones, Meredith, Law Corporate Governance and Partnership at Work: A Study of Australian Regulatory Style and Business Practice (Ashgate Publishing Limited, UK 2011)

Monks, Robert, Minnows, Nell, Corporate Governance (5th edn. TJ International, Cornwall UK 2011)

Morris, Verlis, Smith, Sashana Smith, Williams, Horatio, An Empirical Comparative Analysis of Financial Sector Crises in Asia and the Americas: American Charter of Economics and Finance Vol 1 No. 2 December 2012

Morris, Verlis, Smith, Sashana Smith, Williams, Horatio, An Empirical Comparative Analysis of Financial Sector Crises in Asia and the Americas: American Charter of Economics and Finance Vol 1 No. 2 (December 2012)

Munday, Roderick, Agency: Law and Principles (Oxford University Press, USA 2010)

Murray, Peter; Poole, David; Jones, Grant (Eds) Contemporary Issues in Management and Organisational Behaviour (Cengage Learning Australia 2005)

Newlands, David, Hooper, Mark. J., (Eds) The Global Business Handbook (Gower Publishing Limited 2009)

Ogawa, Sumiko, Park, Joonkyu, Singh, Diva, Thacker, Nita, (Eds) Financial Interconnectedness and Financial Sector Reforms in the Caribbean WP/13 (International Monetary Fund, Washington DC, USA 2013)

Patel, Sujata (Ed), The ISA of Diverse Sociological Traditions (Sage Publications Limited, London, 2010)

Poitras, G., (Ed) Handbook of Research on Stock Market Globalization Vol I (Edgar Elgar Publishing Limited, UK 2012)

Presson, Gunnar, Karl, An Economic History of Europe (Cambridge University Press, UK 2010)

Roach, Lee, Concentrate Company Law (3rd edn. Oxford University Press, UK 2014)

Ruck, Kevin, (Ed) Exploring Internal Communication: Towards Informed Employee Voice (Gower Publishing Limited, UK 2015

Saharay, K. H., Company Law (5th edn. Universal Law Publishing Company Pvt. Limited, India 2010)

Sarbah, A., Xiao, W, Good Corporate Governance Structures: A Must for Family Businesses (2015)

Schipke, Alfred, Cebotari, Aliona, Thacker, Nita, (Eds) Eastern Caribbean Economic and Currency Union: Macro Economics and Financial Systems (International Monetary Fund, USA 2013)

Schwart, Michael, What The Best Law Teachers Do (Harvard University Press, USA 2013)

Sealy, Len, Worthington, Sarah, Sealy & Worthington's Cases and Materials in Company Law (10th edn. Oxford University Press, UK 2013)

Skelton, Tracey, (Ed) Introduction to the Pan Caribbean (Routledge Publishers, UK 2014)

Slorach, Scott, Embley, Judith, Goodchild, Peter, Shephard, Catherine, Legal Systems and Skills (2nd edn. Oxford University Press, UK 2015)

Smith, Roy H., El - Anis, Imad, Ferrands, Christopher, International Political Economy in the 21st Century: Contemporary Issues and Analyses (Pearson Education Limited, UK 2011)

Sonne, Mikael, Toennesvang, Jan., Integrative Gestalt Practice: Transforming our Ways of Working with People (Karnac Books Limited UK 2015)

Tricker, Bob, Corporate Governance: Principles, Policies and Practices (3rd edn. Oxford University Press, UK 2015)

Vagle, Mark, Crafting Phenomenological Research (2nd edn Routledge, USA 2018)

Van Luikj, Henk, (Ed) Ethics Management: Auditing and Developing the Ethical Content of Organization (Kluwer Academic Publishers, The Netherlands, 2012)

Vasudev, M.P, Watson, Susan, (Eds) Corporate Governance after the Financial Crisis (Edward Elgar Publishing Limited, UK 2012)

Vischer, Robert K., Conscience and the Common Good: Reclaiming the Space Between Person and State (Cambridge University Press, USA 2010)

Wacks, Raymond, Understanding Jurisprudence: An Introduction to Legal Theory (4th edn. Oxford University Press, UK 2015)

Watkins, Dawn, Burton, Mandy (Eds) Research Methods in Law (Routledge, UK 2013)

Weiss, Friedl, Kammel, Armin. J., The Changing Landscape of Global Financial Governance and the Role of Soft Law (Koninklijke Brill N.V, The Netherlands, 2015)

Wertz, Frederick, Five Ways of Doing Qualitative Analysis: Phenomenological Psychology, Grounded Theory, Discourse Analysis, Narrative Research and Intuitive Inquiry (The Guilford Press, NY 2011)

Yin, Robert, Case Study Research: Design and Methods (4th edn. Sage Publication, USA 2009)

JOURNALS

Schleifer & R. Vishny, 'Politicians and Firms,' (1994) 109 Quarterly Journal of Economics 995

Abdul Aziz Bin Atan & 87 Ors v Ladang Tengo Malay Estate Sdn Bhd (1985) 2 ML J 165

Burman, S.B., 'Symbolic Dimensions of the Enforcement of Law', British Journal of Law and Society, Volume 3 No 2, 1976

Evans, Frank, What is a Company? - (1910) 26 L.Q.R 259 @263

Harvard Business Review on Strategies for Growth (Harvard Business School Press, USA 1998)

Influence of the Roman Law on the Law of England (Cambridge University Press Archive, June 2015)

Journals of the House of Commons (UK) - Vol 44, 1803, 356

Managing People: Fresh Perspectives (Pearson Education South Africa Pty Ltd, 2007)

Methodology For Assessing The Implementation Of The OECD Principles Of Corporate Governance - accessed 23 October 2014

Int. J. Law Context, 7, 2 p. 139 –179 (2011) @145

KIM, Julie Chun. "The Caribs of St. Vincent and Indigenous Resistance during the Age of Revolutions." Early American Studies, Vol. 11, No. 1, 2013, pp. 117–132. JSTOR, www.jstor.org/stable/23546705

Oh, Peter B., 'Veil Piercing Unbound' (2013) 93 B.U.L. Rev. 89

Hansmann, Henry, Pargendler, Mariana, The Evolution of Shareholder Voting Rights: Separation of Ownership and Consumption, Vol 123 No 4. Yale Law Journal, January 2014

American Bankers Association Financial Modernization: The Gramm-Leach-Bliley Act Summary, November 12, 1999

Kempin, Frederick, Limited Liability in Historical Perspective - American Business Law Association Bulletin (Unknown publisher, undated) 13

Swiss Corporate Law Reform Bill – Bulletin, November 28 2016

Chrisman, Rodney D., Fordham Journal of Corporate & Financial Law Vol 15, No 2 (2009) Article 4

International Corporate Global Network: Global Governance Principles (5th edn International Corporate Governance Network, UK 2017)

REPORTS

2005 Financial System Stability Assessment (FSSA), IMF Country report on SVG, 25 - 26

Government Commission, German Corporate Governance Code, May 2010

A C L Financial Overview, The Caribbean Centre for Money and Finance, February, 2009

Report No 09/175: IMF Staff Country Report: Eastern Caribbean Currency Union: 2009 Discussion on Common Policies of Member Countries (International Monetary Fund publication, USA, 2009)

Central Bank of Trinidad and Tobago, Financial Stability Report, Mid Year Review (Trinidad and Tobago, June 2011)

G. Bonnick "Storm in a Teacup: Crisis in Jamaica's Financial Sector" Adlith Brown Memorial Lecture (Thirtieth Annual Conference of the Caribbean Centre for Monetary Studies, Bahamas (October 1998, final version May 1999)

Poverty Assessment Report Vol II (Kairi Consultants Limited, Trinidad and Tobago 2007 – 2008) 4 – 7;

National Report St. Vincent and the Grenadines: Third International Conference on Small Island Developing States – National Report (Ministry of Health Wellness and the Environment, July 2013)

Poverty Assessment Report Vol II (Kairi Consultants Limited, Trinidad and Tobago 2007 – 2008)

The Cadbury Report: Financial Aspects of Corporate Governance (Gee & Co Ltd, UK 1992) - accessed 11 - 12 January 2019

Annual Report for 69th Annual General Meeting, St. Vincent Building and Loan Association, Kingstown, St. Vincent and the Grenadines, 9th June 2010

Annual Report, C L Financial Report, 2007

Browne, Mariano, THE 4TH BIENNIAL INTERNATIONAL BUSINESS, BANKING AND FINANCE CONFERENCE, 'Too Big to Fail', Port of Spain, Trinidad & Tobago, June 22-24, 2011

Browne, Mariano, THE 4TH BIENNIAL INTERNATIONAL BUSINESS, BANKING AND FINANCE CONFERENCE, 'Too Big to Fail', Port of Spain, Trinidad & Tobago, June 22-24, 2011

Building and Loan Association 69th Annual General Meeting, 9 June 2010

C L Financial Limited Company Annual Report 2007

Cadbury Report: Financial Aspects of Corporate Governance (Gee & Co Ltd, UK 1992) - accessed 11 April 2013

Caribbean Region: Review of Economic Growth and Development (United States International Trade Publication 4000, USA 2008)

Central Bank of Trinidad and Tobago, Financial Stability Report, Mid Year Review, June 2011

Certificate of Registration of External Company, No 119 of 2002, 07/05/2002

Colonial Office List (Great Britain Colonial Office, date unknown)

Colony of St. Vincent, Annual Blue Book 1940 (Unknown publishers, UK 1940)

Dr Ralph E Gonsalves, Prime Minister of St. Vincent and the Grenadines - Twelfth Budgetary Speech, Building A Sustainable, Resilient Economy In Challenging Times, St. Vincent and The Grenadines, 2013

Dr Ralph E Gonsalves, Towards a National Economic and Social Development Plan for St. Vincent and the Grenadines, 2008 – 2020

Eastern Caribbean Currency Union: 2005 Article IV Consultation—Staff Report and Public Information - Notice on the Executive Board Discussion on the Eastern Caribbean Currency Union - August 2005 -IMF Country Report No. 05/304

Ewart S. Williams Governor, Central Bank of Trinidad and Tobago - "THE FUTURE OF THE FINANCIAL INDUSTRY AFTER THE CRISIS," The Caribbean Centre for Money and Finance, 14th Caribbean Business Executive Seminar, April 30, 2010

Greenbury Report 1995

Hampel Report 1998

Higgs Report 2003

IMF Country Report No 11/74: Trinidad and Tobago: Selected Issues (International Monetary Fund, Washington USA 2011)

International Monetary Fund Country Report No. 05/304 Article IV Consultation—Staff Report and Public Information Notice on the Executive Board Discussion on the Eastern Caribbean Currency Union August 2005, 50 - accessed on 7 May 2014

International Monetary Fund Country Report, No. 11/74, Washington, DC, USA 2011, 6

International Monetary Fund, Staff Country Report 2007, No 07/97, S.41

The King Report 2002 – accessed on 18 August, 2019

The Bullock Report - accessed 19 September, 2019

National Economic and Social Development Plan 2010 - 2015, St. Vincent and the Grenadines pdf/power point presentation - accessed on 29 October 2013

National Report - St. Vincent and the Grenadines - Third International Conference on Small Island Developing States (Ministry of Health, Wellness and the Environment, St. Vincent and the Grenadines July 2013)

Report of the Judicial Manager of St Vincent & the Grenadines Branch (Pursuant to Section 52 of the Insurance Act of St Vincent & the Grenadines)

Report on the Institutional Assessments: St. Vincent and the Grenadines Country Poverty Assessment 2007/2008 Vol III, Kari Consultants Limited, Trinidad and Tobago

Saint Vincent and the Grenadines, Consolidated Index of Statutes and Subsidiary Legislation (Faculty of Law & Law Library/Ministry of Legal Affairs, Kingstown, Saint Vincent/UWI, Barbados, 1981)

Saint Vincent Building & Loan Association 70th Annual Report of the Directors and Statement of Accounts for the year ended December 31, 2010

Securities Protection Investor Corporation, Annual Report 2011

St. Vincent and the Grenadines - National Economic And Social Development Plan 2013-2025 - accessed on 23 February 2015

St. Vincent and the Grenadines Country Report, IMF Country Report No.11/343, 2011 - accessed 24 October 2013

St. Vincent And The Grenadines Interim Poverty Reduction Strategy Paper - Prepared by The Poverty Reduction Task Force (PRTF) Of The National Economic and Social Development Council (NESDC) Final Revision, June 2003

St. Vincent and the Grenadines: Detailed Assessment Report on Anti Money Laundering and Combating the Financing of Terrorism - International Monetary Fund - Staff Report, No. 10/311, Washington. DC, USA October 2010

Statistical Report, Statistical Department, St. Vincent and the Grenadines, Kingstown, St. Vincent and the Grenadines 2012

The Committee on the Financial Aspects of Corporate Governance (Gee and Co. Ltd. UK1992)

Turnbull Report 1999

"Improving Corporate Governance in T & T: Implementing Best Practices Workshop, February 5, 2014 (Project for IADB Project ATN/ME 12783 – TT)

Axel Kravatzky (Ed) Corporate Governance Disclosure in Trinidad and Tobago: A case study by Syntegra Change Architects of Trinidad and Tobago, (Presented to UNCTAD Working Group of Experts on International Standards of Accounting and Reporting (ISAR), Palais des Nations, Geneva, Syntegra Change Architects Ltd, Session 12 – 14 October 2011

Report of The Committee on the Financial Aspects of Corporate Governance (Gee and Company Ltd., 1992 UK)

Reform of the Financial System of Trinidad and Tobago – A White paper, Ministry of Finance (Government of Trinidad and Tobago 2004)

Trinidad and Tobago: Selected Issues (International Monetary Fund Publications, USA 2011) 3

ST. VINCENT AND THE GRENADINES Interim Poverty Reduction Strategy Paper - Prepared by The Poverty Reduction Task Force (PRTF) Of The National Economic and Social Development Council (NESDC) Final Revision, June 2003, p. 13

Poverty Assessment report Vol II - (Kairi Consultants Limited, Trinidad and Tobago 2007 – 2008)

National Report St. Vincent and the Grenadines: Third International Conference on Small Island Developing States – National Report – (Ministry of Health Wellness and the Environment – July 2013)

IMF Country Report 14/360 - St. Vincent and the Grenadines: Request for Disbursement Under The Rapid Credit Facility And Purchase Under The Rapid Financing Instrument - Staff Report; Press Release (International Monetary Fund Publication Services, USA December 2014)

Da Costa, Michael, Grenade, Kari & Polius, Tracy, The Caribbean: Rethinking Policy Frameworks in the wake of the recent financial failures (Da Costa Associates/CBB/CCMF 2012)

SPEECHES

Gonsalves, Ralph, Budget Speech Theme: Job Creation, Economic Growth, Financial Stabilisation, Fiscal Re-Balancing And Social Equity At A Time Of Continued Global Economic Uncertainty - (Kingstown, St. Vincent and the Grenadines 2012)

Gonsalves, Ralph. Dr, "The Modern, Competitive Post Colonial Economy: The Case of St. Vincent and the Grenadines (Office of Prime Minister, Cabinet Office, SVG June 2007)

Statement on recent developments regarding CL Financial Group and the Government of Trinidad and Tobago - Dr The Hon. Ralph E. Gonsalves, Prime Minister of St. Vincent and the Grenadines, delivered in Parliament on February 3rd, 2009

WEBSITES

www.collasday.com/Assets-F2CMS/Bulletin-Board-Issue-16-14.pdf - accessed on 25 October 2019 (unstable link)

www.careyolsen.com/downloads/publications/incorporating_a_guernsey_company.pdf - accessed 25 October 2019 (unstable link)

CARICOM Census Data – www.caricomstats.org/popdata.htm - accessed on 22 April 2019

www.globalcorporategovernance.com/n_europe/250_254.htm - accessed on 20 September 2019

www.cia.gov/library/publications/the-world-factbook/geos/vc.html - accessed on 12 April 2019

Total Labour Force, Total Unemployed & Unemployment Rate by Age Group, 2001 & 2012 - www.stats.gov.vc/Default.aspx?tabid=136- accessed on 2 April, 2019

www.caribccu.coop/affiliates/st-vincent-and-the-grenadines - accessed on 12 March 2019

www.cavehill.uwi.edu/fss/resources/research-and-publications/clico-s-collapse-_wayne-soverall.aspx - accessed on 14 January 2019

www.larouchepub.com/eiw/public/1977/eirv04n06-19770208/eirv04n06-19770208_043-the_bullock_report_for_the_healt.pdf - accessed on 22 September, 2019

www.cibcfcib.com/index.php?page=barclay-s-history-in-the-caribbean - accessed on 15 January 2019

www.sagicorlife.com/Pages/Countries/Countries-St-Vincent-Grenadines.aspx - accessed on 8 April, 2019

www.iod.com/MainWebsite/Resources/Document/policy_article_corp_gov_unlisted_companies_eu.pdf, 11 - accessed on 12 March 2019 - provided a definition of

www.siteresources.worldbank.org/EXTPUBLICSECTORANDGOVERNANCE/Resources/governanceandgrowth.pdf, 2 - accessed 29 September 2019

Risk Management and Corporate Governance (OECD Publications, 2014) 11- www.dx.doi.org/10.1787/9789264208636-en - accessed on 27 February 2019

www.jamaica-gleaner.com/gleaner/20120229/business/business7.html - accessed 2 February 2019

www.iod.com/services/information-and-advice/resources-and-factsheets/details/UK-Corporate-Governance-Code-July-2018, accessed on 17 January, 2019

www.johnflood.com/pdfs/Socio_Legal_Ethnography_2005.pdf- accessed on 17 June 2019

www.republictt.com/about/company-overview- accessed on 1 September 2019

www.clico.com/pdf/AR07/CL%2520Financial%2520Annual%2520Report%25202009.pdf - accessed on 10 October 2019 – unstable link

www.nationnews.com/nationnews/news/9367/painful-blow-caricom - accessed on 19 April 2019

www.jamaica-gleaner.com/gleaner/20120327/business/business3.html - accessed on 29 April, 2019 – Prime Minister of St. Vincent Dr. Ralph Gonsalves also said, "Trinidad and Tobago contravene the CARICOM treaty and allow oil rich twin island republic to treat its nationals favourably following the collapse of Colonial Life Insurance Company and subsidiary, British American Insurance Co. Ltd (BAICO)"

www.bvifsc.vg/News/tabid/160/ArticleType/ArticleView/ArticleID/60/language/en-US/Default.aspx - accessed between 18 - 21 September 2019

www.caribbean360.com/news/bailout-for-cl-financial-before-tt-parliament;

www.bnamericas.com/news/insurance/CL_Financial_Roundup:_Guyana,_Bahamas,_Trinidad_*_Tobago - accessed on 1 June 2019 – unstable link

www. jamaica-gleaner.com/gleaner/20110405/business/business1.html - accessed on 29 June 2019 – unstable link

www.trinidadexpress.com/news/Statement-From-The-Office-Of-THE-Attorney-General-on-CL-Financial-Group-181152451.html - accessed on 9 July 2019

www.bahamaislandsinfo.com/index.php?option=com_content&view=article&catid=34:Bahamas%20National%20News&id=2474:prime-minister-gives-statement-on-clico-bahamas-situation&Itemid=147 - accessed on 9 July 2019

www.clfhcuenquiry.org/Core/Core%20Bundle%20Item%208/8a-22.pdf - accessed on 2 September 2019

www.ccmf-uwi.org/files/publications/companies_profiles/CL_Financial_Limited.pdf - accessed on 29 August 2019 – Available in pdf format

www.jamaica-gleaner.com/gleaner/20120229/business/business7.html#disqus_thread - accessed on 16 February 2019

www.jamaica-gleaner.com/gleaner/20120229/business/business7.html- last accessed 15 April, 2019

www.guyanachronicle.com/a-history-of-events-clico-guyana/ - accessed on 19 April, 2019

www.thevincentian.com/ulp-view-securing-grants-for-st-vincent-and-the-grenadines-p6060-107.htm - accessed on 7 April 2019

www.ctntworld.com/cnews2/index.php?option=com_content&view=article&id=2724:clico-did-not-follow-corporate-governance-guidelines&Itemid=707 - accessed on 30 September 2019

www.jamaicagleaner.com/gleaner/20120314/business/business9.html - accessed on 23 September 2019

www.eccb-centralbank.org/p/financial-system-of-the-eccu - accessed on 6 March, 2019

www.ecgi.org/codes/documents/cadbury.pdf - accessed on 30 July, 2019

www.capital-chronicle.com/2009/02/trouble-in-paradise-cl-financial.html - accessed on 14 October 2019

www.capital-chronicle.com/2009/04/credit-crisis-in-caribbean-cl-financial.html - accessed on 24 August, 2019

www.imf.org/external/pubs/ft/gfsr/2010/02/pdf/press.pdf - accessed on 23 September 2019

www.afraraymond.files.wordpress.com/2010/03/mou21.pdf (Memorandum of Understanding 21) as per filed - accessed on 5 May, 2019 – unstable link

www.guardian.co.tt/news/2011/11/24/clicohcu-inquiry-handbook-what-corporate-governance-not - accessed on 30 August, 2019

www.dixcart.com/articles/2012/01/09/in172-key-features-of-guernsey-company-law-and-the-guernsey-registry.htm - accessed on 25 October 2019 (unstable link)

www.vincyview.com/2012/01/12/dr-henry-said-the-lack-of-good-governance-was-a-key-factor-in-the-failure-of-some-of-the-world%E2%80%99s-leading-institutions-in-recent-years/ - accessed on 29 August 2019 – Link removed but worked during the period of study

www.guardian.co.tt/business-guardian/2012-08-15/dookeran-comes-clean-clico-bailout - accessed 21 October, 2019 – unstable link

www.guardian.co.tt/business/2013-01-30/duprey-named-lawsuit-against-bipa - accessed on 7 August 2019

www.guardian.co.tt/news/2013-07-26/big-benifit - accessed on 11 October 2019

www.thenewtoday.gd/local-news/2014/05/13/sun-group-launches-grenada/ - accessed on 30 August, 2019

www.svgfsa.com/industry.html - accessed on 5 February 2019

www.bma.bm/SitePages/Home.aspx - accessed on 19 January 2019

www.bis.org/review/r100305d.pdf - accessed on 14 May 2019

www.svgfsa.com/ - access on 12 February 2019

www.bvifsc.vg/ - accessed on 18 February 2019

www.nissvg.org/history/ - accessed on 20 February, 2019

www.stabroeknews.com/2009/archives/03/07/insurance-for-7000-teachers-at-risk-in-clico-meltdown-gtu/ - accessed on 18 August 2019

www.immigration.gov.tt/Services/CSME.aspx - accessed on 2 April 2019

www.coreas.vc/about-us - accessed on 4 April, 2019

www.fss.uog.edu.gy/beware-boasting - accessed 10 April, 2019 – available as Appendix 5(4) Opinion post from the University of Guyana, September 2017

www.oecd.org/daf/ca/49081438.pdf - accessed on 30 June 2019

www.stabroeknews.com/2013/news/regional/07/26/duprey-to-benefit-financially-from-clico-deal/ - accessed on 19 July 2019

www.ttmethanol.com/ - accessed on 1 September 2019

www.newsday.co.tt/news/0,95143.html - accessed on 17 October 2019

www.guernseyregistry.com; accessed 25 October 2019 (unstable link)

www.tridenttrust.com/PDFs/Companies-IND.pdf - accessed on 25 October 2019 (unstable link)

www.mondaq.com/article.asp?articleid=86326 - accessed on 25 October 2019 (unstable link)

www.stabroeknews.com/2009/business/11/06/cleaning-up-the-clico-mess-oecs-seeking-to-salvage-regional-subsidiary/ - accessed between 15 - 23 September 2019

www.imf.org/external/pubs/ft/scr/2011/cr1174.pdf, 3 - accessed on 25 July 2019

www.guardian.co.tt/business-guardian/2012-09-12/clico-being-undervalued - accessed between 19 - 23 April, 2019

www.baico-intl.com/ - accessed on 25 September 2019

www.countrystudies.us/caribbean-islands/ - accessed on 18 March 2019

www.guernseyregistry.com - accessed on 8 May 2019

www.dixcart.com/articles/2012/01/09/in172-key-features-of-guernsey-company-law-and-the-guernsey-registry.htm - accessed on 14 April, 2019

www.ardelholdings.com/file/57/ardel-company-management.pdf - accessed on 8 May 2019

www.collasday.com/Assets-F2CMS/Bulletin-Board-Issue-16-14.pdf - accessed on 14 April, 2019

www.careyolsen.com/downloads/publications/incorporating_a_guernsey_company.pdf - accessed on14 April, 2019

www.tridenttrust.com/PDFs/TGUE-C-KF.pdf - accessed on 14 March 2019

www.svgfsa.com/industry.html - accessed 15 February, 2019

www.iod.com/about/our-history - accessed on 16 January 2019

www.ecoda.org/about-ecoda/ - accessed on 20 February, 2019

*VISITS TO ST. VINCENT AND THE GRENADINES

August 2012; September 2013

*Student currently resident and domicile in St. Vincent but effective February 2010 to November 2017/Diplomatic representative (Deputy Head of Mission/Minister Counsellor) of the island of St. Vincent and the Grenadines where its High Commission was accredited to the Court of St. James/ Royal court for the Sovereign of the United Kingdom). Student returned to island as stated since this was in fulfilment of investigative research on the topic under study.

INSTITUTIONS/PLACES VISITED

Bank of Nova Scotia

Bank of St. Vincent and the Grenadines

Building and Loan Association

Commercial and Intellectual Property Office

Coreas Hazells Incorporated

Financial Services Authority

General Employees Credit Union

Kingstown Credit Union

Lewis Building- Location of the former private limited liability company BAICL/BAICO

Ministry of Finance, Kingstown

Ministry of National Reconciliation, Public Service et al

Other government offices

Government Printer

National Archives of St. Vincent and the Grenadines

National Insurance Scheme

National Public Library

Taxi Driver Association

Hotel Association

Churches

Fish market/Meat market

Office of Prime Minister, Honourable Prime Minister of St. Vincent and the Grenadines - Dr Ralph Gonsalves, Kingstown

Office of the Attorney General

Original Site/Location - Lot 35- Kingstown, SVG - John Hazell Sons and Co Ltd

Travel around island and in discussions with various categories of stakeholders

INTERVIEWS

Attorney General of St. Vincent and the Grenadines (up to 2013) - Mrs Judith Jones Morgan

Chief Executive Officer, Coreas Hazells Incorporated - Mr. Joel Providence

Legal Practitioners

Mr. Isaac Legair - Barrister

Members of rural and urban communities

Shareholders/Stakeholders

QUESTIONNAIRES/DISCUSSIONS/TELEPHONE DISCUSSIONS

St. Vincent and the Grenadines Financial Services Authority - August - December 2013,

(Verification of data) May to August 2014

Commercial Property Office

August (Verification of data) - December 2013

September 2013 to September 2014

MISCELLANEOUS

Caribbean Centre for Money and Finance, Newsletter - Vol V1 No1, January 2013

Caribbean Centre for Money and Finance, Newsletter - Vol X11 No 3, March 2012

Certificate of Incorporation 119 of 2002 - St. Vincent and the Grenadines, 7 May 2002

Jhinkoo, Julia, Caribbean Centre for Money and Finance - Newsletter Vol 6, No. 1, 2013

Government Gazette, Vol 102 No 8, St. Vincent and the Grenadines, Tuesday 23 December 1969

Memorandum of Understanding (MOU)/Agreement between CL Financial Limited and the Government of Trinidad and Tobago - accessed 5 May 2019

Register of Companies: 1909 - 2013 - Commercial and Intellectual Property Office, St. Vincent and the Grenadines - Examined by researcher during visits to the island in 2012 and 2013(Records examined at that time for more than a century (1800s to 1900s) were in a state of disuse)

Layne, William, Permanent Secretary (ret.) RECENT FINANCIAL FAILURES IN THE CARIBBEAN - WHAT WERE THE CAUSES AND WHAT LESSONS CAN BE LEARNT? The Ministry of Finance - Barbados 6, para. 2. 3 – www.da-academy.org/Financial_Crisis_in_the_Caribbean.pdf - accessed on 3 May 2019

British American Insurance Company Limited - Companies Act (St. Vincent and the Grenadines) 1994

British American Insurance Company Limited (Judicial Management): Policyholder update: Proposed Plan of Arrangement (KPMG UK LLP /KPMG Europe LLP Publication UK 2016)

Update on the ECCU response to issues relating to British American Insurance Company and CLICO in the Eastern Caribbean - accessed on 19 April 2019 (Available as a pdf/Media Release)

Caribbean Centre for Money and Finance, Newsletter - Vol X11 No 3 (March 2012)

Caribbean Centre for Money and Finance, Newsletter - Vol V1 No1 (January 2013)

www.idsguyana.org/articles/prof-clive-thomas/global-crisis/60-the-stanford-financial-group-scandals-and-scams.html - accessed on 12 January 2019

www.broadstreetjournalbarbados.com/2011-03-22/clico-and-corporate-governance - accessed on 27 March 2019

www.businessinsightcaribbean.com/documents/1086.pdf - accessed on 8 May 2019

"Banks' liquidity challenges in Trinidad and Tobago" - Comments by Ewart S. Williams, Governor of the Central Bank of Trinidad and Tobago for the CIB/Clico Media Conference, Port of Spain Trinidad and Tobago, 30 January 2009

Saint Vincent Building & Loan Association 70th Annual Report of the Directors and Statement of Accounts (December 31, 2010)

National Economic and Social Development Plan 2010 - 2015, St. Vincent and the Grenadines pdf/power point presentation - accessed on 29 October 2019

St. Vincent and the Grenadines - National Economic and Social Development Plan 2013-2025 - accessed on 23 February 2019

Williams, Ewart. S., Governor, Central Bank of Trinidad and Tobago: Presentation to Commonwealth Secretariat Conference on Sustaining Development in Small States in a Turbulent Economy (Central Bank of Trinidad and Tobago, July 2009)

Minutes of the centennial meeting – Company records - John Hazell Sons and Company Limited, Kingstown, St. Vincent 1945

Discussions with descendants of shareholders: 'shares held by shareholders were transferrable and sold so as to purchase homes and other commodities.' This information was relayed to researcher as part of the oral history that surrounds this company – Mr. Steve Maingot (London, UK November 2012)

British American Insurance Company Limited - Certificate of Incorporation 119 of 2002 - St. Vincent and the Grenadines, 7 May 2002

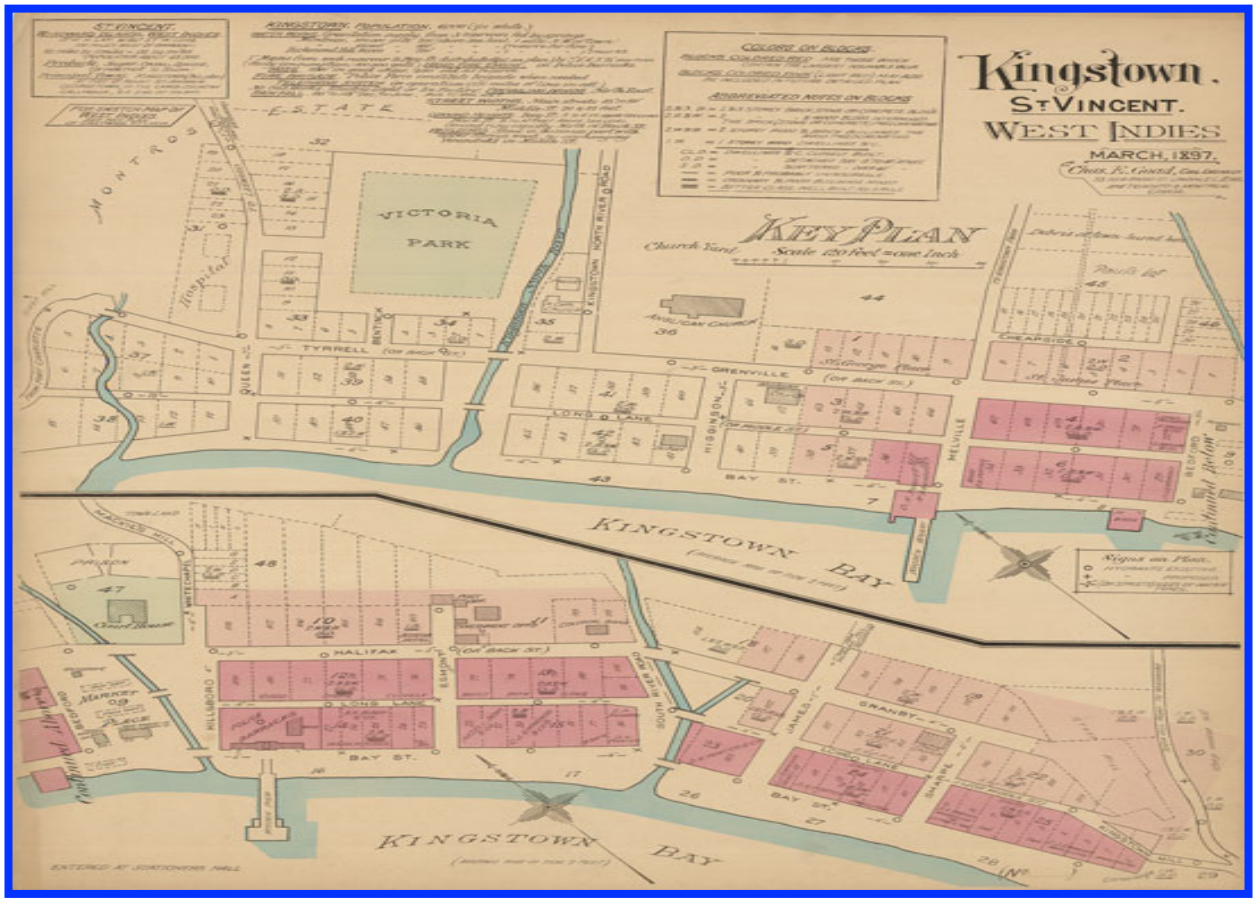
Quotations and references to historical texts within the bibliographical material/footnotes before **2009 were imperatives and included generally for historical context/ information germane to this study in its originality and used parsimoniously.*

<>Websites: access dates may vary in many instances due to further verification as to their current functionability at the time of input into Bibliography versus time of input into footnotes.

APPENDICES

APPENDIX (i)

ORIGINAL LOCATION OF JOHN HAZELL SONS AND COMPANY LIMITED



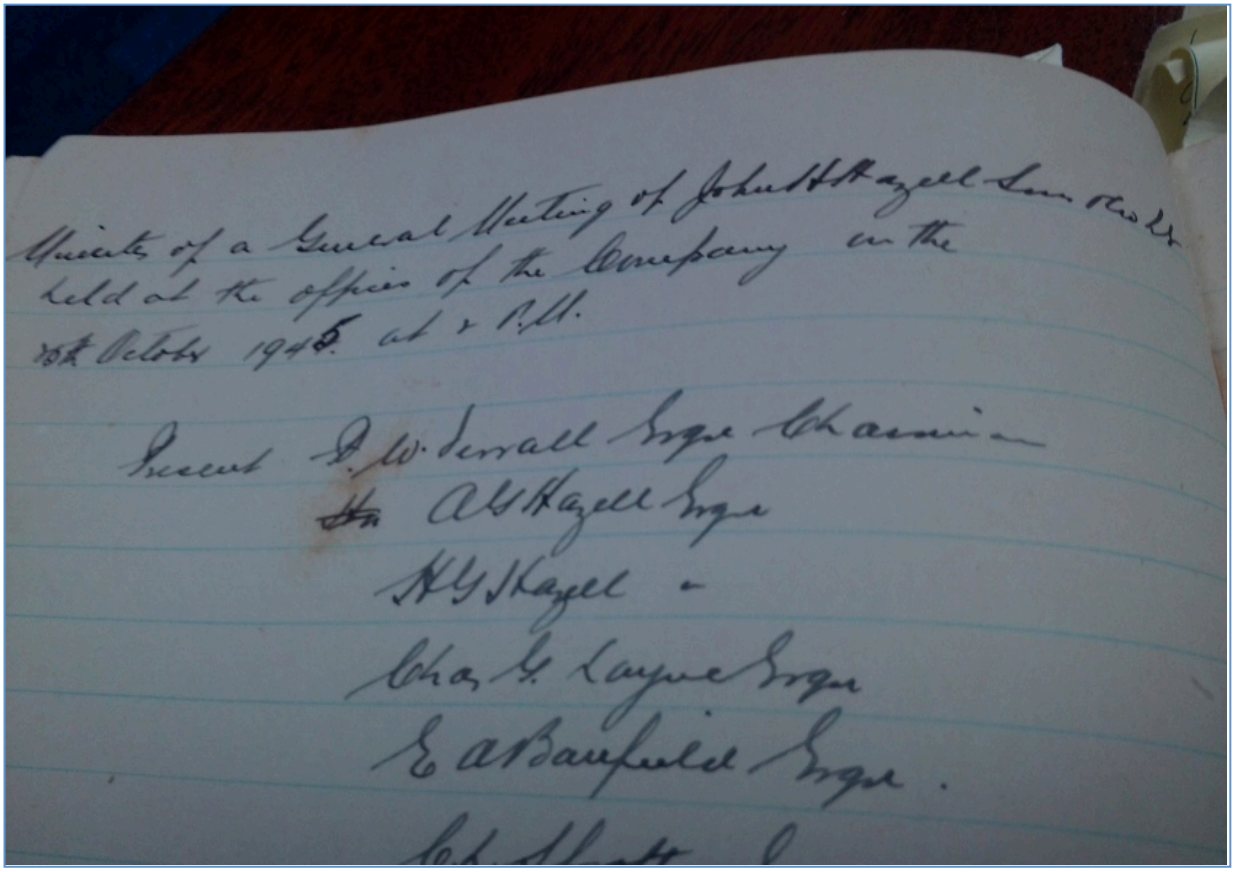
Lot 35

The marked spot is still identifiable in Kingstown, St. Vincent and the Grenadines

Source: Public domain
Original site (Lot 35) conveyed to shareholders of John Hazell Sons and Company Limited
Map of Kingstown, St. Vincent and the Grenadines in 1897
Post 1845 the controlling shareholder was reportedly Mr. John Hazell

APPENDIX (ii)

THE NAMED COMPANY : JOHN HAZELL SONS & CO LTD



Caption reads :

Minutes of a General Meeting of John H. Hazell Sons & Co Ltd held at the offices of the Company on the 25th October 1945 at 2 p.m.

(There were eight (8) persons recorded as being present at this meeting as seen in the minutes)

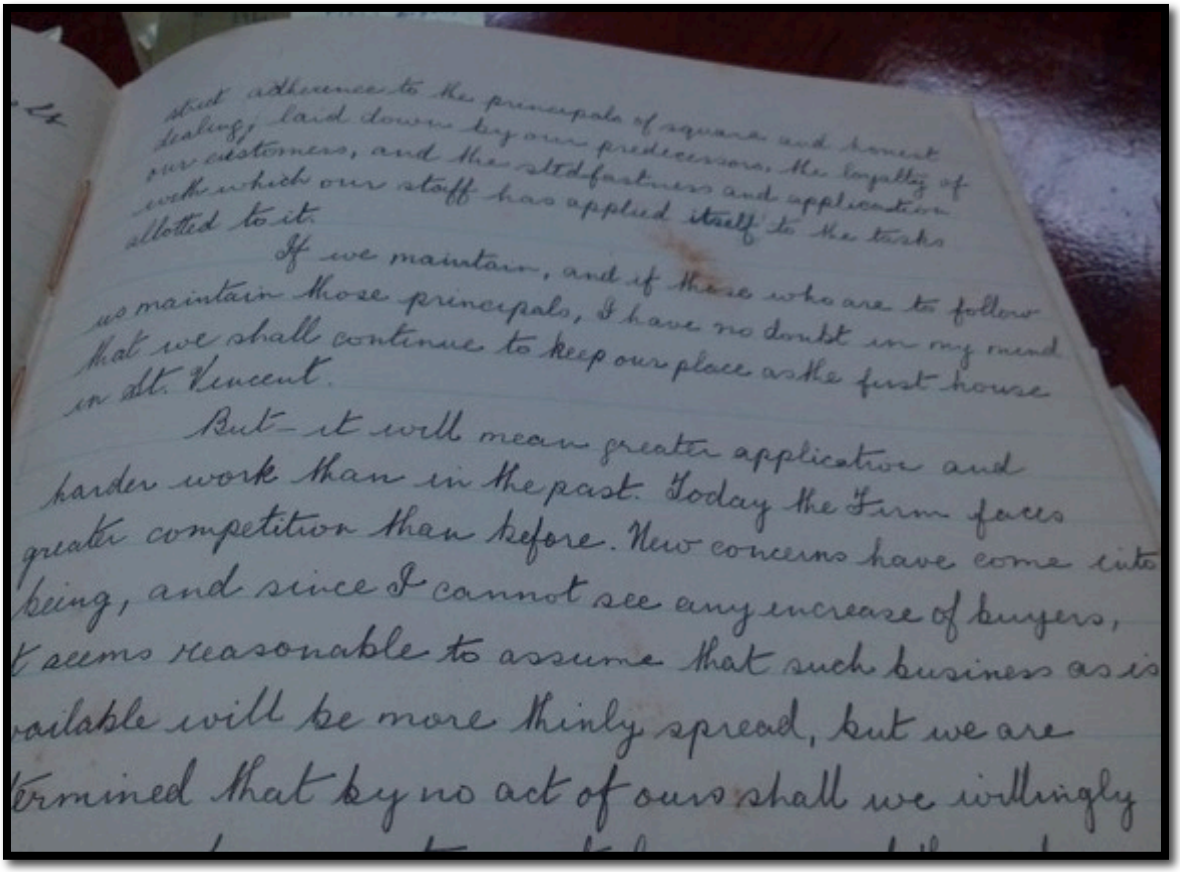
Source:
The Coreas Hazells Incorporated Company
With the kind permission of CEO - Mr. Joel Providence – 2012 - 2013

APPENDIX 1 (1)

PRINCIPLES FUNDAMENTAL TO THE FIRST ESTABLISHED COMPANY – JOHN HAZELL SONS AND COMPANY LIMITED – EFFECTIVELY FROM 1845

PARAGRAPHS ONE AND TWO

"Strict adherence to the principals (principles) of square and honest dealing, laid down by our predecessors, the loyalty of our customers, and the steadfastness and application with which our staff has applied itself to the tasks allotted to



Source: The Coreas Hazells Incorporated Company
With the kind permission of CEO - Mr. Joel Providence – accessed 2012 - 2013

APPENDIX 1 (2)

SYMBOL

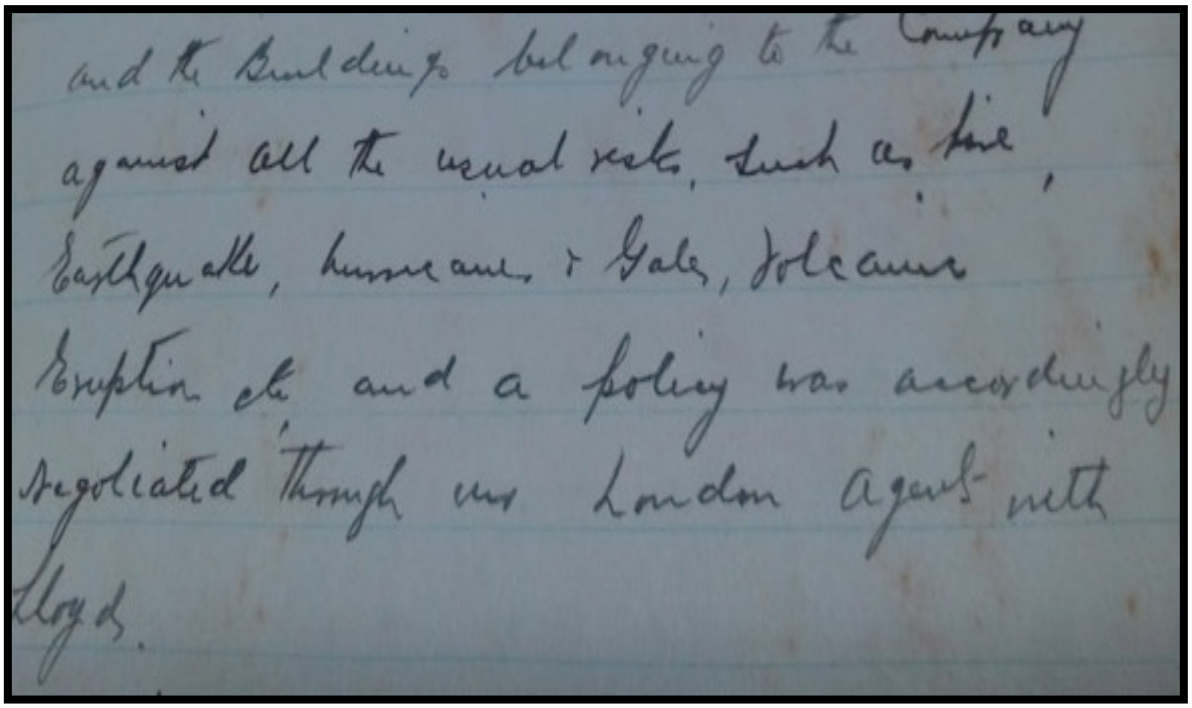
LLOYDS OF LONDON AGENT/AGENCY

(THIS WAS INDICATIVE OF THE HISTORICAL RELATIONSHIP BETWEEN LLOYDS OF LONDON AND THE FIRST ESTABLISHED COMPANY – JOHN HAZELLS SONS AND COMPANY LIMITED – REPORTED IN ITS CENTENNIAL MEETING 1945)

Symbol displayed on the premises of Coreas Hazells Incorporated (John Hazell Sons and Company Limited was one of the companies amalgamated to form this new incorporated entity which characterizes its brand identity)
Photo courtesy Mr. Kurtland Barbour, Kingstown, St. Vincent
April 2018

APPENDIX 1 (3A)

EXCERPT OF MENTION IN MINUTES OF MEETING ABOUT RISK MANAGEMENT DECISION – LLOYDS OF LONDON WAS APPROACHED THROUGH THE COMPANY'S AGENT – SEE LAST PARAGRAPH


and the Buildings belonging to the Company
against all the usual risks, such as fire,
Earthquake, hurricanes & Gales, Volcanic
Eruption etc and a policy was accordingly
negotiated through our London agents with
Lloyds.

"In the interest of all concerned, it was deemed advisable to fully cover our stock and the buildings belonging to the Company against all the usual risks, such as fire, earthquake, hurricanes & gales, volcanic eruption etc. and a policy was accordingly negotiated through our London agents with LLOYDS."

Source: The Coreas Hazells Incorporated Company – 2012 - 2013
With the kind permission of CEO - Mr. Joel Providence

APPENDIX 1(3B)

THE 81ST ANNIVERSARY OF THE '1935 RIOTS'

Fri, Oct 21, 2016

Today is the 81st anniversary of the '1935 Riots', an event that had far-reaching effects on St Vincent, in that it impacted on the colony's political history and helped to shape the pathway to adult suffrage. Unfortunately, we know little about it and it passes by every year with virtually no acknowledgement of its historical importance. We missed a golden opportunity in 1979 to mark this day as the date of our Independence, for as far as I am aware, the 27th October has no historical significance. The 'Riots' was indeed a milestone to our Independence and represented another chapter in that long march from Emancipation. We were still searching for the promises and expectations of the Emancipation declaration.

St Vincent was one of 10 British Caribbean colonies to have experienced disturbances in the 1930s (that is, including Belize and the Bahamas). The St Vincent Riots followed that of January 1935 in St Kitts and had some uniqueness of its own in that while most of the others were centred around the plantations and strikes, here it began in the yard of the Courthouse during a meeting of the Legislative Council in the upper chambers of the Courthouse. While developments between 1935 and 1951 were common in the British Caribbean colonies, St Vincent, like the others, had its own players and peculiar circumstances.

What happened?

The Legislative Council had, at a meeting on Friday, October 18, introduced some financial measures – Customs Duties and Licences Amendment Ordinances. Among the items subjected to increased duties were matches. The price of matches went from three boxes a penny to one box a penny. The measures were introduced on Friday and the Legislative Council was to meet again on Monday, October 21st to bring them into law. Even before the legislation was finalized, it appeared that some merchants, over the weekend, had begun to increase prices. This was of great concern and when Council was reconvened on the 21st, there were many anxious people flocking to the yard of the Courthouse.

The Times newspaper described the scene. Among the first on the scene were 15 women 'with small sticks'. The crowd later increased to about 200, the majority being men, some with stones, sledgehammers, cutlasses and knives. George McIntosh, after being asked to intervene on their behalf with the Governor, was given a meeting time

at 5 p.m. when the session of Council would have ended. The people refused to accept that, fearing that the Governor would have been returning to Grenada that afternoon. Crowds continued moving into the Court yard and the noise brought an end to the Council meeting. The Governor moved downstairs and attempted to address the crowd, but his voice was drowned out. The Cable Office nearby was broken into, as was the Prison; Sheriff Lewis led the charge there, declaring himself 'Haile Selassie' and demanding that the prison gates be opened.

Things got completely out of hand. One man was shot. Some persons, including the Chief of Police, were struck. Vehicles of officials parked in the Court yard were damaged. This included the Governor's car with the official flag. Police reinforcements were called in and the crowd moved to the business places of FA Corea (Casson). The Riot Act was read, but sections of the crowd still remained at Coreas and the Court yard until later that afternoon; three persons died in the process and one woman later.

North River Road and Cane Garden

A few persons had by then been moving to the North River Road and Wilson Hill area. Fred Hazell, prominent merchant and lieutenant in the Volunteer Force, lived in the area where the St Joseph's Convent is now located. Hazell was accused of shooting 'John Bull' during the disturbances at the Court yard, so he might have been a target. A contingent of police and volunteers forced the men out, some moving in the vicinity of the Guides Pavilion and up to McKie's Hill. Two entered a neighbouring house where they were subdued but not before inflicting a wound on one of the policemen who had to be taken to the hospital.

Cane Garden was the next trouble spot. A squad of police and volunteers, sent to the area was attacked by a group of about 30 men wielding cutlasses and sticks. One of the rioters was shot in his foot but they had already looted some of the houses and cut the telephone wires so that there was no communication with Kingstown. One house that escaped being looted was that of O.W Forde, lawyer and plantation owner who had some of the workers from his estate at Arnos Vale guarding his home.

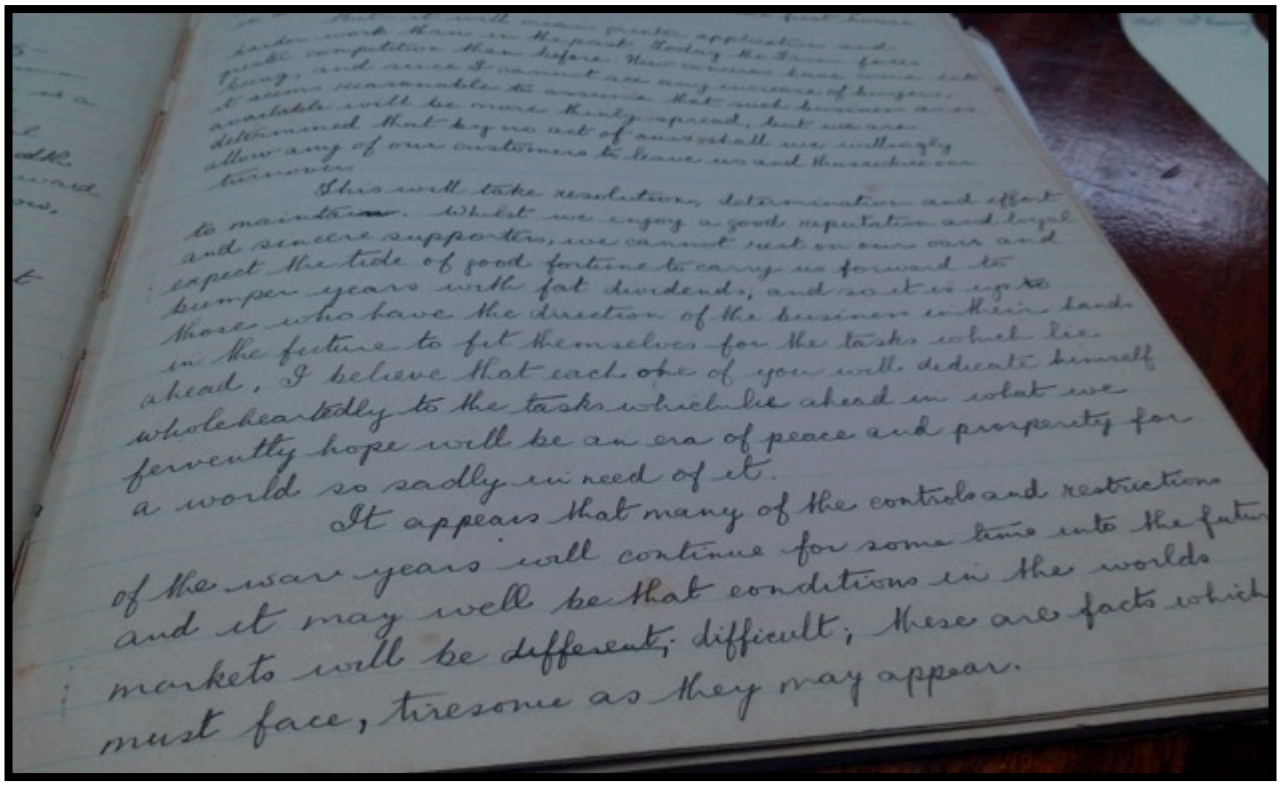
One of the other areas that witnessed disturbances on that Monday was the area of Byrea, Grand Sable and Georgetown. Telephone wires from that area were cut so information about the disturbances there did not get to Police Headquarters until late that night. Even then it was only with the arrival from Grenada of warship H.M.S Challenger at midnight that they were in a position to send reinforcements to Georgetown. (To be continued)

Dr Adrian Fraser is a social commentator and historian.

APPENDIX 1(4)

EXCERPT FROM MINUTES OF MEETING HELD IN 1945 ON THE CENTENARY CELEBRATIONS OF THE JOHN HAZELL SONS AND COMPANY LIMITED

The classic example of one of the organs of the company in its earliest days of efficient Annual General Meetings/Special meetings (the **shareholders assembly/company in meeting**)



to maintain. Whilst we enjoy a good reputation and loyal
and sincere supporters, we cannot rest on our oars and
expect the tide of good fortune to carry us forward to
bumper years with fat dividends, and so it is up to
those who have the direction of the business in their hands
in the future to fit themselves for the tasks which lie
ahead. I believe that each one of you will dedicate himself
wholeheartedly to the tasks which lie ahead in what we
fervently hope will be an era of peace and prosperity for
a world so sadly in need of it.

It appears that many of the controls and restrictions
of the war years will continue for some time into the futur
and it may well be that conditions in the worlds
markets will be different; difficult; these are facts which
must face, tiresome as they may appear.

In paragraphs 1 and 2 the synopsis was that management gave guidance on greater applicability to work in light of the competition that was being faced by the company. The company was concerned that they had a duty to stakeholders (customers) to make sure that their needs are being met. The emphasis was on best practices. In the words of the scribe, "it is left up to those who have the direction of the business [a clear reference to directors] … to fit themselves for the tasks which lie ahead …"

Source: The Coreas Hazells Incorporated Company - 2012
With the kind permission of CEO - Mr. Joel Providence

APPENDIX 1 (5)

SECTION A

CORPORATE GOVERNANCE ASSESSMENT TOOLS
ASSESSMENT TOOL USED FOR PRIVATE LIMITED LIABILITY COMPANIES ON ST.VINCENT AND THE GRENADINES

An adaptation from the *OECD's Corporate Governance Assessment Tool* was utilized for the purposes of evaluation of performance on six areas based on applicable legislation in use in St. Vincent and widely accepted international principles. The following areas were assessed [as far as was practicable]. This is an original assessment and have limitations given that material (raw data has been subjected to a number of natural and manmade manipulation due to /loss of some information over time/disrepair/other). Some specific details are given as per itemized. Nonetheless, sufficient the result suggests that there is room for improvement within the field of corporate governance within domestic companies. It was challenging to get data to properly assess the international companies for a number of legitimate reasons. They are subjected to a higher standard of regulation and legislation itself is specific to levels of probity, transparency specific to directors and the requisite Register.

Areas:

7) Roles of Board members
8) The composition of the Board
9) The assigned tasks of Board members
10) The processes of the Board
11) Disclosure and Transparency mechanisms
12) Relations with shareholders

Assessment Tool includes thirty -two indicators of corporate governance practices that were possible within the private limited liability company

For each Indicator there are 4 levels of maturity as follows:
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
Level 4: Advanced governance practice.

The task is to determine the company's level of maturity for each Indicator by stating whether the Test Statement presented is "True" or "False".

Based on the response, progress to the next relevant Test Statement or the next Indicator. Some Levels may not be applicable and therefore could be disregarded.

The following information was used to assess the nature of corporate governance practices.

1. The private limited liability company is a member of the Chamber of Commerce in St. Vincent and the Grenadines

a) Yes ( ) (67.8 /678) = Approximately 10% companies registered with Chamber of Commerce (there may be reasons why this is so for domestic companies…

b) No (/)

Level 1: Complying with legal baseline

2. The company is locally (SVG) or foreign owned?

a. Local (/) 542.4/678 = 80% locally owned

b. Foreign ( )

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps

3. Number of employees

a) 10 - 500 (/) 676/678 = 99.71%

b) 500 - 678 ( ) 2/678 = 0.29 %(Flour Mills ?? and Coreas Hazells – the latter now part of Goddards Enterprises and listed on Barbados Stock Exchange)

c) 678 - 5000( )

d) 5000 ( )

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps

4. Revenue Turnover annually ($XCD)

Particulars of Company	Annual Revenue Turnover XCD $	Observations
	Below $100,000	/
	$100, 000 - $500,000	55%
	$500,000 - $1,000,000	10%
	$1,000,000 - $1,500,000	15%
	$1,500,000 - $2,000,000	3%
	$2,500,000 - $3,000,000	3%
	>$3,000,000	4%

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance

5. Applicable Business Sector/Sectors

- Construction/Engineering (/) 10%
---Finance/Insurance (/) 25%
---Energy related/Service and Supplies ( ) 8%
---Manufacturing (/) 10%
---Professional Services ( ) 5%

---Consumer Production (Wholesale and Retail) (/) 20%
---Agro Industrial Base (Small Enterprises) ( ) 20%
---Other Services.....( ) 2%

Level 1: Complying with legal baseline

6. Main Source of Financing
   a. ---Bank ( ) 80%
   b. ---Self Financed (/) 12%
   c. ---Equity (/) 8%

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps

7. Board Size (Number of Directors)
   a. 1 - 5 ( )
   b. 5 - 10 (/) - 100%
   c. 10 - 15 ( )
   d. 15 .....( )

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps

1. Number of Independent Directors
   a) 1 - 5 (/) - 100%
   b) 5 - 10 ( )
   c) 10 - 15 ( )
   d) > 15 .....( )

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps

2. Number of Female Directors
   a) 1 - 5 ( ) - 100%
   b) 5 - 10 ( )
   c) 10 - 15 ( )
   d) > 15 .....( )

Level: Not applicable (challenging to assess)

3. Number of Non-Executive Directors
   a) 1 - 5 (/) 100%
   b) 5 - 10 ( )
   c) 10 - 15 ( )
   d) > 15 .....( )

Level 1: Complying with legal baseline

4. DIVISION OF ROLES

The board and management have distinct roles. There is a clear distinction between the decisions taken by the board and the running of the business. Best practice boards do not become involved in management or micro-manage decisions. **(in more than 50%)**
The core functions of the board are to communicate with the owners, to guide executives, and to monitor the performance of the company. The board adds value by determining what results are to achieve, testing the assumptions and the strategies of management, monitoring, and offering its advice to the executive on high-level strategic issues.
Division of Roles
IN THIS SITUATION, BOTH BOARD OF DIRECTORS AND SHAREHOLDERS WERE MANAGING THE CORPORATE ENTITY JOINTLY AS COMPANIES WERE GENERALLY FAMILY RUN BUSINESS -

- References to The Default Article of Association/Regulations

- Table B - 1856 -
- Table A 1862
- Table A 1906
- Table A 1908
- Table A 1929
- Table A 1948

Implementation Level 1 (L1): Complying with legal baseline - YES COMPLIANCE AS PER TABLE A/TABLE B

At least 2 Directors have been appointed.

a) True (/) 80% of the cases
b) False ( )

Level 1: Complying with legal baseline

Level 2: Understanding need to professionalize corporate governance

5. DUTY OF CARE

Board decisions are taken based upon complete information and on a fully informed basis. Information should be complete and available to the board on a timely basis. The board makes important decisions that are founded upon the best possible available information, as well as informed, rigorous and open debate.

In 80% of the cases - The duty of care is an obligation imposed on the board that they act on a fully informed basis, in good faith, and with due diligence. The board needs high quality information on which it can base its decisions. The information must also be complete and provided on a timely basis. It needs to be uncensored by management. An absence of good information leads to weak decision-making processes. (Extrapolation from minutes in general meetings)

Duty of Care

Level 1: Complying with legal baseline

Level 2: Understanding need to professionalize corporate governance

The duty of care is embodied in the company's articles of Association, and or the Memorandum of Association

a) True (/)
b) False ( ).

Level 1: Complying with legal baseline

6. DUTY OF LOYALTY

Directors take decisions objectively and in the exclusive interest of the company. Sometimes this is referred to as the "duty of loyalty" or a directors "fiduciary duty".

80% of the companies- The duty of loyalty means that directors act exclusively in the interest of the company and its shareholders and do not allow their personal, or any other singular, interests to prevail. (Extrapolation from minutes of meetings and other documents)

Duty of Loyalty

Level 1: Complying with legal baseline

Level 2: Understanding need to professionalize corporate governance

The duty of loyalty is embodied in the company's articles of Association, and or the Memorandum of Association

a) True (/)
b) False ( )

Level 1: Complying with legal baseline

7. APPROPRIATE BOARD COMPOSITION

Generally this is true....

The skills and experience of board members are appropriate to the requirements of the business.
Boards will require different skill sets, experience and personalities to properly fulfil their roles. These should be adapted to the evolving needs of the company. The aim is to maintain an appropriate balance of skills and experience on the board.

Appropriate Board Composition
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
The owners and the board recognize that the board needs appropriate skills and experience to best fulfil its responsibilities.
True ( ) False ( ) - difficult to ascertain
but...(discuss this)

8. CHOOSING DIRECTORS

The board member nominations process is formal, documented and transparent. Board members are appointed based exclusively on merit. - Not always as socio-culture elements impact decision-making process significantly.

40% of Board members ~~should be~~ appointed based upon qualities that they bring to the board and the company that help them achieve company goals. Qualities can be technical such as financial skills, industry knowledge, legal expertise, or Management & Accounting expertise, but also soft skills like leadership.

Choosing Directors
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
The appointment process considers not just family members, but people who contribute an outside perspective. This has changed as time progressed

a) True ( )
b) False (/)

Level 1: Complying with legal baseline

9. INDEPENDENCE FOR OVERSIGHT (Could omit due to insufficient checking and rechecking)

In many instances, The board has sufficient independence to allow it to exercise objective oversight of the company. Independence is a quality that permits the board to make objective decisions in the interest of the company. Such independence requires a sufficient number of independent board members.

Independence for Oversight
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps.
There are independent or non-family members on the board.

a) True ( )
b) False (/) For the first one hundred years(Maybe/uncertain)

Level 1: Complying with legal baseline

10. NUMBER OF DIRECTORS

The board size is appropriate for the requirements of the business. There is no single optimal board size as the correct board size depends upon the circumstances of the company.

A typical range of board size would be from 5 to 10 members. Excessively small boards have insufficient manpower and skills. Small boards of up to 6 members are better suited for closely held and family enterprises. Excessively large boards have cumbersome decision making processes and may lead to some directors seldom making contributions and therefore being non-effective.

Number of Directors
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
At least two (2) Directors appointed.

a) True (/) - 80% of company appoint at least two of its directors
b) False ( )

Level 1: Complying with legal baseline

11. DIRECTING, DELEGATING & MONITORING

The board fulfils certain expected responsibilities: establishing an effective link with owners, directing management, and assuring that the executive adheres to board policies through monitoring.
For each of the statements below select the appropriate level for your company.

Particulars	L2: Responsibility formally specified in an adopted document
Reviews and guides corporate strategy as proposed by management	True
Reviews and guides major plans of action including annual budgets and/or business plans	• True
Agrees and sets performance objectives with management and monitors management's implementation of plans	• uncertain/True
Evaluates, selects and dismisses the CEO	• Uncertain as to the process that is followed for dismissal
Oversees the setting of remuneration practices and approves remuneration plans	• Not known

Monitors the effectiveness of the company's governance practices	NA

12. RISK OVERSIGHT AND BOARD AUDIT

The board has established an audit committee and an internal control and risk oversight function is set up and working. Of all of the committees of the board, the audit committee is the most important having responsibility for overseeing the control and reporting environment of the company.

Risk Oversight & Board Audit
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
Level 4: Advanced governance practice.
It is expected that Company has internal controls and risk oversight.

a) True (/)
b) False ( )

Level 1: Complying with legal baseline

13. INTERNAL AUDIT

Companies are generally in compliance here.

The company has an internal audit function. The internal auditor has a direct reporting relationship to the audit committee of the board. The internal auditor is not the same thing as internal control. Internal audit is an independent, objective assurance and consulting activity. It brings a systematic approach to improving the effectiveness of risk management, control, and governance processes.

Internal Audit
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
Level 4: Advanced governance practice.
Risks are being documented (e.g. a risk matrix).

a) True (/)
b) False ( )

Level 1: Complying with legal baseline

14. CONFLICT OF INTEREST

Generally this is so...The board has systems in place for monitoring conflicts of interest, misuse of company assets, and related party transactions. A conflict of interest occurs when an individual or organization has multiple interests, one of which could possibly corrupt their motivation in a transaction. Conflicts of interest commonly result from family interests, ownership of other companies, gifts from friends or business partners, multiple places of employment and self-dealing i.e. entering into a transaction with oneself or a related party.

However, disciplinary actions are difficult to carry through due to family relationships among stakeholders/

Conflict of Interest
Level 1: Complying with legal baseline
Where there is a possible or perceived conflict of interest directors are understood to disqualify themselves from those decisions.

a) True ( )
b) False ( ) - difficult to ascertain

Level 1: Complying with legal baseline

15. COMPLIANCE FUNCTION

The company has a compliance function or systems that are able to ensure that the company complies with law. The compliance function is designed to protect the company from the risk of failure in processes and losses and fines from regulatory inspection. The compliance function ensures that the legal rights of stakeholders are respected.

Compliance Function
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
The company has written compliance manual/policies.

a) True (/)
b) False ( ) This is an assumption

Level 1: Complying with legal baseline

16. WHITLE BLOWER POLICY - not applicable

A whistle blower policy allows the board to be informed of illegal or unethical practices and protects the whistle blower from reprisal. The board has put in place a whistle-blower policy to communicate illegal or unethical practices to the board. In addition, the board ensures the protection of the whistle-blower's identity and their rights.

Whistle-blower Policy
Level 1: Complying with legal baseline.
The company has a written whistle-blower policy in place.

a) True ( )
b) False (/)

Level 1: Complying with legal baseline

17. SEPARATION OF CHAIRMAN AND CEO

In some instances this is so. The roles of chairman and chief executive (or managing director) are not exercised by the same individual Best practice suggests that the roles of the chairman and the CEO be separated in order to create a clear distinction between the oversight role of the chair and the executive role of management. Alternatively, it may be considered good practice to have a lead independent director to balance the powers of the chair in the event that the roles of chair and CEO are combined.

Separation of Chairman and CEO
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
The separation of roles has been considered

a) True ( )
b) False ( ) Difficult to ascertain

Level 1: Complying with legal baseline

18. FREQUENCY OF MEETINGS

The board meets with sufficient regularity to properly discharge its duties. Too few board meetings means work is not being done, or the board does not understand its role. Too many board meetings could mean that the board is overly involved in management and may also stem from a misunderstanding of the role of the board. A minimum of 4 board meetings per year can be used as a rule of thumb. More than monthly meetings would be considered excessive. Some committees, in particular the audit committee of listed companies, tend to meet with greater frequency, sometimes on a monthly basis.

Frequency meetings
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Board meetings are held as prescribed in the company's By-laws. (Generally so based on more than 50% records examined… historically so… but submission of reports ad hoc… over the years …)

a) True ( )
b) False ( ) Yes - inference from Centenary celebrations @AGM and also from records at CIPO … (Coreas Hazell)/this is specific to John Hazell Sons and Company Limited

Level 1: Complying with legal baseline

19. INDUCTION

Some New board members receive induction training. The level of training reflects the size and complexity of the company. New board members need to receive sufficient training and background information to function appropriately. Preparing a board member for effective board contribution is referred to as induction training.

Induction
Level 1: Complying with legal baseline - difficult to ascertain in each subsequent year
The company provides basic background information for board members to step into their new roles and begin to operate immediately.

a) True ( )
b) False ( ) - Difficult to ascertain
Level: Difficult to ascertain

20. WRITTEN POLICIES AND PROCEDURES: BOARD CHARTER AND COMMITTEE TERMS OF REFERENCE

All companies have these - The board has a charter (Table A), committee terms of reference, and other documentation that define its roles, responsibilities and procedures. Written policies and procedures are necessary to formalize the company's governance.

Written Policies and Procedures: Board Charter (Table A) and Committee Terms of Reference
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
The board has policies and procedures. In some cases there are basic charters, however, not all policies and procedures are always formalized.

a) True (/)
b) False ( )

Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance

21. CODE OF ETHICS

22. The board contributes to and ensures that a company code of ethics exists and is implemented.
    In addition to the board code of ethics itself, companies as a whole are expected to have a written ethics code and systems to ensure that the precepts of the ethics code are being followed. - examination of records – (not seen a written ethics code)

Code of Ethics
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
The company has an ethics code that applies to both staff and board.

a) True (/)
b) False ( ) (Appeared not to be written but applicable moral suasion

Level 1: Complying with legal baseline

23. EVALUATION

Not a regular practice - The board conducts a formal annual evaluation of the company's governance practices. Evaluations of the board's and the company's governance practices are typically considered a first step to improving governance. Evaluations can be self-evaluations or externally assisted. An evaluation should lead under ideal circumstances to a governance improvement plan, which is implemented under board supervision.

Evaluation
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
The board has had explicit deliberation on the importance of Corporate Governance

a) True (/)
b) False ( )

Level 1: Complying with legal baseline

24. DISCLOSURE

Some material information is disclosed to relevant stakeholders. Closely held and family business typically have lower disclosure requirements, however, some of them may find it in their interest to maintain a high level of transparency towards the public for better stakeholder relations and to increase their general level of accountability. Transparency towards creditor stakeholders may result in better credit terms.

PARTICULARS	L2: Disclosure according to applicable regulatory guidance
Financial and operating results	True
Company objectives	True
Major share ownership and voting rights	True
Remuneration policy for key	Maybe or should be/no

executives	
Identity and qualifications of board members	Uncertain/unspecified
Selection process of board members	Somewhat
Potential conflicts of interest of board members and executives	Maybe
Which board members are independent	Uncertain
Risk factors	Yes
Stakeholder issues	Yes
Governance policies and structures	Yes
Capital structures or other arrangements allowing disproportionate control of the company should be disclosed	Uncertain

Level 1: Complying with legal baseline

25. ACCOUNTING STANDARD

The reporting standard is in keeping with international standards as reported in Reports to the AGM. Domestic companies generally comply. International Financial Reporting Standards (IFRS).

IFRS is the internationally accepted accounting standard. Closely held companies, listed companies and others are all expected to be able to comply with IFRS disclosure.

Accounting Standard
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps
Level 4: Advanced governance practice.
Company complies with national standards and is able to produce annual statements on a timely basis.

a) True (/)
b) False ( ) – Generally this is done by those companies that choose to produce same. In may instances it was difficult to determine from records

Level 1: Complying with legal baseline

26. AUDITING STANDARD

The audit standard is International Standards of Auditing (ISA). ISA are the internationally accepted standard for the audit of financial statements. Closely held companies, listed

companies and others are all expected to have their financial reports audited according to ISA.

Auditing Standard
Level 1: Complying with legal baseline
Level 2: Understanding need to professionalize corporate governance
Level 3: Significant concrete steps.
Financial reports are audited according to ISA. The audit is conducted annually.

a) True (/)
b) False ( ) - While audit was expected to be conducted annually, insufficient information available to suggest it was according to ISA, in the case of twenty four companies registered and or established for the first century, presumption was that financial reports were done for each year in most cases especially for first established company.

Level 1: Complying with legal baseline

27. ONE SHARE ONE VOTE

The principle of one-share-one-vote applies. The principle of one-share-one-vote means that all shareholders are treated equally on a proportional basis to ownership The board ensures that the legal rights of different shareholder groups are respected and that different shareholders are treated equitably and fairly and that minority shareholders are protected from abusive action by controlling shareholders.

One-share-one-vote
Level 1: Complying with legal baseline
All shareholders are given their right to explicitly vote in accordance with the Companies Act provisions – presumption that shareholders had that right and made good with such right…

a) True (/)
b) False ( )

Level 1: Complying with legal baseline

28. ANNUAL SHAREHOLDER'S MEETING (AGM)

Generally this is done. AGM processes allow for the effective participation of all shareholders. The annual general meeting (AGM), also referred to as the General Shareholders Meeting (GSM), is a meeting usually required by law and/or the articles. A GSM is typically held annually to elect the board of directors and inform shareholders of previous and future activities. It is an opportunity for the shareholders to receive and approve the company's accounts for the past year, to hold the board to account, and ask questions regarding the directions the business will take in the future.

Annual Shareholder's Meeting (AGM)
Level 1: Complying with legal baseline
AGMs are held within 15 months of each other.

a) True (/) – All records indicated that AGM were generally held within that time frame but not consecutively in some instances. Records were inaccessible for some companies due to state of disrepair/ill use/records were being updated/pages missing from some records/wet or just missing…[It must be noted that remaining records were being computerized at the time of visit]
b) False ( )

Level 1: Complying with legal baseline (Nonetheless, compliance)

NOTES:

- *Revised …1000 companies (Domestic companies) – all records (sections/pages etc.) were examined – approximate given records were torn/lost/in disuse up to 2013
- There was a challenge to assess the companies registered under the International Financial Services Authority
- FOR DOMESTIC COMPANIES: Realistic estimates, as some records were wet/in disrepair/some sections of records partially destroyed due to natural and manmade causes, while other relevant information was limited for some companies - 1845 – 1945
- The British American Insurance Company Limited was under judicial management/considered as per Level of maturity: Undecided
- *(Actual write up - September 2015)*
- Summary:

OVERALL FINDINGS:

Level of maturity for Vincentian companies was generally level 1 – Complying with legal baseline.

SECTION B

RESEARCH MATERIAL

GUIDED DISCUSSIONS/QUESTIONS WITH SEVERAL STAKEHOLDERS

FINDINGS

Date: 11/09/2012 - 21/09/12 and the following year 2013 (July, August, September, November 2013)

Discussions took place in St. Vincent and the Grenadines

(Final 'write up' of findings on 24/08/15)

Discussions with some policyholders - BAICL/CLF/BAICO and others/Discussions with employees of Coreas Hazells Inc. in as far as it is an amalgamated company...

Key discussions with Chief Executive Officer – Mr. Joel Providence proved exceptional

Total participants: 5,000 (10 x 500) [1] - unsure as to the exact figure that were policy holders but, due to the negative contagion effect that the collapse of BAICO had, it

became a partisan political issue with radio talk shows as well as discussion points almost every where

Discussions were engaged with persons who were met on the roads in the Capital city; after church services; identified as 'disgruntled' policy holders; persons who invested in BAICO through intermediary Building and Loan Association; attendance at informal meetings/discussion points in the market square where discussions were held openly about BAICL; legal professionals (lawyers) self employed legal clerks who work at the Magistrate courts; politicians; housewives; farmers; bus drivers; categories of civil servants; dentists; policemen

everything; pensions; and was hoping for that policy would mature in my life, at a good old age

Guided discussions

1) How did you come to know about BAICL? Persons came to know about BAICL through sales agents and various levels of advertising and over time, this information was available publicly. Sold to me as an insurance company that will cater for everything. This was through another intermediary - the Building and Loan Association - money was to be made.

2) How did you pay towards your policy? Directly to the office or deductions from my salary slips. I know that I am worst off now. My children's future is at stake and I might die without ever getting back any money. All my pension was placed in this insurance company transfer of my gratuity and each month after expenses, my pension would be sent to that company.

3) How much information was given to you concerning your policies? As the agents would explain and a few times I read the prospectus or some kind of book that was published

4) How would you rate the service provided by BAICL to you? Excellent service provided until now. I am still hoping for that policy would mature in my life, at a good old age but what is hope when poverty is staring you in the face.

5) How were you assured that this was a bona fide insurance company? I trusted the agents and they convince other policy holders with whom I was familiar/the country is small and those who had access to information were able to share with others/at AGM of credit union when questions were asked, the assurances was given/Although not a committee member I pay keen attention to discussions at AGM but suddenly after a few years you begin to understand that all was not well.

6) When did you know about the benefits on offer? - For over ten - fifteen years generally within the region, you follow news, you hear about the CLICO but 2009 changed everything when announcements on the radio and television alert that a bailout was imminent.

7) When was the last time that you were kept informed as to the reasons for the demise of BAICL? A few years ago through printed and electronic media; bits and pieces here and there.

8) When were you given a statement of your financial input into the company? Each time I deposited and upon request;

9) When last did you visit the offices of BAICL? Not within the past five years as I was out of country/Monthly, every three months/ To date, the doors were closed.

10) When were the doors closed to the public/policy holders? In 2010 and then re-opened as business appeared to be continuing as normal as reported by some persons but I attended meetings with Building and Loan Association. Then a newspaper publication caused real 'mayhem'. It alleged among other things that money was badly spent or invested and no one was brought to justice even to this day. I guess not in my life time. Government seem to be attacking the problem so we wait and see.

11) Why were you in shock if at all, at the news that BAICL was not functional? The company was too big and too established for anyone to convince me that it was not functional

12) Why would you say that 'things' were hidden from you as a policy holder? Things was in reference to the financial status of the company? Yes, because after a while, after many years, you were assured that your money was safe, your deposits but now, things are hidden. Reluctance is giving information

13) Why did you question the operations of BAICL? This was because of the rumours that all was not well and then the news came from everywhere. Real fear gripped this nation. Real fear and no money. This is poverty to the highest. No money for the future generation especially as many of us [reference to persons at the time] are no longer able to trust such an institution like Building and Loan. Took all our money and invest with CLICO and BAICO. I truly did not know because I did not attend meetings. It was one of those things. You trust people to do a good job. All our money is gone. I heard a few people got back a small portion but this is ridiculous. Poverty, that's what it is.

14) Why did you continue to pay premiums to BAICL if you knew or suspected if at all, that 'something' was wrong? The situation appeared to calm down and the rescue plans announced and the intermediary B & L association placed a limit on the amount of money I could get...[this point seems to suggest that BAICO was linked to B & L Association]; I was assured that the situation was resolved and I believed

15) Why would you say that you were lied to? Please explain... After the announcements in the general public through the media, I realised that liquidation if any, would never give me back value for money and that the situation with BAICO

was far greater than was initially explained/Information was not readily given by staff of BAICL/

16) What is it that first attracted you to the purchasing of policy or policies from BAICL? I needed to invest and save for my retirement/children's investment; educational purpose; maturing policies within a specified time frame; insurance policies upon maturing could give a real return on you money

17) What would you say was the selling point of BAICL and its sales representatives? Value for money

18) As a shareholder, were you allowed access to information? Yes

19) What was your role as you understand it as a shareholder? No, not a shareholder / just investment portfolio

20) What do you know about corporate governance or best practices within BAICL or its parent company? Bad practices led us to this place and the owner[reference to Lawrence Duprey] should be held accountable

21) What was the organizational structure, and had you known of this; would it had made a difference when investing in the company? I knew every worker in the branch office and I did know a bit about the structure that existed and felt that the current branch office should have been better served as a standalone entity.

22) What do you understand is the differences between the branch and the parent company? It is like a tree. That is how it is. What is in the parent or the body of the main company is also in the branch.

23) Where was the company and or the branch located? I was not aware that this was so but I got to understand that one is in Trinidad and the other here. This is where I put my money on a monthly basis.

24) Where do you think corporate governance fits into a branch or a company of this sort? It is about management. Corporate governance is about control and balance.

25) Where would you be reimbursed your financial investments? It is a shame. I understand that it is no value for money. We may get some back but this is so unfair. I think the company would be re-opened soon according to the news feedback.

26) Where would you be allowed to speak more openly about the crisis as it now stands? I go to the radio talk shows. I speak my mind in the general public. The public needs to hear what this government has done to us by allowing a company to come in and rip us off.

27) Where are other shareholders and stakeholders likely to discuss the current situation and with whom? Except in Building and Loan Association or in the media.

The insurance company was not really the main company, so that is a good question. I have no idea.

28) Where do you think the money is invested? In all sorts of property and inter-company sweet heart deals. They have the money and bought stuff/assets are there to be sold off. They should do so and give back people their money.

29) What is your opinion of the CEO - Mr. Lawrence Duprey? I never heard of the man until some time ago. He is to be blamed.

30) What is your understanding of a private limited liability company?

    It is a private company really. Nothing more, nothing less and that is it.

31) Who do you think is responsible for regulating and supervising a conglomerate as the CLF? The company was too big and they claimed too big to fail. Nonsense. Regulations? The laws are there and government was responsible. This government is responsible. Next elections they should not be put back into power.

32) Who can you report to in the case when your money is not returned? I call the government and they are playing politics. I call the ministry involved. Building and Loan Association; the insurance company and the lawyers.

33) Who do you think should be held responsible for this crisis? Management and owners.

34) Who do you think stands to benefit the most from this crisis? Probably politicians but also those in management and ownership of this company.

35) Who is responsible for teaching about corporate governance within the organisation?

36) Have you ever seen or read about corporate governance in this organization? Why or why not? Please explain... None and it does not matter. Money is money and those who have stolen should be brought to justice. I don't understand what corporate governance has to do with my money.

    Corporate governance means better money management by those in authority. If Trinidad has anything to do with our money, they should pay us with interest.

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SUMMARY DISCUSSIONS WITH STAKEHOLDERS/SHAREHOLDERS

Summary of comments

- Members of the community
- Fishermen/fisher folk
- Lawyers/legal practitioners
- Barbers
- Housewives
- Block makers/construction workers
- Gardeners
- CEO - JHC/CH
- AG
- Secretaries/employees of insurance companies on the island /Others

The summary of comments

- Many were unaware of corporate governance as an active articulated concept but were aware that private limited liability companies do have certain best practices.
- Not familiar with terminology
- Did not matter that terminology was unknown but best practices were key in terms of service and delivery of products
- Attended meetings but corporate governance was not well articulated except that written statements indicated such practices
- Were aware of some of the internal practices within domestic private limited liability companies
- Offshore/international private limited liability companies were not the domain of citizens but was aware that regulatory bodies did not perform task creditably well
- Legislation itself prevented full absorption of best practices and it ought to be so due to nature of Ltds being 'offshore'
- Company Laws and English Company Laws drive the corporate governance agenda but regulators were untrained and refused to be trained further with respect to corporate governance issues
- Corporate governance was not well articulated and in not known or discussed locally previous to crises of BAICO/CLICO/CCL Financial Ltd in 2009

- Private companies are what they are - private and their corporate governance statements are their own to be operated solely within their remit /shared sometimes when one has the time to read their Annual reports if and when available

- As a shareholder I was disappointed by the lack or total disregard of corporate governance best practices that should have been well advocated in favour of my interests; no meetings were called for over a year; unable to get enough interests from other key players to make it happen; concern was for my investment but I held my peace until I complained - crisis followed - BAICO related

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QUESTIONS/STRUCTURED SURVEY

(Extract)

GENERAL QUESTIONS/STRUCTURED SURVEY ON CORPORATE GOVERNANCE WITH RESPECT TO SVG

JOHN HAZELL AND SONS COMPANY LIMITED

1845 - 1945

PRIVATE COMPANY/BRANCH BAICL

There are separate sections to be answered by each category/ company. If your organization operates in more than one segment please answer both the sections. Please feel free to use separate sheet(s) to reply, where required.

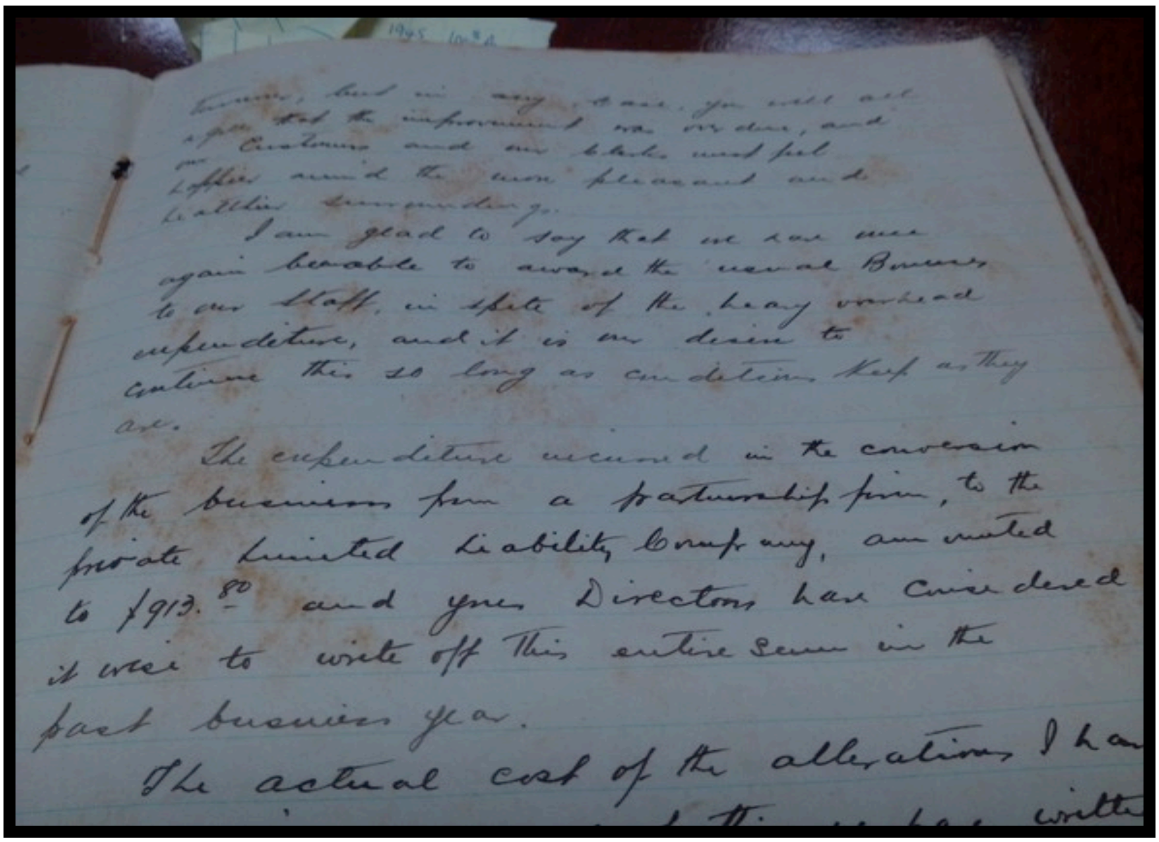
I. *Date of establishment of company?*
II. *Does your organization have a structure of corporate governance? If yes, please provide copy of same*
III. *You are not a listed entity, are there any regulatory authority that has prescribed compliance of corporate governance norms? Do you have a list of guidelines by which you operate? Is there a Code on Corporate Governance that you follow? Why? Why not?*
IV. *If you are a private company, have you voluntarily taken up compliance of corporate governance norms?*
V. *How do you fulfil the compliance requirements of corporate governance? Any reports available?*
VI. *If you have your internal corporate governance structure, please state after how many intervals is the same revised/revisited?*

Thank you.

APPENDIX 1 (6)

FROM PARTNERSHIP TO PRIVATE LIMITED LIBALITY COMPANY

EXCERPT "TRANSITION FROM PARTNERSHIP TO PRIVATE LIMITED LIABILITY COMPANY" – MINUTES OF THE JOHN HAZELLS SONS AND COMPANY LIMITED IN MEETING.



I am glad to say that we have once again been able to award the usual Bonuses to our Staff, in spite of the heavy overhead expenditure, and it is our desire to continue this so long as conditions keep as they are.

The expenditure incurred in the conversion of the business from a partnership firm, to the private limited Liability Company, amounted to £913.80 and your Directors have considered it wise to write off this entire sum in the past business year.

The actual cost of the alterations I have

"The expenditure incurred in the conversion of the business from a *<u>partnership firm to the private limited liability company</u>* *amounted to $913.80 and your Directors have considered it wise to write off this entire sum in the last business year."*

Source: The Coreas Hazells Incorporated Company – 2012 /2013

With the kind permission of CEO – Mr Joel Providence

APPENDIX 1(7)

COMPARATIVE : CHARACTERISTICS OF THE ANGLO AMERICAN AND GERMAN MODELS OF CORPORATE GOVERNANCE

Characteristics	Anglo-American Model	German Model
Funds	Equity financing Family Banks	Banks (But not applicable in SVG up to 2013)
The key players in the corporate environment	Shareholders/investors, directors, management, Ltd in meetings (organizational, special meetings, AGM, shareholders meetings, directors meetings) government agencies, self regulatory organizations and the firms that consult with them on corporate governance and voting by proxy. The corporate triangle is formed primarily with management, shareholders and the board of directors. While this is the ideal situation, an aggressive approach to corporate governance best practices was not well articulated, was lacking or was absent in some Private limited liability companies limited by shares.	Voting rights restrictions that are legal/limit on shareholder voting a % of the GmbH's total share capital irrespective of the share ownership (Not applicable in SVG up to 2013)
Share ownership pattern in SVG	Individual share ownership; Increasingly institutional investors not affiliated with the Ltd (outside shareholders/outsiders). These institutional investors play a very important role also in capital markets and corporate governance A well-defined legal framework that detailed rights and responsibilities of management; directors and shareholders remained as pillars of this model. Within the Anglo-American model of governance operative in SVG to a large extent, share ownership of individuals is one of its features. It was only during the 1990s that emphasis on ownership shifted increasingly to institutional and investors who were not affiliated with the Ltd. (International Business Companies/Limited Liability	Not applicable in SVG up to 2013

	Companies/Limited Duration Companies) There is a noticeable uncomplicated procedure for interaction among these three major players and the Ltd itself. Such interaction takes place among shareholders during and or outside the AGM	
Composition of Board(s) of Directors	One - tier boards with CEO interchangeable roles?	Two tier boards The Supervisory Board (*Aufsichtsrat*) and the Management Board (*Vorstand*) Supervisory board and management/in some cases supervisory board may be voluntary (aspects applicable in St. Vincent up to 2013)
Regulatory framework	Well developed with defined rights and responsibilities	Currently being developed with defined rights and responsibilities as part of the hybrid system advocated up to 2013
Corporate actions requiring shareholder approval	The "election of directors"[627] and the "appointment of auditors"[628] are required under this model. Also other actions that require approval are provisions for mergers and restructurings; and "amendments to the articles of association."[629] Shareholders in the Private limited liability companies limited by shares on SVG do have the right to vote on the dividend proposal, as is the similar situation in the UK Private limited liability companies limited by shares. The submission of" proposals"[630] to the agenda for the AGM by shareholders is also permitted. These should relate to the business activity of the Ltd. Shareholders that own at least "five per cent"[631]of total share capital, deemed an insider, can convene an extra ordinary general meeting of shareholders. Investors avoid liability by ceding to management, control of the Ltd and paid management huge sums for acting on their behalf as agents. These agents effectively controlled the affairs of the Ltd. This generates agency	Not fully articulated but in discussions as to actual framework/amendments to laws in draft format up to 2013

[627] Companies Act, Cap. 143; By-Law No.1, Art. 4.3
[628] Companies Act (SVG) 1994 S. 158 - 161
[629] *Ibid*, s. 177 ss1 (a); s. 214
[630] *Ibid*, s.114
[631] Companies Act, Cap. 143, By-Law No.1, Art. 12.2.1

	costs commensurate to the cost of separation of ownership and control of the Ltd. Prescriptive laws on "election of board of directors" by shareholders require that boards act as "fiduciaries for shareholder's interests" as they exercised their oversight function towards management on behalf of shareholders.	
Interaction among key players	Shareholders exercise their voting rights even without attending meetings in person. They should ordinarily receive the agenda for meetings; proxy statements; Private limited liability companies limited by shares annual report and a voting card. Some shareholders do vote by proxy by completing the voting card and return it by mail to the Ltd. By so doing the shareholder authorizes the chairman of the BOD to act as his proxy and vote as was indicated by on card. It is expected that some institutional investors (for example funds that invest in 'start up' Private limited liability companies limited by shares) and financial specialists (among them auditors) monitor performance and corporate governance within a private limited liability company limited by shares. There is generally a strong relationship between a Ltd and its main bank Management, directors, shareholders with uncomplicated procedure for interaction with Ltd during or outside AGM	Currently being developed up to 2013

Source : Researcher's compilation - 2019

APPENDIX 1(8)

ST.VINCENT AND THE GRENADINES COMPANIES ACT, CAP. 143
MODEL BY LAW NO. 1
[A By-law relating generally to the conduct of the affairs of…]

MODEL BY-LAW NO.1
OF
[NAME OF COMPANY]
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COMPANIES ACT, CAP. 143
MODEL BY LAW NO. 1
A By-law relating generally to the conduct of the affairs of:
[INSERT NAME OF COMPANY]
BE IT ENACTED as the general by-law of [INSERT NAME OF COMPANY]
(Hereinafter called the "Company" as follows):

1. INTERPRETATION

1.1. In this by-law and all other by-laws of the Company, unless the context otherwise requires:

(a) "Act" means the Companies Act 1994 as from time to time amended and every statute substituted therefore and, in the case of such substitution, any references in the by-laws of the Company to provisions of the Act shall be read as references to the substituted provisions therefore in the new statute or statutes.

(b) "Regulations" means any Regulations made under the Act, and every regulation substituted therefore and, in the case of such substitution, any references in the by-laws of the Company to provisions of the Regulations shall be read as references to the substituted provisions therefore in the new regulations;

(c) "By-laws" means any by-law of the Company from time to time in force;

(d) all terms contained in the by-laws and defined in the Act or the Regulations shall have the meanings given to such terms in the Act or the Regulations; and

(e) the singular includes the plural and the plural includes the singular; the masculine gender includes the feminine and neuter genders; the word "person" includes bodies corporate, companies, partnerships, syndicates, trusts and any association of persons, and the word "individual" means a natural person.

2. REGISTERED OFFICE

2.1. The registered office of the Company shall be in the State at such address as the directors may fix from time to time by resolution.

3. SEAL

3.1.1. The common seal of the Company shall be such as the directors may by resolution from time to time adopt.

4. DIRECTORS

4.1. Powers: Subject to any unanimous shareholder agreement, the business and affairs of the Company shall be managed by the directors.

4.2. Number: There shall be [INSERT NUMBER OF DIRECTORS OR MINIMUM AND MAXIMUM NUMBER OF DIRECTORS] directors.

4.3. Election: Directors shall be elected by the shareholders on a show of hands unless a ballot is demanded in which case such election shall be by ballot.

4.4. Tenure: Unless his tenure is sooner determined, a director shall hold office from the date from which he is elected or appointed until the close of the annual meeting of the shareholders next following but he shall be eligible for re-election if qualified.

4.4.1 A director who is also an officer shall continue to be a director until he ceases to be an officer.

4.4.2. A director shall cease to be a director:

(a) if he becomes bankrupt or compounds with his creditors or is declared insolvent;

(b) if he is found to be of unsound mind; or

(c) if by notice in writing to the Company he resigns his office and any such resignation shall be effective at the time it is sent to the Company or at the time specified in the notice, whichever is later.

4.4.3. The shareholders of the Company may, by ordinary resolution passed at a special meeting of the shareholders, remove any director from office and a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed.

4.5 Committee of Directors: The directors may appoint from among their number a committee of directors and subject to section 82(2) of the Act may delegate to such committee any of the powers of the directors.

5. BORROWING POWERS OF DIRECTORS

5.1. The directors may from time to time:

(a) borrow money upon the credit of the Company;

(b) issue, reissue, sell or pledge debentures of the Company;

(c) subject to section 53 of the Act, give a guarantee on behalf of the Company to secure performance of an obligation of any person; and

(d) mortgage, charge, pledge or otherwise create a security interest in all or any property of the Company, owned or subsequently acquired, to secure any obligation of the Company.

5.2. The directors may from time to time by resolution delegate to any officer of the Company all or any of the powers conferred on the directors by paragraph 5.1. hereof to the full extent thereof or such lesser extent as the directors may in any such resolution provide.

5.3. The powers conferred by paragraph 5.1. hereof shall be in supplement of and not in substitution for any powers to borrow money for the purposes of the Company possessed by its directors or officers independently of a borrowing by-law.

6. MEETINGS OF DIRECTORS

6.1. Place of Meeting: Meetings of the directors and of any committee of the directors may be held within or outside the State.

6.2. Notice: A meeting of the directors may be convened at any time by any director or the Secretary, when directed or authorized by any director. Subject to subsection 79(1) of the Act the notice of any such meeting need not specify the purpose of or the business to be transacted at the meeting. Notice of any such meeting shall be served in the manner specified in paragraph 18.1 hereof not less than two days (exclusive of the day on which
the notice is delivered or sent but inclusive of the day for which notice is given) before the meeting is to take place. A director may in any manner waive notice of a meeting of the directors and attendance of a director at a meeting of the directors shall constitute a waiver of notice of the meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

6.2.1 It shall not be necessary to give notice of a meeting of the directors of a newly elected or appointed director for a meeting held immediately following the election of directors by the shareholders or the appointment to fill a vacancy among the directors.

6.3. Quorum: One Director shall form a quorum for the transaction of business and, notwithstanding any vacancy among the directors, a quorum may exercise all the powers of the directors. No business shall be transacted at a meeting of directors unless a quorum is present.

6.3.1. A Director may, if all the directors consent, participate in a meeting of directors or of any committee of the directors by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other and a director participating in such a meeting by such means is deemed to be present at that meeting.

6.4. Voting: Questions arising at any meeting of the directors shall be decided by a majority of votes. In case of an equality of votes the chairman of the meeting in addition to his original vote shall have a second or casting vote.

6.5. Resolution in lieu of meeting: Notwithstanding any of the foregoing provisions of this by-law a resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of the directors or any committee of the directors is as valid as if it had been passed at a meeting of the directors or any committee of the directors.

7. REMUNERATION OF DIRECTORS

7.1. The remuneration to be paid to the directors shall be such as the directors may from time to time determine and such remuneration may be in addition to the salary paid to any officer or employee of the Company who is also a director. The directors may also award special remuneration to any director undertaking any special services on the Company's behalf other than the routine work ordinarily required of a director and the confirmation of any such resolution or resolutions by the shareholders shall not be required. The directors shall also be entitled to be paid their travelling and other expenses properly incurred by them in connection with the affairs of the Company.

8. SUBMISSION OF CONTRACTS OR TRANSACTIONS TO SHAREHOLDERS FOR APPROVAL

8.1. The directors in their discretion may submit any contract, act or transaction for approval or ratification at any annual meeting of the shareholders or at any special meeting of the shareholders called for the purpose of considering the same and, subject to the provisions of section 91 of the Act, any such contract, act or transaction that is approved or ratified or confirmed by a resolution passed by a majority of the votes cast at any such meeting (unless any different or additional requirement is imposed by the Act or by the Company's articles or any other by-law) shall be valid and as binding upon the Company and upon all the shareholders as though it had been approved, ratified or confirmed by every shareholder of the Company.

9. FOR THE PROTECTION OF DIRECTORS AND OFFICERS

9.1. No director of the Company shall be liable to the Company for:-

(a) the acts, receipts, neglects or defaults of any other director or officer or employee or for joining in any receipt or act for conformity;

(b) any loss, damage or expense incurred by the Company through the insufficiency or deficiency of title to any property acquired by the Company or for or on behalf of the Company;

(c) The sufficiency or deficiency of any security in or upon which any of the moneys of or belonging to the Company shall be placed out or invested;

(d) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person, including any person with whom any moneys, securities or effects shall be lodged or deposited;

(e) any loss, conversion, misapplication or misappropriation of or any damage resulting from any dealings with any moneys, securities or other assets belonging to the Company;

(f) any other loss, damage or misfortune whatever which may happen in the execution of the duties of his respective office or trust or in relation thereto;

unless the same happens by or through his failure to exercise the powers and to discharge the duties of his office honestly and in good faith with view to the best interests of the Company and in connection therewith to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

9.2. Nothing herein contained shall relieve a director or officer from the duty to act in accordance with the Act or regulations made there under or relieve him from liability for a breach thereof.

9.2.1. The Directors for the time being of the Company shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the Company, except such as are submitted to and authorized or approved by the directors.

9.2.2. If any director or officer of the Company is employed by or performs services for the Company otherwise than as a director or officer or is a member of a firm or a shareholder, director or officer of a body corporate which is employed by or performs services for the Company, the fact of his being a shareholder, director or officer of the Company shall not disentitle such director or officer or such firm or body corporate, as the case may be, from receiving proper remuneration for such services.

10. INDEMNITIES TO DIRECTORS AND OFFICERS

10.1 Subject to section 99 of the Act, except in respect of an action by or on behalf of the Company to obtain a judgment in its favour, the Company shall indemnify a director or officer of the Company, a former director or officer of the Company or a person who acts or acted at the Company's request as a director or officer of a body corporate of which the Company is or was a shareholder or creditor, and his personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of such company, if:

(a) he acted honestly and in good faith with a view to the best interests of the Company; and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

11. **OFFICERS**

11.1 Appointment: The directors shall as often as may be required appoint a Secretary and, if deemed advisable, may as often as may be required appoint any or all of the following officers: a Chairman, a Deputy Chairman, a Managing Director, a President, one or more Vice-Presidents, a Treasurer, one or more Assistant Secretaries or one or more Assistant Treasurers. A director may be appointed to any office of the Company but none of the officers except the Chairman, the Deputy Chairman, the Managing Director, the President and Vice-President need be a director. Two or more of the aforesaid offices may be held by the same person. In the case and whenever the same person holds the offices of Secretary and Treasurer he may but need not be known as the Secretary-Treasurer. The directors may from time to time appoint such other officers and agents as they deem necessary who shall have such authority and shall perform such duties as may from time to time be prescribed by the directors.

11.2. Remuneration: The remuneration of all officers appointed by the directors shall be determined from time to time by resolution of the directors. The fact that any officer or employee is a director or shareholder of the Company shall not disqualify him for receiving such remuneration as may be determined.

11.3. Powers and Duties: All officers shall sign such contracts, documents or instruments in writing as require their respective signatures and shall respectively have and perform all powers and duties incident to their respective offices and such other powers and duties respectively as may from time to time be assigned to them by the directors.

11.4. Delegation: In case of the absence or inability to act of any officer of the Company except a Managing Director or for any other reason that the directors may deem sufficient the directors may delegate all or any of the powers of such officer to any other officer or to any director.

11.5. Chairman: A chairman shall, when present, preside at all meetings of the directors, and any committee of the directors or the shareholders.

11.6. Deputy Chairman: If the Chairman is absent or is unable or refuses to act, the Deputy Chairman (if any) shall, when present, preside at all meetings of the directors, and any committee of the directors, or the shareholders.

11.7 Managing Director: A Managing Director shall exercise such powers and have such authority as may be delegated to him by the directors in accordance with the provisions of section 82 of the Act.

11.8. President: A President shall be the Chief Executive Officer of the Company. He shall be vested with and may exercise all the powers and shall perform all the duties of a

Chairman and Deputy Chairman if none be appointed or the Chairman and the Deputy Chairman are absent or are unable or refuse to act.

11.9. Vice-President: A Vice-President or, if more than one, the Vice-Presidents, in order of seniority, shall be vested with all the powers and shall perform all the duties of the President in the absence or inability or ref””usa””l to act of the President.

11.10. Secretary: The secretary shall give or cause to be given notices for all meetings of the directors, any committee of the directors and the shareholders when directed to do so and shall have charge of the minute books and seal of the Company and, subject to the provisions of paragraph 14.1 hereof, of the records (other than accounting records) referred to in section 177 of the Act.

11.11. Treasurer: Subject to the provisions of any resolutions of the directors, a Treasurer shall have the care and custody of all the funds and securities of the Company and shall deposit the same in the name of the Company in such bank or banks or with such other depositary or depositaries as the directors may direct. He shall keep or cause to be kept the accounting records referred to in section 187 of the Act. He may be required to give such bond for the faithful performance of his duties as the directors in their uncontrolled discretion may require but no director shall be liable for failure to require any such bond or for the insufficiency of any such bond or for any loss by reason of the failure of the Company to receive any indemnity thereby provided.

11.12. Assistant Secretary and Assistant Treasurer: The Assistant Secretary or, if more than one, the Assistant Secretaries in order of seniority, and the Assistant Treasurer or, if more than one, the Assistant Treasurers in order of seniority, shall respectively perform all the duties of the Secretary and the Treasurer, respectively, in the absence or inability or ref””usa””l to act of the Secretary or the Treasurer, as the case may be.

11.13. General Manager or Manager: The directors may from time to time appoint one or more General Manager or Managers and may delegate to him or them full power to manage and direct the business and affairs of the Company (except such matters and duties as by law must be transacted or performed by the directors or by the shareholders) and to employ and discharge agents and employees of the Company or may delegate to him or them any lesser authority. A General Manager or Manager shall conform to all lawful orders given to him by the directors of the Company and shall at all reasonable times give to the directors or any of them all information they may require regarding the affairs of the company. Any agent or employee appointed by the General Manager or Manager may be discharged by the directors.

11.14. Vacancies: If the office of any officer of the Company becomes vacant by reason of death, resignation, disqualification or otherwise, the directors by resolution shall, in the case of the Secretary, and may, in the case of any other office, appoint a person to fill such vacancy.

12. SHAREHOLDERS' MEETINGS

12.1. Annual Meetings: Subject to the provisions of section 107 of the Act, the annual meeting of the shareholders shall be held on such day in each year and at such time as the directors may by resolution determine at any place within the State or, if all the shareholders entitled to vote at such meeting so agree, outside the State.

12.2. Special Meetings: Special meetings of the shareholders may be convened by order of the Chairman, the Deputy Chairman, the Managing Director, the President, a Vice-President or by the directors at any date and time and at any place within the State or, if all the shareholders entitled to vote at such meeting so agree, outside the State.

12.2.1. The directors shall, on the requisition of the holders or not less than five percent of the issued shares of the Company that carry a right to vote at the meeting requisitioned, forthwith convene a meeting of shareholders, and in the case of such requisition the following provisions shall have effect:-

(1) The requisition shall state the purposes of the meeting and shall be signed by the requisition and deposited at the Registered Office, and may consist of several documents in like form each signed by one or more of the requisition.

(2) If the directors do not, within twenty-one days from the date of the requisition being so deposited, proceed to convene a meeting, the requisition or any of them may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(3) Unless subsection (3) of section 131 of the Act applies, the directors shall be deemed not to have duly convened the meeting if they do not give such notice as is required by the Act within fourteen days from the deposit of the requisition.

(4) Any meeting convened under this paragraph by the requisition shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws and Divisions E and F of Part 1 of the Act.

(5) A requisition by joint holders of shares shall be signed by all such holders.

12.3 Notice: A printed, written or typewritten notice stating the day, hour and place of meeting shall be given by serving such notice on each shareholder entitled to vote at such meeting, on each director and on the auditor of the Company in the manner specified in paragraph 18.1 hereof, not less than twenty-one days or more than fifty days (in each case exclusive of the day for which the notice is delivered or sent and of the day for which notice is given) before the date of the meeting. Notice of a meeting at which special business is to be transacted shall state (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon, and (b) the text of any special resolution to be submitted to the meeting.

12.4. Waiver of Notice: A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders and attendance of any such person at a meeting of shareholders shall constitute a waiver

of notice of the meeting except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

12.5. Omission of Notice: The accidental omission to give notice of any meeting or any irregularity in the notice of any meeting or the non-receipt of any notice by any shareholder, director or the auditor of the Company shall not invalidate any resolution passed or any proceeding taken at any meeting of the shareholders.

12.6. Votes: Every question submitted to any meeting of shareholders shall be decided in the first instance by a show of hands unless a person entitled to vote at the meeting has demanded a ballot and, if the Articles so provide, in the case of an equality of votes the chairman of the meeting shall on a ballot have a casting vote in addition to any votes to which he may be otherwise entitled.

12.6.1. At every meeting at which he is entitled to vote, every shareholder, proxy holder or individual authorized to represent a shareholder who is present in person shall have one vote on a show of hands. Upon a ballot at which he is entitled to vote, every shareholder, proxy holder or individual authorized to represent a shareholder shall, subject to the articles, have one vote for every share held by the shareholder.

12.6.2. At every meeting unless a ballot is demanded, a declaration by the Chairman of the meeting that a resolution has been carried or carried unanimously or by a particular majority or lost or not carried by a particular majority shall be conclusive evidence of the fact.

12.6.3. When the Chairman, the Deputy Chairman, the President and the Vice-President are absent, the persons who are present and entitled to vote shall choose another director as chairman of the meeting, but if no director is present or all the directors present decline to the chair, the persons who are present and entitled to vote shall choose one of their number to be chairman.

12.6.4. A ballot, either before or after any vote by a show of hands, may be demanded by any person entitled to vote at the meeting. If at any meeting a ballot is demanded on the election of a chairman or on the question of adjournment it shall be taken forthwith without adjournment. If at any meeting a ballot is demanded on any other question or as to the election of directors, the vote shall be taken by ballot in such manner and either at once, later in the meeting or after adjournment as the chairman of the meeting directs. The result of a ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. A demand for a ballot may be withdrawn.

12.6.5. If two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may, in the absence of the other, vote the shares; but if two or more of those persons who are present, in person or by proxy vote, they shall vote as one on the shares jointly held by them.

12.7 Proxies: Votes at meetings of shareholders may be given either personally or by proxy or, in the case of a shareholder who is a body corporate or association, by an

individual authorized by a resolution of the directors or governing body of that body corporate or association to represent it at meetings of shareholders of the Company.

12.7.1. A proxy shall be executed by the shareholder or his attorney authorized in writing and is valid only at the meeting in respect of which it is given or any adjournment thereof.

12.7.2. A person appointed by proxy need not be a shareholder.

12.7.3. Subject to the provisions of Regulations 6 and 7 a proxy may be in the following form:

The undersigned shareholder of **[INSERT NAME OF COMPANY]**

hereby appoints of , or failing him, of as the nominee of the undersigned to attend and act for the undersigned and on behalf of the undersigned at the Meeting of the shareholders of the said Company to be held on the

day of , 19 and at any adjournment or adjournments thereof in the same manner, to the same extent and with the same powers as if the undersigned were present at the said meeting or such adjournment or adjournments thereof.

DATED this day of 2005

Signature of shareholder

12.8. Adjournment: The chairman of any meeting may with the consent of the meeting adjourn the same from time to time to a fixed time and place and no notice of such adjournment need be given to the shareholders unless the meeting is adjourned by one or more adjournments for an aggregate of thirty days or more in which case notice of the adjourned meeting shall be given as for an original meeting. Any business that might have been brought before or dealt with at the original meeting in accordance with the notice calling the same may be brought before or dealt with at any adjourned meeting for which no notice is required.

12.9 Quorum: Subject to the Act, and except in the case of a Company having only one shareholder a quorum for the transaction of business at any meeting of the shareholders shall be one person present in person, each being either a shareholder entitled to vote thereat, or a duly appointed proxy holder or representative of a shareholder so entitled. If a quorum is present at the opening of any meeting of the shareholders, the shareholders present or represented may proceed with the business of the meeting notwithstanding a quorum is not present throughout the meeting. If a quorum is not present within 30 minutes of the time fixed for a meeting of shareholders, the persons present and entitled to vote may adjourn the meeting to a fixed time and place but may not transact any other business.

12.10 Resolution in lieu of meeting: Notwithstanding any of the foregoing provisions of this by-law a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is, subject to section 130 of the Act, as valid as if it had been passed at a meeting of the shareholders.

13. SHARES

13.1. Allotment and Issuance: Subject to the Act, the articles and any unanimous shareholder agreement, shares in the capital of the Company may be allotted and issued by resolution of the directors at such times and on such terms and conditions and to such persons or class of persons as the directors determine.

13.2 Certificates: Share certificates and the form of share transfer shall (subject to section 197 of the Act) be in such form as the directors may by resolution approve and such certificates shall be signed by a Chairman or a Deputy Chairman or a Managing Director or a President or a Vice-President and the Secretary or an Assistant Secretary holding office at the time of signing.

13.2.1. The directors or any agent designated by the directors may in their or his discretion direct the issuance of a new share or other such certificate in lieu of and upon cancellation of a certificate that has been mutilated or in substitution for a certificate claimed to have been lost, destroyed or wrongfully taken, on payment of such reasonable fee and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the directors may from time to time prescribe, whether generally or in any particular case.

14. TRANSFER OF SHARES AND DEBENTURES

14.1. Transfer: The shares of debentures of a company may be transferred by a written instrument of transfer signed by the transferor and naming the transferee

14.2. Registers: Registers of shares and debentures issued by the Company shall be kept at the registered Office of the Company or at such other place in the State as may from time to time be designated by resolution of the directors.

14.3. Surrender of Certificates: Subject to section 195 of the Act, no transfer of shares or debentures shall be registered unless or until the certificate representing the shares or debentures to be transferred has been surrendered for cancellation.

14.4. Shareholder indebted to the Company: If so provided in the articles, the Company has a lien on a share registered in the name of a shareholder or his personal representative for a debt of that shareholder to the Company. By way of enforcement of such lien the directors may refuse to permit the registration of a transfer of such share.

15. DIVIDENDS

15.1. The directors may from time to time by resolution declare and the company may pay dividends on the issued and outstanding shares in the capital of the Company subject to the provisions (if any) of the articles and sections 51 and 52 of the Act.

15.1.1. In case several persons are registered as the joint holders of any shares, any one of such persons may give effectual receipts for all dividends and payments on account of dividends.

16. **VOTING IN OTHER COMPANIES**

16.1. All shares or debentures carrying voting rights in any other body corporate that are held from time to time by the Company may be voted at any and all meetings of the shareholders, debenture holders (as the case may be) of such other body corporate and in such manner and by such person or persons as the directors of the Company shall from time to time determine. The officers of the Company may for and on behalf of the Company from time to time:

(a) execute and deliver proxies; and

(b) arrange for the issuance of voting certificates or other evidence of the right to vote;

in such names as they may determine without the necessity of a resolution or other action by the directors.

17. **INFORMATION AVAILABLE TO SHAREHOLDERS**

17.1. Except as provided by the Act, no shareholder shall be entitled to any information respecting any details or conduct of the Company's business which in the opinion of the directors it would be inexpedient in the interests of the Company to communicate to the public.

17.2. The directors may from time to time, subject to rights conferred by the Act, determine whether and to what extent and at what time and place and under what conditions or regulations the documents, books and registers and accounting records of the Company or any of them shall be open to the inspection of shareholders and no shareholder shall have any right to inspect any document or book or register or accounting record of the Company except as conferred by statute or authorized by the directors or by a resolution of the shareholders.

18. **NOTICES**

18.1. Method of giving notice: Any notice or other document required by the Act, the Regulations, the articles or by-laws to be sent to any shareholder, debenture holder, director or auditor may be delivered personally or sent by prepaid mail or cable or telex to any such person at his latest address as shown in the records of the Company or its transfer agent and to any such director at his latest address as shown in the records of at his business address.

18.2. Waiver of notice: Notice may be waived or the time for the notice may be waived or abridged at any time with the consent in writing of the person entitled thereto.

18.3 Undelivered notices: If a notice or document is sent to a shareholder or debenture holder by prepaid mail in accordance with the paragraph and the notice or document is returned on three consecutive occasions because the shareholder or debenture holder cannot be found, it shall not be necessary to send any further notices or documents to the shareholder or debenture holder until he informs the Company in writing of his new address.

18.4 Shares and debentures registered in more than one name: All notices or other documents with respect to any shares or debentures registered in more than one name shall be given to whichever of such persons is named first in the records of the Company and any notice or other document so given shall be sufficient notice of delivery to all the holders of such shares or debentures.

18.5 Persons becoming entitled by operation of law: Subject to section 200 of the Act, every person who by operation of law, transfer or by any other means whatsoever becomes entitled to any share is bound by every notice or other document in respect of such share that, previous to his name and address being entered in the records of the Company is duly given to the person from whom he derives his title to such share.

18.6. Deceased Shareholders: Subject to section 200 of the Act, any notice or other document delivered or sent by prepaid mail, cable or telex or left at the address of any shareholder as the same appears in the records of the Company shall, notwithstanding that such shareholder is deceased, and whether or not the Company has notice of his death, be deemed to have been duly served in respect of the shares held by him (whether held solely or with any other person) until some other person is entered in his stead in the records of the Company as the holder or one of the holders thereof and such service shall for all purposes be deemed a sufficient service of such notice or document on his personal representatives and on all persons, if any, interested with him in such shares.

18.7. Signature to notices: The signature of any director or officer of the Company to any notice or document to be given by the Company may be written, stamped, typewritten or printed or partly written, stamped, typewritten or printed.

18.8. Computation on time: Where a notice extending over a number of days or other period is required under any provisions of the articles or the by-laws the day of sending the notice shall, unless it is otherwise provided, be counted in such number of days or other period

18.9. Proof of service: Where a notice required under paragraph 18.1 hereof is delivered personally to the person to whom it is addressed or delivered to his address as mentioned in paragraph 18.1 hereof, service shall be deemed to be at the time of delivery of such notice.

18.9.1. Where such notice is sent by post, service of the notice shall be deemed to be effected forty-eight hours after posting if the notice was properly addressed and posted by prepaid mail.

18.9.2. Where the notice is sent by cable or telex, service is deemed to be effected on the date on which the notice is sent.

18.9.3. A certificate of an officer of the Company in office at the time of the making of the certificate or of any transfer agent of shares of any class of the Company as to facts in relation to the delivery or sending of any notice shall be conclusive evidence of those facts.

19. CHEQUES, DRAFTS AND NOTES

19.1 All cheques, drafts or orders for the payment of money and all notes and acceptances and bills of exchange shall be signed by such officers or persons and in such manner as the directors may from time to time designate by resolution.

20. EXECUTION OF INSTRUMENTS

20.1. Contracts, documents or instruments in writing requiring the signature of the Company may be signed by:

(a) a chairman, a Deputy Chairman, a Managing Director, a President or a Vice-President together with the Secretary or the Treasurer, or

(b) any two directors

and all contracts, documents and instruments in writing so signed shall be binding upon the Company without any further authorization or formality. The directors shall have power from time to time by resolution to appoint any officers or persons on behalf of the Company either to sign certificates for shares in the Company and contracts, documents and instruments in writing generally or to sign specific contracts, documents or instruments in writing.

20.1.1. The common seal of the Company may be affixed to contracts, documents and instruments in writing signed as aforesaid or by any officers or persons specified in paragraph 20.1. hereof.

20.1.2. Subject to section 136 of the Act

(a) a Chairman, a Deputy Chairman, a Managing Director, a President or a Vice-President together with the Secretary or the Treasurer, or

(b) any two directors

shall have authority to sign and execute (under the seal of the Company or otherwise) all instruments that may be necessary for the purpose of selling, assigning, transferring, exchanging, converting or conveying any such shares, stocks, bonds, debentures, rights, warrants or other securities

21. SECURITIES

21.1. The signature of a Chairman, a Deputy Chairman, a Managing Director, a President, a Vice-President, the Secretary, the Treasurer, an Assistant Secretary or an Assistant

Treasurer or any director of the Company or of any officer or person, appointed pursuant to paragraph 20 hereof by resolution of the directors may, if specifically authorised by resolution of the directors, be printed engraved, lithographed or otherwise mechanically reproduced upon any certificate for shares in the Company or contract, document or instrument in writing, bond, debenture or other security of the Company executed or issued by or on behalf of the Company. Any document or instrument in writing on which the signature of any such officer or person is so reproduced shall be deemed to have been manually signed by such officer or person whose signature is so reproduced and shall be as valid to all intents and purposes as if such document or instrument in writing had been signed manually and notwithstanding that the officer or person whose signature is so reproduced has ceased to hold office at the date on which such document or instrument in writing is delivered or issued.

22. **FINANCIAL YEAR**

22.1. The directors may from time to time by resolution establish the financial year of the company.

ENACTED this day of 20

Corporate Seal

…….
……

President Secretary

Organisations/Institutions	Acronyms

APPENDIX 2(1)

SOME COUNTRIES/AGENCIES/ORGANISATIONS TO WHICH ST. VINCENT HOLDS MEMBERSHIP AS A BONAFIDE STAKEHOLDER AS PER INTERNATIONAL BEST PRACTICES TO SUPPORT ECONOMIC DEVELOPMENT AND FINANCIAL PROGRESS

Association of Caribbean and Pacific states www.acp.int/content/secretariat-acp	ACP
Alianza Bolivariana para los Pueblos de Nuestra América – The Bolivarian Alliance for the Peoples of Our America	ALBA
Alliance of Small Island States	AOSIS
Caribbean Community	CARICOM
Caribbean Development Bank	CDB
Community of Latin American and Caribbean States www.nti.org/learn/treaties-and-regimes/community-latin-american-and-caribbean-states-celac/	CELAC
Food and Agriculture Organisation	
The Group of 77 at the United Nations	G77
International Bank for Reconstruction and Development	IBRD
The International Civil Aviation Organisation	ICAO
International Development Association	IDA
International Fund for Agricultural Development	IFAD
International Financial Reporting Standards	IFRS
International Labour Organisation	ILO
International Monetary Fund	IMF
International Maritime Organisation	IMO
International Criminal Police Organisation more commonly known as Interpol	ICPO-INTERPOL
International Olympic Committee	IOC
International Organisation for Standardisation	ISO
International Telecommunications Unit	ITU
Multilateral Investment Guarantee Agency	MIGA
OAS	OAS

www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS_signatories.asp	
Organisation of Economic Co-operation and Development	**OECD**
Organisation of Eastern Caribbean States	**OECS**
Agency for the prohibition of Nuclear Weapons in Latin America and the Caribbean	**OPANAL**
Organisation for the Prohibition of Chemical Weapons	**OPCW**
www. dictionary.sensagent.com/PETROCARIBE/en-en/ - Caribbean oil alliance between Venezuela and some Caribbean countries	**PETROCARIBE**
United Nations **www.svg-un.org/index.php?option=com_content&view=article&id=3&Itemid=11**	**UN**
United Nations Conference on Trade and Development	**UNCTAD**
United Nations Educational Scientific and Cultural Organisation	**UNESCO**
United Nations Industrial Development Organisation	**UNIDO**
Universal Postal Union	**UPU**
World Federation of Trade Unions	**WFTU**
World Health Organisation	**WHO**
World Intellectual Property Organisation	**WIPO**
World Trade Organisation	**WTO**

Source : Compilation by researcher - 2018

NEWSPAPER ARTICLES CITED

NB. SOME OF THE FOLLOWING NEWSPAPER ARTICLES REFLECT THE DISTILLED BUT SOMEWHAT SUBSTANTIVE FINDINGS OF THE

INTERNATIONAL MONETARY FUND AND ALSO GENERALLY REPORT ON THE PREVAILING SENTIMENTS OF STAKEHOLDERS (INSTITUTIONAL AND NON-INSTITUTIONAL)

THE OPINIONS ARE NOT NECESSARILY THOSE OF THE RESEARCHER SAVE AND EXCEPT WHERE STATEMENTS AND REPORTS WERE DIRECTLY FROM JUDICIAL MANAGEMENT, GOVERNMENT OFFICIALS AND QUOTATIONS TAKEN FROM ANNUAL GENERAL MEETINGS AND OTHER ARTICLES THAT ARE SUBSTNATITATED AS REFERENCES

APPENDIX 2 (2)

NEWS PAPER ARTICLE

www.searchlight.vc/sugar-slavery-and-emancipation-in-stvincent-a-brief-overview-p27899-86.htm - last accessed on 16 April 2018

SUGAR, SLAVERY AND EMANCIPATION IN ST. VINCENT- A BRIEF OVERVIEW

Fri, Jul 23, 2010

Sunday, August 1, is the anniversary of Emancipation, but the annual holiday will be celebrated on the next day, Monday, August 2.

To mark the occasion, I am doing a two-part article reflecting on issues pertaining to Emancipation in St. Vincent. In this first article I will provide a brief overview of Slavery.

The first point that should perhaps be made is that this country got into the sugar business at a late stage. While other Caribbean colonies had begun the production of sugar from the 1640s and 50s, St. Vincent was still in the hands of the Caribs who controlled what were considered the best sugar lands. Colonies such as Barbados and Antigua had, therefore, been producing sugar for over 120 years at the time when St. Vincent began its period of British colonisation. St. Vincent became a colony of Britain in 1763, and three years later it began to export sugar but in very small quantities. In fact the export in that year, 1766, was a mere 35 tons.

By 1771 it had reached 2,218 tons. However, in 1828, following the expulsion of the Caribs, it reached 14,403 tons, an amount that was never surpassed in its history. A major effort into the expansion of sugar began with the expulsion of the Caribs since the British planters then had access to the prized Carib lands in the north, lands considered ideal for sugar production. In 1813, the Byrea Hill tunnel was cut through Mount Young, facilitating communication with the north of the island. Later, the Black Point tunnel, as we call it, was also created at the sea end of Mount Young, to accommodate easier shipment of sugar to the calmer Byrea end. Georgetown was created from the Grand Sable estate which was the largest estate in the colony and the remainder of the Carib lands were divided into 7 large estates: Mt. Bentinck, Langley Park, Rabacca, Lot 14, Waterloo, Orange Hill, and Tourama.

In 1791 the Grenadines were divided into two blocs with the north bloc linked administratively with St. Vincent. On Bequia there were 9 estates with Industry (1,000 acres) being the largest, Mustique -2 estates, Cheltenham (663 acres) and Adelphi (1,992 acres); Canouan 1 estate-Careenage 600 acres and Union Island 1 estate, 2057 acres. Cotton was

planted in Union Island, Canouan, Petit St. Vincent and Mayreau with Balliceaux and Batowia used as stock islands from 1821.In any attempt to understand the state and fate of the Sugar Industry in St. Vincent, it is important to know that the country started exporting Sugar a mere 10 years before the start of the War of American Independence which deprived planters of cheap sources of supplies for their estates. Added to this there were a series of disasters that played havoc with the Sugar Industry; a hurricane in 1780, the eruption of the Soufriere Volcano in 1812, another hurricane in 1819 and yet another in 1831. Loans advanced for hurricane relief following that of 1831 were up to 30 years after, not repaired and had brought a great burden on the estates. With Sugar came slavery. Although a few slaves existed before, working on the small farms of the French planters, it was not until the development of the Sugar Industry that slavery expanded. It meant, however, that slavery did not exist for any major period in St. Vincent and began at a time when persons were beginning to raise serious issues about that institution and the challenge to the system began. Slaves came from different parts of Africa.

Advertisements in the newspapers referred to the sale of Eboe and Malay slaves. Sir William Young in his diaries left accounts of the sale of Windward and Gold Coast slaves. While it might be argued that Slavery in St. Vincent for the reasons already outlined did not attain the brutality that it did in the older slave colonies, slavery was slavery, a brutal institution and moreover slaves were property. A notice in one of the newspapers in 1808 tells it all, "For Sale - A stout healthy Negro man of the Ebo nation, well seasoned to the island and sold for no fault but that the owner is in want of cash. For further particulars enquire of Mr. James O' Flaherty."

Slave laws put severe restrictions on the lives of slaves. Meetings of slaves after 10 pm were prohibited. Slaves were not allowed to leave the estates without a ticket except when they were going to the markets. Their houses, too, were often searched for weapons. Preaching of slaves was forbidden. Despite the restrictions prescribed in the laws, the slaves tried to fashion a life of their own and to create the space to do so. They had access to provision grounds and yam pieces and planted food, which they took to the market. Mrs. Carmichael, the wife of a Scottish planter, left us some accounts:

"After morning service at the Chapel, the country Negroes eat cold fried jack fish and drink mobee, grog or some other beverage with their friends in the market place under a tree, and soon after, the well disposed people may be seen trudging home again with their empty trays and baskets. Mobee is a drink prepared with sugar, ginger and snake root, as a bitter it is fermented and is a wholesome cooling beverage." Ashton Warner who was a slave on the Penniston estate and who left an account of slavery mentioned that his mother made sausages and souse made from pig head for sale. There was no major slave revolt in St. Vincent but there were individual acts of violence. St.Hilaire, a planter of French descent who lived in Mayreau was murdered by his slaves while working in the field. Charles Warner, the proprietor of Friendship estate in Bequia was murdered by two of his slaves.

There were major disturbances on the estates in the Carib Country area in 1833, so much so that mention of this was made during the debate on abolition in the British parliament. The country was then experiencing serious economic difficulties, to the extent that the British Government had to meet the salary of the Lieutenant Governor. What I have provided is a brief glimpse of aspects of the Sugar Industry and Slavery. Next week I will focus on issues related to Emancipation as they were played out in this country.

Fri, Aug 06, 2010

The traditional view of Emancipation put the role of the humanitarians above everything else, so that the contribution of Wilberforce, Granville Sharpe, Thomas Clarkson and the others who constituted that body was highlighted. This was until the late 1940s when Eric Williams without denying that the humanitarians played an important role placed emphasis on the social, political and economic changes taking place in England.

In fact, Elsa Goveia, Guyanese historian, now deceased, gave support to this when she argued that, "If the British West Indian Sugar Industry had not been in severe economic difficulties from the beginning of the 19th century it appears most unlikely that the humanitarians could have succeeded in abolishing either the British Slave Trade or British Colonial Slavery..." In recent times the role of the slaves has been highlighted, with Jamaican Richard Hart producing two volumes on the "Slaves Who Abolished Slavery". Not only was the Haitian Revolution identified as a major player but so were the rebellions in Barbados (1816), Demerara (1823) and Jamaica 1831. Missionaries came under strong attack from the belief that they played key roles in these rebellions.

The case of John Smith who was put in prison in Demerara and others who suffered at the hands of the planters crossed the line. It was one thing to be attacking and prosecuting the slaves but when it touched their kith and kin then it was something else. William Shrewsbury, a Weslyan Minister in Barbados, had to flee to St. Vincent after his chapel was burnt, and Lumb, a Weslyan Missionary, was also imprisoned in St. Vincent for allegedly preaching the gospel without a proper licence. All of this impacted on public opinion. All of this was being played out in the context of an economy in Britain that was shifting from an agricultural base to one involving manufacturing.
The Act that brought an end to the Slave Trade was passed in 1807 to take effect in the colonies from January 1, 1808. The evidence shows that for the period 1815-1830 more slaves were sold in the Americas than in the last two decades of the 18th century. British goods were sold to the slave traders and British merchants purchased Slave grown produce, even though there was no direct British participation in the actual trade.

Although the slave trade to the colonies was illegal the inter-island slave trade was still legal. The issue of Registration then became a critical one in an effort to ensure that slaves were not brought into the colonies. The St. Vincent Assembly like others in the colonies strongly condemned the efforts to introduce a Slave Registration Bill, which they regarded as an effort by the parliament in Britain to intervene in their internal affairs. An Act to provide for a triennial return of slaves was eventually passed. Interest in the conditions existing under slavery began to surface in the early 1820s and in 1823 the Society for the Mitigation and Gradual Abolition of Slavery was formed. One of the key issues at this time was the matter of amelioration where pressure was being exerted on the slave owners to improve the condition of their slaves.

Even the Society of Absentee Planters and Merchants recognised the handwriting on the wall and tried unsuccessfully to get the planters in the colonies to undertake major improvement in the lives of their slaves. Efforts by the British Parliament to get the colonies to pass Amelioration legislation created an uproar and strong opposition in St. Vincent until 1830 when its Parliament was able to pass legislation that was acceptable to the British Parliament. While the movement for Emancipation took centre stage in England with numerous resolutions and pieces of legislation being taken to Parliament, the situation in St. Vincent became quite serious in 1833, to the extent that this was mentioned during the debates in the

British Parliament. The slaves became agitated and the Governor had to visit the island in a warship to try to keep the situation under control. He left the 69th regiment to try and maintain calm but serious disturbances continued on the Carib Country estates, with slaves not turning out to work on time, going in large numbers to the hospital and letting their managers know that they were prepared to go to the Governor in the event of any punishment being meted out to them.

A Committee that was set up to investigate the disturbances heard virtually the same story from the managers and overseers of the estates. Alexander Cumming, proprietor of Lot 14 and Rabacca, stated that the slaves were coming into the hospital in considerable numbers ranging from about 30-50 without any appearance of sickness. Other managers claimed that they were turning out to work much later than usual. Others claimed that threats were made to them. One slave informed them that although his master had bought him, he had worked long enough to pay him for what it cost. The manager of Lot 14 referred to what he described as a spirit of obstinacy and disobedience. There was also the belief that slaves from the different estates were meeting at night to coordinate their plans, prompted by the belief that the King of England had already freed them but that the planters were resisting it. Finally the passage of the Act in England brought fury to the Assembly, which protested what it considered an undue invasion of their rights. Reference was made to the millions they contributed to England. The protests continued until they were reminded that failure to pass an Act in their colony was going to prevent them from getting the compensation money on which they so greatly depended for cultivating their estates. Eventually on May 28, 1834, the Act for the Abolition of Slavery in St. Vincent was sent to Britain.

On August 1, 1834, 18,102 slaves became apprentices. 2,959 children less than 6 years were freed immediately as were 1,189 persons who were aged or incapacitated. A total of £1,602,307 was paid to the planters for compensation. August 1, 1834, was a Friday and on that day, according to Ebenezer Duncan, the Methodist Chapel was filled with slaves who sang lustily Wesley's hymn "Blow Ye the Trumpet, blow." What the slaves got was a state of semi-freedom called Apprenticeship. 'Full freedom' only came in 1838 some four years later.

Dr. Adrian Fraser is a social commentator and historian. Former Resident Tutor/Head of the University of the West Indies Centre, St. Vincent and the Grenadines

APPENDIX 2 (3)

The guardian newspaper

ABOUT NEWSPAPER ARTICLES

– **European commission** Opinion

www.theguardian.com/commentisfree/2010/may/18/decline-caribbean-banana-trade-europe - Accessed from *2011 but last accessed 2 April 2018

(In keeping with work program as part of preparatory work on government's agenda and discussions on the implications for the decline on the industry for the island of St. Vincent and the Grenadines …

Caribbean banana industry decline is no sideshow

Aurelie Walker

Europe's trade policy has sold the Caribbean banana industry down the river, exacerbating drug trafficking and poverty

Tue 18 May 2010 09.00 BST

First published on Tue 18 May 2010 09.00 BST

Today, EU leaders and their counterparts from Colombia and Peru will strike lucrative trade agreements spanning financial services, industry and agriculture – the first between the EU and any Latin American nation since 2003. The EU's attention will then focus on securing similar deals with the mighty Latin American Mercosur bloc that includes Brazil and Argentina.

Another example of the power of globalisation to generate wealth? Maybe, but there is a less rosy side to the seemingly inevitable victory march of trade liberalisation.

As European business interests ready themselves for new markets, it should not be forgotten that breakthrough would never have materialised without selling the Caribbean banana industry down the river. Unlikely as it may seem, until last December, there was an impasse in closer trade ties between Europe and Latin America. It came in the form of the banana – the world's most exported fruit.

Since 1975, Europe protected Caribbean banana growers. But the largely American interests that controlled the vast banana plantations in Ecuador and Colombia, where workers' rights are at best an afterthought, persuaded the then fledgling Clinton administration, whose election they lavishly funded, to lodge a complaint with the World Trade Organisation demanding they overturn this perceived unjust support.

For 17 years, the banana wars raged. Then, five months ago, with one eye on huge trade deals between Colombia and Peru, Europe relented.

Compensation for banana farmers in a dozen Caribbean and African countries comes in the form of €190m fund. The money will be paid to Caribbean governments in the form of budget support. In other words, farmers won't see the cash.

The most serious challenge to agriculture in the Caribbean comes as islands face falls in tourism, foreign direct investment and financial services. This after the international community told the islands to pursue these paths.

The decline of the Caribbean banana industry may seem like a sideshow. But abandoned farms together with laid-off financial workers are a seedbed for enveloping the Caribbean economy and political system in a drug morass.

There is evidence of the spread of marijuana cultivation and trafficking, especially in St

Vincent where a Marijuana Growers Association was publicly announced, despite the practice being illegal.

Strategically placed on the cocaine route from South to North America, the Caribbean used to be just a stopping-off point for traffickers. Now, say well-placed sources, drug barons are making connections with the marijuana trade and supplying them with guns and cocaine.

In a region where unemployment surpasses 30% in some countries, according to International Labour Organisation estimates, this is what happens when you lose a trade war. Farmers question whether it is worth tilling the soil against a shrinking export market, a lower return and a lack of credit.

Trade is not a cure-all for poverty reduction. Investment in infrastructure, technology and human capital are also prerequisites for development.

But the economies of vulnerable nations are being sacrificed to satisfy the interests of western corporations. The last rites are administered by global food giants who have and continue to diminish workers' rights to increase their profits.

The remaining Windward farmers are fighting back by shortening supply chains and investing in community and business developments. Backed by the better nature of UK consumers, who are choosing Fairtrade in increasing numbers, at least there is one way they can still receive a decent price for their crop in a market that has seen long-term real-terms price decline.

But the big, contradictory picture is at the very same time that Caribbean governments are fighting poverty, drugs and crime, the same curse of poverty, drugs and crime is being exacerbated – as a direct consequence of the European commission's trade policy

APPENDIX 2(4)

NEWSPAPER ARTICLE

HISTORY THIS WEEK – REASONS FOR THE RAPID GROWTH OF A BLACK PEASANTRY IN BRITISH GUIANA AND TRINIDAD IMMEDIATELY AFTER 1838

By Staff Writer April 9, 2009 Comments

By Clyde W. Thierens

The high wages received by freed Africans immediately after Emancipation also helped to stimulate the rapid growth of a Black peasantry in British Guiana and Trinidad. Wages in these colonies ranged from one shilling and six pence to two shillings and one penny per task. Able- bodied Africans were often able to push themselves to complete as many as three tasks on some days. This enabled them to earn substantial sums which they saved up to purchase available lands in the colonies. To some measure, workers in Jamaica had similar experiences. However, the situation was somewhat different in the colonies of Barbados, Antigua, and St Kitts where the earnings of workers were as low as one shilling per day or less. The low earnings they received in those colonies generally prohibited them from purchasing scarce, highly priced lands in their territories.

The rapid growth of a Black peasantry in Trinidad and British Guiana was also stimulated by the weakened economic state of the sugar industry in the two colonies. Many planters found it difficult to cope with the loss of labour and the demands of the newly freed workers for higher pay and better terms of work. While being forced to offer inducements to keep workers, many planters found it impossible to remain in operation in the light of declining sugar prices. In these two colonies, as in Jamaica, a Black peasantry rapidly developed as a result of the post- Emancipation difficulties of the planters and their inability to adjust quickly. Many estates were abandoned as planters were forced to sell land to the Africans in an effort to cut their losses and accumulate desperately needed cash. The shortage of labour and capital led to reductions in the areas under cultivation. Between 1838 and 1844 there was a decrease in production. The situation worsened further in 1846 when the Sugar Duties Act was introduced. The drastic cuts in the price of sugar added to the planters' woes.

However, in contrast, the sugar industry in Barbados, Antigua and St Kitts remained dominant. Cultivation in these colonies actually expanded and production increased. The continued dominance of the industry precluded the significant development of a peasantry in these colonies.

As unprofitable estates in British Guiana and Trinidad were abandoned or sold, many planters sought to enhance their labour supply by selling some of their estate lands to the Africans. This resulted in significant purchases being made by the ex- slaves and the hastening of the growth of a Black peasantry. Much of the land acquired in this manner was partially drained and therefore 'workable'. This was in contrast to the Leeward Islands where any lands the ex-slaves could acquire were found in areas that were marginal to the estates and in difficult terrain. These lands, unlike much of those acquired in Trinidad and British Guiana, were unfit for effective utilization.

In Nevis, despite the collapse of the sugar industry, and then of cotton, a significant peasantry failed to develop partly due to a marked exodus of workers from the colony, in addition to the scarcity of land for this purpose. Similarly in Barbados, no real growth was experienced as only six villages were established by 1859. This was due to the unwillingness of planters to sell land to the ex- slaves and, whenever they did, they asked for exorbitant prices ranging from as much as one hundred to two hundred pounds per acre. However, a few ex-slaves acquired small portions of land from charitable proprietors.

Despite the chronic labour shortage in British Guiana and Trinidad, the decreasing levels of cultivation and production meant that many labourers could not be fully employed-especially during out of crop time. This helped to contribute to the rapid growth of a Black peasantry. In addition to this, the introduction of new techniques and machinery, to help counter the labour shortages also reduced labour requirements and thereby 'pushed' more freed Africans into the ranks of the peasantry.

Throughout the British Caribbean, planters individually and collectively devised a number of official and unofficial policies to keep the freed Africans tied to plantation work. In British Guiana, and in Jamaica, acts such as the wanton destruction of fruit trees and provision grounds backfired on the planters. Instead of these acts achieving the desired objective of

keeping the Africans bound to the plantations, they resulted in the opposite effect of driving the Black workers away from the plantations and making them more determined to free themselves as much as possible from being in positions where they could be victims of such spite and vindictiveness.

In Trinidad, planters' actions such as the introduction of the tenancy system, the withdrawal of allowances and the attempts to reduce wages, forced many Africans to leave the estates. Hall is of the view that there would not have been the mass exodus away from some plantations in some territories if planters had sought to foster better relations with the labourers. He contends that they may very well have fared better had they not imposed such harsh conditions for workers' use of estate residences and provision grounds.

The tenancy-at-will system, which combined rents and wages, and confined labourers to work on particular estates or be evicted, was utilized in Dominica, Nevis, Montserrat, St Lucia, Tobago, St Vincent and Antigua. Successful resistance was mounted by Jamaican labourers, leading to the withdrawal of the system in that colony in 1842. In St Lucia, the system proved ineffective because of the moderate population density of that colony. Implementation of the system in British Guiana and Trinidad was not vigorously pursued as it was felt that- as was the case in St Lucia- the low population density of these territories would have rendered it unsuccessful.

The Barbadian planters, by the Masters and Servants Acts, maintained their stranglehold on the labourers by keeping them working on the estates for wages that were less than market rates. Barbadian workers were forced to pay high rents for dwellings. They were only allowed to remain on the plantations at the discretion of the planters. With land in the colony already scarce, proprietors themselves immediately bought or rented any plots that became available so that African workers could not acquire them. African Barbadian labourers were forced to continue working under onerous conditions on the plantations or face starvation as a result of the employment of these strategies.

Planters in British Guiana and Trinidad introduced measures to lessen production costs, and control workers' wages and conduct, as a result of falling sugar prices. In 1842, African Guianese workers resisted these draconian 'Rules and regulations' by staging massive strikes. Many plantations were ruined as a result of the withdrawal of labour and this led to decreases in the prices of land from which the Africans benefitted. The measures adopted by the planters helped to convince many more Black workers that they would be better off on their own 'pieces of ground'. This was demonstrated in the substantial growth of the peasantry.

A similar situation unfolded in Trinidad as labourers resisted regulations by moving to available lands in the colony away from the plantations. In Jamaica, planters also attempted to cut wages but strikes by workers there threatened the impending production and labourers left the estates in protest. In 1847-48, the Black peasantry in British Guiana again received a boost as planters once more attempted to reduce wages. More labourers fled to areas up the creeks and rivers, many anticipating the collapse of the entire economic system.

Anticipating that Emancipation would result in a mass exodus of Africans from the plantations, the Secretary of State for the colonies had outlined a land policy to prevent free access to Crown lands in order to keep the labourers on the estate. This official policy did not

have the desired effect in British Guiana and Trinidad. Some African Trinidadians were able to squat on Crown lands, while in British Guiana, in addition to some squatting, significant numbers of Africans purchased many of the abandoned plantations on the coast. In both instances the freed Black populations were able to circumvent official policy and acquire land. This contributed immensely to the growth of a Black peasantry in the two colonies.

In Trinidad, despite the passage of legislation in 1839, many labourers were able to squat successfully on Crown lands until the 1860s. In British Guiana, the Peter Rose Report of 1850 indicated that there was significant squatting on the banks of the Demerara River. Africans in this area were engaged in farming, fishing, hunting and the production of firewood and charcoal to support themselves.

It must be noted that there was some measure of official support of the growth of a Black peasantry in Trinidad and British Guiana. Governor Light reported favourably on its growth while at least two Stipendiary Magistrates provided legal advice to the Africans regarding their purchases of land. In Trinidad, Governor Lord Harris supported the growth of a peasantry by selling one-acre plots of land to workers and making some attempts to regularize squatting in the col

APPENDIX 2(5)

COMPOSITION OF THE POPULATION ST. VINCENT AND THE GRENADINES:

1735 – 1825 (PRE ESTABLISHMENT OF FIRST COMPANY

Source:

Sheppard, Charles, An Historical Account of the Island of Saint Vincent (W. Nicol,

Year	Negroes	Caribs	Whites	Coloreds	Slaves
1735	6,000	4,000	-	-	-
1764	-	-	2,104	-	7,414
1787	-	-	1,450	300	11,853
1805	-	-	1,600	450	16,500
1812	-	-	1,053	1,482	24,920
1825	-	-	1,301	2,824	-

Cleveland Row St.James, London 1831) IV – (Researcher's extraction/composition of table)

APPENDIX 2(6)

NEWSDAY NEWSPAPER

Newspaper article – last accessed on 1 April 2018

www.archives.newsday.co.tt/2009/06/11/clico-shocks-caricom/

CLICO 'SHOCKS' CARICOM

CL Financial's troubles are not only a problem for Trinidad and Tobago and the "shocks" of this crisis continues to be felt across the Caricom region, so much so, that it has even sent up a red flag at the International Monetary Fund, according to economist Sir Ronald Sanders.

Through flagship insurance subsidiaries Colonial Life Insurance Co Ltd (Clico) and British American, fear of what impact a total collapse of the CL Financial group could have on regional economies is real, Sanders told journalists attending a Commonwealth Caribbean Business Media Workshop at Crowne Plaza, in Port-of-Spain last week. "For some people there is a fear of loss of insurance annuities, long - term savings and insurance coverage. The latter fear has less to do with the global financial crisis than it has to do with the collapse of CL Financial holdings," he said on June 3. Noting that CL Financial's subsidiaries have "an outreach across the majority of Caricom states", Sanders said the International Monetary Fund (IMF) has observed that "shocks emanating from the collapse of CL Financial have also increased the stress in the non-bank financial sector with knock on effects for the domestic market and the domestic banks in the Organisation of Eastern Caribbean States (OECS). With this connection, we might not yet have seen the end of matters related to Clico and British American in the Eastern Caribbean," he warned. Sanders predicted that if these institutions are unable to meet their insurance coverages, mortgages and other lendings by domestic banks, "further problems will develop".

The troubles of CL Financial mirror on a smaller but equally significant scale the impact, which the collapse of the banking systems of developed nations has had around the economies of the world. Indeed the tentacles of the global economic crisis had already begun to reach out to the Caribbean when CL Financial sought a bailout from the Trinidad and Tobago Government when it ran into problems. Stating that the CL Financial saga has made the need for a regional regulator for banking and non-banking financial institutions "absolutely necessary", Sanders welcomed the initiative by TT, Grenada, St Vincent and St Lucia to form an economic union by 2011 and a political union by 2013.

"Whether this particular initiative comes to fruition or not, it emphasises the recognition that Caricom countries cannot go it alone," he stated. He noted that while some Caricom countries may be worried about a loss of sovereignty through regional integration, the example of the European Union put those fears to rest. Integration would be timely as the region seeks to maintain its space in such blocs as the Commonwealth, said Sanders, noting that when members meet in Port-of-Spain from November 27 to 29 it would be an opportune time for Caricom states to seek out new business to once again shore up their economies.

Observing that Prime Minister Patrick Manning will become chairman of the Commonwealth for a two-year period after meeting in November, Sanders said Manning and his Caricom colleagues must seize this opportunity to advance the region's interests.

Sanders said this is critical given the continued pressures, which the region faces from the global crisis, and the internal economic challenges, best exemplified by the problems of the CL Financial Group. Prior to the start of the Commonwealth Heads of

Government Meeting (CHOGM), the Commonwealth Business Forum (CBF) will be held on board the Royal Caribbean cruise liner Serenade of the Seas at the Port-of-Spain International Waterfront Complex from November 23 to 26.

The CBF is one of the most important pre-CHOGM events and will be "among the biggest business conferences" ever hosted in TT and Caricom. At least 700 delegates, comprising government and business leaders from all 53-member nations of the Commonwealth, are expected to attend the CBF. Information provided by the Commonwealth Secretariat shows the importance, which the CBF has regarding foreign direct investment (FDI). FDI into Malta increased two years after it hosted the 2005 CHOGM, infrastructure projects worth US$3 billion were discussed at the 2003 CBF in Nigeria and over US$1 billion worth of projects in infrastructure, energy and telecommunications have been commissioned in Uganda since that country hosted the last CHOGM in 2007.

Manning underscored the importance of the 2009 CBF when he addressed its launch at the Royal Automobile Club in London on May 21. He observed that the CBF "is happening at a time when it is sorely needed". "In these recessionary days, we especially need the courage, dynamism and creativity of the private sector. There is no other way to return to anywhere near the level of growth that the world economy experienced before the present crisis," Manning stated.

"Business activity will not fully flourish in most countries unless we transform an international economic system that has contributed immeasurably to very uneven global development. This global imbalance is reflected quite starkly in our own grouping. The tragic result has been wide scale poverty and underdevelopment affecting hundreds of millions of people all over the developing world. The present crisis is already making the situation worse." In his address to the workshop, Sanders said the Caribbean Development Bank has reported that in seven of the 13 Caricom countries, negative growth is projected for 2009. "In the next six cases (including TT), the growth rate, although positive, will be slower in 2009," he stated. With the economies of Organisation of the Eastern Caribbean States (OECS) expected to contract by 2.9 per cent this year, Sanders said, "There is no question that the crisis, through poor regulation, has adversely affected the Caribbean." Serious declines in revenues in some Caricom countries, a fall in remittances and many construction projects being halted because of tightening credit facilities are just some signs of the impact which the crisis has had on the region. The economist added that the human face of the crisis in the Caribbean has been seen in a "marked increase in unemployment in single mothers and unskilled workers." However, no single group anywhere in the Caribbean has been unscathed by the crisis. "The accustomed quality of life has declined across the board," Sanders added.

Thursday 11 June 2009, Clint Chan Tack

APPENDIX 2(7)

NEWSPAPER ARTICLE

Newspaper article – jamaica-gleaner.com/article/business/20160705/rowley-clico-commission-report-alleges-criminal-misconductRead previously and last accessed – 30 March 2018

SEE COMMISSION OF ENQUIRY – 2010 GAZETTED INFORMATION PRIOR TO THIS NEWSPAPER ABOUT A COMMISSION OF ENQUIRY –

”HCU Report Dated 16 July 2014 by The Hon Sir Anthony Colman

Rowley: CLICO Commission Report Alleges ‘Criminal Misconduct’

Published: Tuesday | July 5, 2016 | 12:01 AM

Prime Minister Dr Keith Rowley said on Friday that the report of a commission of enquiry into the failed regional insurance giant, CLICO, has made "very serious allegations of criminal misconduct" and is urging Director of Public Prosecutions (DPP), Roger Gaspard to review them. Rowley told Parliament that he would not disclose details of the report pending legal advice from Gaspard, to whom a copy had been sent.Rowley said it would be "wholly irresponsible" to publish or release the report of the one-man commission that probed the circumstances that led to the collapse of the CL Financial Group and its insurance subsidiary CLICO in 2009.

"A number of adverse findings of criminal misconduct ... were found and recommendations made which would be for the DPP to consider. I make no further comment with respect to these areas in the report," Rowley told legislators, adding that the sole commissioner Sir Anthony Coleman had submitted a number of recommendations, which were now being dealt with by the government.

Rowley said the commission found several factors had contributed to the collapse of CLICO, resulting in the Trinidad and Tobago government having to pump "many billions of dollars" into a bailout plan.

He said Minister of Finance Colm Imbert was doing an audit of the bailout programme to determine its cost, including payments to lawyers.

SERIOUS ALLEGATIONS

Rowley said that having perused the report himself, "I can advise the population that it contains very serious allegations of criminal misconduct on the part of a handful of privileged individuals who were associated with the CLICO/CLF group of companies. "Accordingly, these findings of the report must, of necessity, require the attention of law enforcement through the office of the DPP..."

But Rowley also said there were some aspects of the report he could relate, saying there was overleveraging and unacceptable, intercompany transactions that seriously, negatively affected CLICO, CLICO Investment Bank (CIB) and the British American Insurance Company. "CLF paid high premium prices in acquiring various assets - thereby resulting in overall prices being more than originally anticipated," said the PM. "CLF's auditors expressed disquiet in the course of 2008 at the rapidity with which the group was acquiring new companies ... at the growth of intercompany balances, particularly the indebtedness of CLF to CLICO and CIB, as well as the limited ability of CLF management to operate a much enlarged group".

Rowley said that the auditors had also recommended "that there be no further acquisitions until the group had consolidated its new holdings and paid down the unsecured part of its indebtedness to CLICO", but that "recommendation was ignored in as much as CLF management proceeded to go ahead with what can be described as a reckless manner".

DEFECTIVE BUSINESS MODEL

He said the underlying causes of the collapse of all of the companies were the defective business model of the CLF Group, poor corporate governance, and ignoring the recommendations of their external auditors. Rowley told legislators that the business model which ultimately crippled the entire CLF Group involved as its central feature "the deployment by CLF, either directly or through subsidiaries, of funds originating in monies deposited by external depositors as well as by CLICO and BAT in CIB", as well as the use of funds "originating in policy premium income and investment dividends belonging to CLICO and BAT for the purpose of making investments in equities and real estate and, latterly, for the payment of the operating expenses of CLF itself and other group companies".

"In essence, therefore, the insurance companies were treated as the means of funding the investments made by or directed by CLF," Rowley said. "The fundamental defects in this business model were first, that once funds had been transferred out of CLICO, CIB and BAT, and invested by CLF and/ or other group component companies in real estate and equities, those assets lost the key attribute of liquidity which was essential to the safe conduct of the business of both CIB and the insurance companies, CLICO and BAT. "Consequently, those companies lost the ability to respond to the requirements of external policyholders and depositors for money payments as and when they fell due," he said.

- CMC

APPENDIX 2(8)

STABROEK NEWS – GUYANA NEWSPAPER

www.stabroeknews.com/2009/news/stories/04/15/worst-case…clico-liabilities-exceed-assets-by-119b/ - last accessed April 5, 2018

WORST CASE…. CLICO LIABILITIES EXCEED ASSETS BY $11.9B

By Staff Writer April 15, 2009 Comments

Maria van Beek

In the worst case scenario of liquidation, the liabilities of CLICO (Guyana) will exceed its assets by $11.9 billion dollars, Judicial Manager, Maria van Beek said in a report submitted to the High Court yesterday.

Clico (Camp Street) – photo removed due to size - too large

In a highly anticipated report she also strongly criticized the manner in which the insurance company was run.

A best case presentation at liquidation shows the liabilities exceeding assets by $8.1B, the Judicial Manager said, emphasizing that there are on-going concerns as it relates to the company's assets and liabilities

Based on an investigation by Nizam Ali & Company, van Beek said that as a going concern, the book value of the company's assets and liabilities shows the net asset position of the company is approximately -$1.6B. She said that given the likely impairment of the investment in CLICO (Bahamas) valued at $7.1B and "assuming some write-off in the value of the remaining assets of the company", the net deficit could rise to $11.9B should the company be wound-up. She stressed however that these estimates are dependent on the value of the long-term liabilities produced by the actuary who is dependent on the policy data stored and compiled by the staff of CLICO (Trinidad) who were subcontracted to perform the work. CLICO (Bahamas) was last week ordered wound up by a judge in Nassau. It was the placing of this business into liquidation that precipitated the placing of CLICO (Guyana) under judicial management. The final position of CLICO (Bahamas) showed its liabilities exceeding its assets by US$18M.

Chief Justice Ian Chang yesterday requested additional information on CLICO (Guyana's) statutory fund – money set aside to cover needs in each class of insurance. He said that more information is needed in relation to the particulars of the fund, noting that the Judicial Manager must provide information on all the lines of businesses that CLICO (Guyana) conducts, which relates to the various categories of insurances such as accident, fire and motor. Justice Chang then granted the Judicial Manager, who is also the Commissioner of Insurance leave to file a further report that would be reflective of the entire financial position of the company.

In reporting on the company's statutory fund, van Beek, has said that when the necessary calculation is done for the Actuary's report, it is expected that there would be insufficient funds to cover all classes of business. She stated that it is possible however that some classes of business could be adequately funded. However, she said that there was insufficient time to do this analysis, adding that The [Insurance] Act provides insurers with up to six months to revise their statutory funds following the financial end of year. CLICO (Guyana) entered an appearance in the court matter yesterday through its attorney, Roysdale Forde, signalling a possible challenge to the wind-up application before the court, and even a challenge to the contents of the report by the Judicial Manager.

The company is to file a formal entry of appearance within a few days. CLICO (Guyana) had

opted out of the court proceedings prior to yesterday's hearing, but the company is permitted by law to enter an appearance and challenge the wind-up application.

Van Beek also revealed yesterday in her report that CLICO (Guyana) commenced the preparation of an information memorandum for distribution to interested parties with the intention of determining whether the company or parts of its business could be sold. She noted that despite the reported difficulties of the company interest has been expressed by local insurers. "… I would like to seek the permission of the court to fully explore this by sharing information on the insurance business of the company with these parties and reporting back to the court", van Beek said.

She stated that the sale of the local assets of the company would allow greater certainty with regard to the best possible treatment of the company's policyholders. She theorized that it may for example permit a scheme whereby the viable parts of the business can be transferred to one or more local insurer and the remaining policies could be paid up to an amount to be determined and that the larger policies could be repaid over a period of time under terms to be agreed with the government and/ or parties, policyholders and the company. The government has said that no policyholder or investor will lose as a result of the CLICO debacle.

Generally poor

(Maria van Beek – photo removed too large)

Van Beek lamented the state of the company's documentation in her report, calling it "generally poor". She said that based on the documents reviewed to date and a review of the investment decisions made by the company, "it appears that any assessment of the appropriateness of the investments in group subsidiaries was ineffectual." She noted that this is of particular concern given that two of the Directors are also Directors on the board of CLICO (Bahamas) Ltd.

She said it does not appear that there were clear lines of communication between the actuary, management and the board. Further, she said discussions on critical assumptions for the actuarial valuation of the long-term liabilities do not appear to have been properly documented. "While the investment in The Bahamas appeared liquid on the company's books, the directors should have been aware of the high level of liquidity risk that the investments in The Bahamas entailed in recent years. There was also some common directorship with Caribbean Resources Ltd", the Judicial Manager continued.

She added "The Directors and management of the Company operated without a basic understanding of managing an insurance business or pursued a strategy that has resulted in significant losses to the Company. This has jeopardized the ability of the company to meet its policyholder obligations". She stated that as at February 28, 2009, the company had approximately $1.7B in Executive Flexible Premium Annuity (EFPA) and Flexible Premium Annuity (FPA) claims outstanding and approximately $382 million in other claims outstanding. But, she noted that at least a further $5.7B in EFPA and FPA claims were submitted.

She also said in the report that if additional time is permitted she intended to instruct Nizam Ali to review the claims paid by the company during 2009 "and to determine whether any preferential disbursement was made". During a run on CLICO (Guyana) in February after it was reported that Trinidad was bailing out its parent company, C L Financial, CLICO (Guyana) sold its Berbice Bridge bonds to the New Building Society to fund the surrenders of policies and investments. Questions have been raised about who cashed in on this. According to the report, several non-essential agencies in Rose Hall, Bartica, Parika and Georgetown were closed in an effort o save costs, since the closure of these offices it expected to save the

company at least $2.4 million per month.

The report stated that the employment and services of 40 permanent staff and 3 contractual and non-essential staff were also terminated in an effort to reduce costs; the expected savings related to the basic salary costs totalled $5.85M per month or approximately 40 per cent of the total basic payroll. She said that the personnel were largely associated with the sale and marketing of insurance business and in all cases their positions were not essential for the effective and economic functioning of the company.

Cost assessments

She noted that they were paid severance on and after 27th March 2009 in accordance with the labour laws of Guyana, adding that the remaining staff has been retained at this time to service existing policyholders and assist the Judicial Manager in protecting the interest of policyholders of the company.

On the issue of the termination of services provided by Premium Security Services Inc. (PSSI), a subsidiary of CL Financial Ltd, she said that it was found that no contract existed for the provision of this service nor was the service secured under normal business considerations such as cost assessments. According to van Beek, it became necessary to replace these services on 24th April due to deliberate delinquency on the part of a senior employee of PSSI. She said that investigations revealed that PSSI owes CLICO (Guyana) about $243 million and that despite being requested to repay this amount, PSSI has refused. RK Security Services have since been temporarily retained as replacement, she added.

The Judicial Manager reported that an investigation into CLICO (Guyana) investments with Caribbean Resources Ltd. and PSSI, both subsidiaries of CL Financial, reveals that both companies have little or no ability to repay the loans from the company. “Over the years they have been largely dependent on the company to provide cash for both these organizations to function. All support to both companies has ceased since my appointment as Judicial Manager, and efforts are being made to recover the loans”, van Beek stated.

Further, she added that it appears unlikely that the investments totalling $2.4B would be recovered. She said too, that the report by Nizam Ali & Company estimates a recovery of approximately $402M, adding that any shortfall is guaranteed by the parent company CL Financial. In addition, she reported that CLICO Guyana is wholly dependent on CLICO Trinidad to produce information and accounting information, and that this has caused some delays during the reporting period. Further, she said that any data problems have to be discussed with personnel in Trinidad.

As an illustration of the state of the company’s investments, the going concern value is $7.5b but in the liquidation worst-case scenario the investments are reduced to $344m – the difference representing the investment in The Bahamas company. She revealed that on the announcement by Trinidad on January 30, 2009 that some assets of C L Financial were being taken over CLICO (Guyana) “began experiencing heavier than normal surrenders. As at 28th February 2009, $1.5 billion in claims were paid during 2009 and $1.6 billion in claims remain outstanding on 28th February 2009”

In an affidavit accompanying the report, van Beek noted that Winston Ramalho, claiming to be a director of CLICO (Guyana) had filed a motion seeking her removal as judicial manager. She averred that the motion was invalid and authorized and she had filed an affidavit in answer seeking to have it struck out and dismissed.

We meet today to present the annual accounts. This is a yearly occurrence."

APPENDIX 2(9)

LETTER TO CARICOM

EXCERPT OF LETTER FROM PRIME MINISTER RALPH GONSALVES TO CARICOM

The Prime Minister

St. Vincent and the Grenadines

West Indies

February 09, 2012

H.E. Mr Irwin La Rocque
Secretary General
CARICOM
Greater Georgetown
P.O. Box 10827
Georgetown
Guyana

ON STRATEGIC DIRECTIONS FOR CARICOM

Dear .....

The Eastern Caribbean Currency Union (ECCU) consists of the six independent countries of the OECS plus Anguilla and Montserrat. The CLICO-BAICO debacle has caused an exposure in insurance liabilities of EC $2 billion (US $800 million) or roughly 16 per cent of the Gross Domestic Product (GDP) of the ECCU. By and large, CARICOM as an organised entity has stood askance from this formidable threat to the financial stability of the ECCU member-countries, the most vulnerable, collectively, in CARICOM. To be sure, there has been reportage at the Conference of Heads and at COFAP but CARICOM has largely been disengaged. The resolution of this issue has been left mainly up to the member-countries of the ECCU, Barbados and Trinidad and Tobago; recently, the Caribbean Development Bank (CDB) has become involved.

The CLICO-BAICO conundrum represents, arguably, the greatest danger to the integrity of CARICOM if it is not resolved speedily, fairly, and cooperatively. This matter has the potential to wreck CARICOM; and this is not hyperbole. I am hopeful that the government of Trinidad and Tobago in respect of BAICO and CLICO (Trinidad) and the government of Barbados regarding CLICO International will shoulder their especial responsibilities. Admittedly, the satisfactory resolution of these matters is extremely difficult; some progress has been made, but there is still a long and arduous journey ahead. CARICOM's productive engagement is still required on "this insurance business", now, and on-going. But does it possess the institutional and juridical capacity? I doubt; should it? Yes!

Prime Minister of St. Vincent and the Grenadines

Ralph Gonsalves

APPENDIX 2(10)

UK COMPANIES ACTS APPLICABLE TO ST. VINCENT COMPANIES FROM 1800 - 2013

[SEE ALSO APPLICABLE HISTORICAL *TABLE A]*

TABLE A

MODEL ARTICLES/DEFAULT FORM OF ARTICLES OF ASSOCIATION FOR COMPANIES THAT ARE LIMITED BY SHARES

Effective Dates in the UK	Effective Dates in SVG	Regulations of the UK Companies Acts	Provisions in the SVG Acts	Observations
14 July 1856	Corresponding date to the UK by virtue of island being a colony of the UK	Joint Stock Companies Act 1856 Table B	As per UK Companies Acts	"Table A"? Table A is simply the name given to the prescribed format for Articles of Association of a company limited by shares under the Companies Act 1985 and earlier legislation. The Articles set out the regulations by which the company will be managed. The first prescribed format of Articles was made in "The Joint Stock Companies Act, 1856". In this Act, the Articles were called "Table B" (simply because they were preceded by a form of Memorandum of Association called "Form A"). At the next prescription, which happened in 1862, the

				Memorandum was moved into the body of the Act and the Articles became "Table A". Memorandum of Association necessary to file to incorporate company…this is part of the constitution of the company
7 August 1862	Corresponding date to the UK by virtue of island being a colony of the UK	The Companies Act 1862	As per UK Companies Acts	Operative Act in SVG same as the UK – Table A as amended but only applicable to public Table B was changed to Table A under the UK Companies Act1862 (Possibly served as guidance to the Directors and Shareholders in the early establishment and or continuance of the First House – John Hazell Sons and Company Limited, save and except to say that such guidance would have been post 1845. The First House would have had to refer to this Table B/later Table A as per applicable and

				prevailing legislative period) companies
1 October 1906 *1907	Corresponding date to the UK by virtue of island being a colony of the UK	Board of Trade Order 1906 *UK Companies Act 1907 provides for 'private company' for the first time	Memorandum was moved into the body of the Act	Memorandum was adopted from the public companies and moved into the body of the Act and *Table A* also incorporated in the body of the Act
1 April 1909	Corresponding date to the UK by virtue of island being a colony of the UK	Companies Consolidation Act 1908	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
1 November 1929	Corresponding date to the UK by virtue of island being a colony of the UK	Companies Act 1929	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
1 July 1948	Corresponding date to the UK by virtue of island being a colony of the UK	Companies Act 1948	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
27 January 1968	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by Companies Act 1967	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
^18 April 1977, 1	Corresponding date to the UK by virtue of	As amended by Companies Act 1976 (^^^3	Discussion on the Limited Liability Company/Private	Memorandum was moved into the body of the Act

^June 1977, 1 ^October 1977	island being a colony of the UK	Commencement dates)	Limited Liability Company Limited by Shares but Articles of Association binding	and Table A also incorporated in the body of the Act
2 February 1979	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by the Stock Exchange (Completion of Bargains) Act 1976 Part 1	Same as above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
2 February 1979	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by the Stock Exchange (Completion of Bargains) Act 1976 Part 2	Same as above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
2 February 1979	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by the Stock Exchange (Completion of Bargains) Act 1976 Part 3	Same as above	
22 December 1980	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies Act 1980	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
3 December 1981	Independent nation state by 1979 but laws of the UK remain	As amended by Companies Act 1981	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the

	predominantly those of the former colony			body of the Act
1 July 1985	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	Companies (Tables A to F) Regulations 1985	As Above	Applicable to the Company in as much as they are not excluded or varied by the Articles of Association of the Company limited by shares
1 August 1985	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies (Table A to F) (Amendment) Regulations 1985	As Above	Table A remained valid for companies incorporated under Companies Act 1985 in the same format that it existed at the time of incorporation of the Company under Companies Act 1985
22 December 2000	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies Act 1985 (Electronic Communications) Order 2000	As Above	Amended by SI 2000/3373
1 October 2007	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies (Tables A to F) (Amendment) Regulations 2007 and The Companies (Tables A to F) (Amendment) (No 2) Regulations 2007 for private	Fundamental change to simplification of previous combination of memorandum and set of articles of association based on default Table A regulations as Articles of	Article 50 of Table A with regards to the Chairman having a casting vote was removed from Table A. Amendment (No 2) Regulations 2007/2826. If however the right

		companies limited by shares	Association based on a model set…However, Memorandum of association still exists but now reduced and contains statement of subscribers; intent (As Above) **The Articles can be seen as a rule book on corporate governance of the company. The word 'Model' not to be confused other than a set from which one can make changes to reflect company's intention.**	existed in the Company's articles once it was incorporated before this date, it remains valid as per Sch 3 para 23A Companies Act 2006 (Commencement No. 3, Consequential Amendments, (Transitional Provisions and Savings) Order 2007/2194 (see Sch 5 para 2(5) Companies Act 2006 (C0mmencement No. 5, Transitional Provisions and Savings) Order 2007/3495
1 October 2007	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies (Tables A to F) (Amendment) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment (Regulations 1985), the Companies (Table A to F) (Amendment) Regulations 2007 and the Companies (Table	As Above	Table A as amended Companies (Tables A to F) Regulations 1985 as amended by SI 2007/2541 and SI 2007/2826

		A to F) (Amendment) (No. 2) Regulations 2007		
2008	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As above	Companies Model Articles Regulations 2008	Table A replaced for new companies by Model Articles UK Companies Act 2006 which came into effect 1 October 2009
2009	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Table A replaced for new companies by Model Articles UK Companies Act 2006 which came into effect 1 October 2009 See Part 13 as per procedures for resolutions and meetings
2010	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Same as above
2011	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Same as above
2012	Independent	As Above	As Above	Same as above

	nation state by 1979 but laws of the UK remain predominantly those of the former colony			
2013	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Same as above

TABLE B –AMENDED AND TRANSPOSED TO TABLE A

Time Periods	Number of Board members	Number of Shareholders	Applicable laws (Company laws)	Statutory Instrument/By-laws specific reference to management and control of companies (Table A/B-Outline of responsibilities of management and control)
1845 - 1865	7 and more?	7 and more? 1845 – 1909, one company dominated with up to 8 board members	UK Joint Stock Companies Act 1844 UK Companies Clauses Consolidation Act 1845	Table B Table B was changed to Table A under the UK Companies Act1862

			UK Limited Liability Act 1855 UK Joint Stock Companies Act 1856 UK Companies Act 1862 UK Company Clauses Act 1863 UK Company Seals Act 1864	
1865 - 1885	Variable	Variable	UK Companies Act 1864 amended/consolidated by UK Companies Act 1867 UK Company Clauses Act 1869 UK Joint Stock Companies Arrangement Act 1870 UK Companies Act 1877 UK Companies Act 1879 UK Companies Act 1880 UK Companies (Colonial Registers) Act 1883 UK Companies Act 1884	
1885 - 1905	Variable	Variable	UK Companies Act 1884	

			amended/consolidated by Companies Act 1886 UK Companies Clauses Consolidation Act 1888 UK Company Clauses Act 1889 UK Companies (Memorandum of Association) Act 1890 UK Companies (Winding-up) Act 1890 UK Directors Liability Act 1890 UK Companies (Winding-up) Act 1893	
1905 - 1925	Variable	Variable	UK Companies Acts 1890/1893 amended by UK Companies Act 1907 UK Companies (Consolidation) Act 1908	Adaptation of *Table A* with relevance to the private company
1925 - 1945	Variable	Variable	UK Companies Act 1928 UK Companies Act 1929	Adaptation of *Table A* with relevance to the private company
1945 - 1965	Variable	Variable	UK Companies Act 1947 UK Companies Act 1948	Adaptation of *Table A* with relevance to the private company
1965 - 1985	Minimum 3 and	Minimum 3 and	UK Companies Act 1948	Adaptation of *Table A* with

	variable	variable	amended/consolidated by UK Companies Act 1967 UK Companies Act 1976	relevance to the private company Company was amalgamated in 1981
1985 – 2013	Minimum 3 and variable Gender diversity encourage	Minimum 3 and variable Gender diversity encouraged – See Davies Report – Lord Davies of Aberscoch, CBE but for FTSE 100 companies...May have been used as guidance for gender equality and inclusion on private unlisted companies	UK Companies Act 1976 amended/consolidated by UK Companies Act 1985	* On or after 28 April 2013 – ***Table A as Model Articles*** for private companies limited by shares Amendments to *Model Articles by Mental Health (Discrimination) Act 2013*

APPENDIX 2(11)

EXCERPT FROM THE FINANCIAL SERVICES AUTHORITY ON

MINIMUN REQUIREMENTS FOR APPROVAL AND CONTINIUNED APPROAVAL BY THE AUTHORITY

DIRECTORS OF DOMESTIC REGULATED FINANCIAL INSTITUTIONS

(**With particular reference to insurance companies and credit unions**)

EFFECTIVE: 15 MAY 2013

The Authority expects that institutions will adopt *the two-tier model* in structuring their boards. Executive directors (including the CEO) will be employed in the organization on a day to day basis, while independent non-executive directors (including the Chairman), though forming the majority of the board, may have little day to day involvement in running the organization. A ratio of 2 Executive Directors to 3 Non-Executive directors, though not prescriptive, may be a useful guide for institutions to adopt.

SEE OVERLEAF

APPENDIX 2(12)

Trinidad Daily Express

CLIENTS MONEY FUNDED DUPREY'S PERSONAL NEEDS

www.trinidadexpress.com/news/local/clients-money-funded-duprey-s-personal-needs/article_f4b53cc8-1dc4-550b-a84f-dd586c7ab4e0.html - last accessed on 19 April 2018

June 9, 2011
Mark Fraser

Money invested by CLICO policyholders and mutual fund investors was improperly used to fund the personal needs and lifestyle of Lawrence Duprey and other members of his family and his private companies.

This is the assertion of the Central Bank in its Statement of Case, which was filed in the High Court on Tuesday. The Central Bank also stated that CLICO funding was used for the "pursuit of Mr Duprey's personal global ambitions".

"Mr Duprey and Mr Monteil procured CLICO to fund unsuitable and high-risk projects in pursuit of Mr Duprey's personal global ambitions contrary to the interests of CLICO and its policyholders. These projects included real estate in Florida, acquisitions of European and Caribbean drinks companies, acquisitions of energy companies and ventures building methanol plants in the Caribbean and in the Gulf. The projects were characterised by little or no regard to the costs of borrowing, high leverage (because the bulk of money used was borrowed) and no, or no adequate, due diligence," it said.

It said Duprey procured money from CLICO to fund his personal expenses and lifestyle in the form of "consultancy" fees, salary and bonuses. The Statement of Case said between 2001 and 2008, it is currently estimated that he received direct payments from CLICO totalling TT$96.8 million. Through commission or other payments to DALCO (in which he had a 99 per cent equity interest); it is currently estimated DALCO received payments and financial assistance totalling TT$468.9 million for the period 1997 to 2008, the Central Bank claimed. Other payments to other companies owned by him, for example included TT$15.2 million received by Sable Investment Company from CLICO for the period 1999 to 2008.

The Central Bank asserts that Andre Monteil procured and assisted Mr Duprey in the diversion of money from CLICO for his own personal benefit in the form of:

1. Salary and discharge of liabilities (estimated to total TT$16.8 million between 2004 and 2008. This despite the fact that he (Monteil) was no longer a director after 2/5/2005.

2. "Consultancy fees" paid to him or his company, Stone Street, such as a payment of US$3.5 million to CLF who paid it onto Mr Monteil or Stone Street. This was the fee for his role in executing the 2004 CIB ten per cent RBL (Republic Bank Ltd) shareholding purchase. There were also payments totalling at least US $1.1 million by CLICO to Stone Street for his role in the acquisition of the Jamaican spirits company (LDM).

The Bank further stated that Mr Duprey and Mr Monteil procured CLICO fund for other companies which were used to make payments for their personal benefit, in particular to CL Financial (in which Dr Duprey and Mr Monteil had an interest either directly or via other entities); DALCO (in which Mr Duprey owned a 99 per cent shareholding) and DITL (in which DALCO was a 31 per cent shareholder). It added that such funding included the following: a transfer of TT$7.5 million to CLF which was used to part-fund a CLF dividend payment; on or around 19/5/2005 2) CLICO's placing of TT$22.5 million into a RBTT account which was transferred to CLF to fund CLF dividend payments on or around 1/2/06.

Examining the Home Mortgage Bank transaction, the Central Bank noted that as a result of the February/March 2007 transaction, "the CIB loan of TT$78 million to Stone Street was caused to be financed by CLICO from the TT$100 million caused to be deposited by CLICO with CIB and consequently TT$78 million of the sale price of TT$110 million due to CLICO from Stone Street was indirectly caused to be financed by CLICO itself". "Neither the sale of the seven million HMB shares by CLICO to Stone Street nor the related deposit by CLICO of TT $100 million with CIB were authorised by CLICO, nor were such sale and deposit in the interests of CLICO," the Bank said.

The Bank stated that Duprey exercised almost absolute control over CLICO as though it were his own unregulated company. He replaced CLICO's actuaries, Watson Wyatt, when it was not prepared to issue the normal actuarial certificate (refusing to let them meet with the CLICO board) and engaged Buck Consultants in 2001 which changed the basis on which the obligations to policyholders were valued, with the result that a surplus of policyholders' funds were reported on a companies act basis.

The Statement of Case also noted that Duprey dismissed the entire board of directors, apart from himself, in April 2005 and appointed a new board. "Before appointment of the new board, Duprey with the assistance of Monteil, Gita Sakal, caused to be effected a power of attorney which gave them absolute control over CLICO and its assets. For example, the power of attorney was used to divert RBL dividends due to CLICO to CLF during 2006 and 2007 until its revocation on 16/6/07. Duprey did not disclose the existence of the power of attorney to the new board," the Statement of Case said.

It added that Duprey generally ignored the board of directors and all normal corporate governance. "Board meetings of CLICO were few, rare and for many years non-existent. And Mr Duprey procured the commitment of CLICO to transactions without board approval. He procured the sale of CLICO's 17 per cent stake in CLICO Energy on 4.2.09 without disclosure to the CLICO board or the obtaining of its authority in the form of a board resolution," it noted. Reiterating that CLICO was not operated as regulated entity, the Statement of Case said Duprey and Monteil consistently failed to match the assets of CLICO with its liabilities and obligations to policyholders and investors; b. caused CLICO to invest in high-risk and speculative investments that were unsuitable, such as Florida real estate and high-risk debt (including with CLF and/or CIB); c. failed to manage risks adequately or at all; d. failed to ensure that there was adequate capital to meet liabilities to policyholders and investors and engaged in interest-free lending to CLF.

The Statement quoted an e-mail sent by Mr Dziadyk of CLICO in 11.04.06, which stated: "Generally every risk known to man and then some are in CLICO's balance sheet... CLICO does not invest assets in support of its liabilities. The balance sheet is not managed. CLICO is an asset appreciation company; not much asset appreciation in 2005; and asset appreciation usually is in non-interest bearing intercompany or related party debt while liabilities continuously appreciate. CLICO is getting caught in the market cycle; asset values invariably fluctuate with cycles; but liabilities are impervious, which makes for an extremely dangerous combination". The Statement said Duprey and Monteil and /or CLF (CL Financial) each procured CLICO not to seek to recover sums owing to it from CLF and or/CIB and that CLICO accept fresh certificates of deposit in respect of principal and accumulated unpaid interest in relation to sums owing from CIB.

It said CLICO's operation was grossly deficient and egregious in the following (and other) respects: the interests of policyholders and mutual fund investors were subordinated to the

interests (and demands) of others, in particular the private interests of Mr Duprey and Mr Monteil;) returns offered on products and related costs were excessive and unsustainable; CLICO's assets were improperly dealt with; CLICO was improperly exposed to liabilities unrelated to its interests; CLICO was improperly caused to provide an interest-free current account facility to CLF; assets were not matched to liabilities, in particular in order to generate the sums needed to pay the rates of return contractually due to policyholders and mutual fund investors.

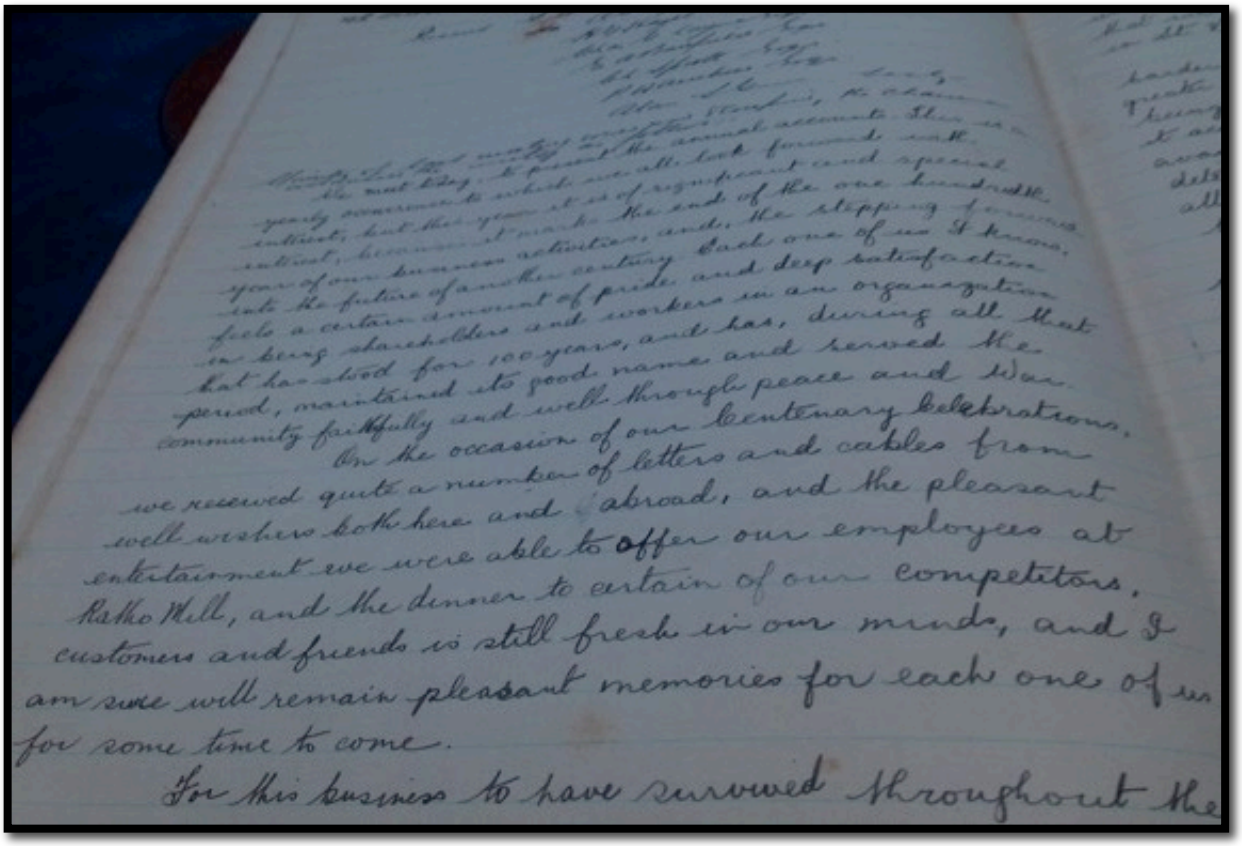
The Statement noted that over the years CLICO's assets and liabilities were misrepresented, misreported, and manipulated, including by related party transactions in order to conceal the deficit and increasing chasm in the statutory fund. The Statement of Case said Duprey and Monteil procured CLICO in act in breach of the Insurance Act and contrary to the interests of CLICO and its policyholders. Duprey (including on behalf of DALCO) and Monteil procured CLICO to pay commissioners or other consideration to himself or companies owned or controlled by him, contrary to the director benefit prohibition and/or the pecuniary interest prohibition, such as the US $3.5 million commission payment for the 2004 CIB ten per cent RBL shareholding purchase and the payments totalling US $1.1 million in respect of the LDM acquisition; Duprey and Monteil procured CLICO to make unsecured loans to CIB, such as the loan to CIB on 8.11.04 of US $163.3 million in connection with CIB's purchase of an additional ten per cent RBL shareholding in breach of the unsecured credit prohibition.

APPENDIX 3(1)

EXCERPTS FROM MINUTES OF CENTENARY CELEBRATIONS OF OLDEST ESTABLISHED COMPANY

1845 - 1945, KINGSTOWN, ST. VINCENT AND THE GRENADINES

(Named members of the meeting are listed)



Extract: "...being shareholders and workers in an organisation that has lasted for 100 years and has during all that time period, maintained its good name and served the community faithfully and well through peace and war. One the occasion of our Centenary Celebrations, we received quite a number of letters and cables from well wishers both here and abroad, and the pleasant entertainment we were able to offer our employees at Ratho Mill, and the dinner to certain of our competitors…"

Source:

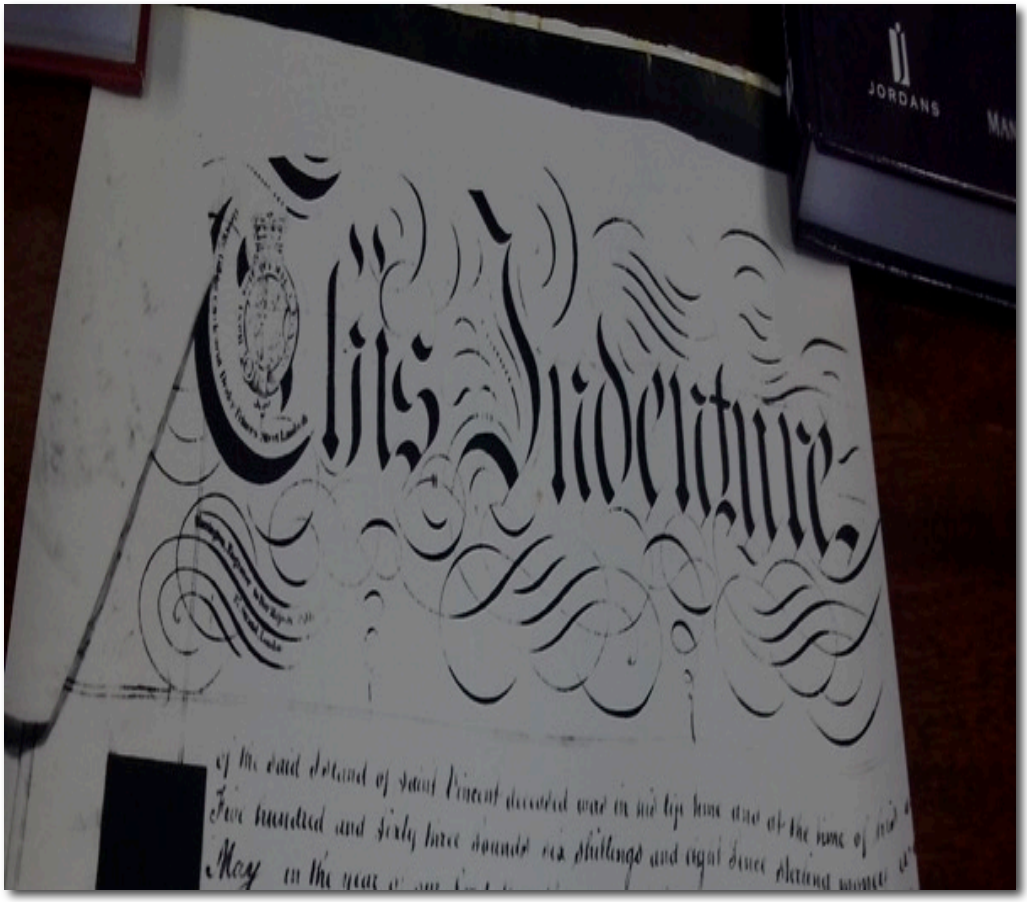
Minutes of the John Hazells Sons and Company Limited 1845 - 1945

Used with permission, CEO Joel Providence 2012 - 2013

APPENDIX 3 (2)

COPY OF THE INDENTURE [SECTION] – REPORTEDLY A LEGAL CONTRACT FOR LOT 35 ON WHICH THE JOHN HAZELL SONS AND COMPANY CONSTRUCTED THE FIRST BUILDING

(An agreement that indicates benefits and obligations to two or more parties. In bankruptcy law, this is a mortage or deed of trust and could constitute a claim against a debtor.)

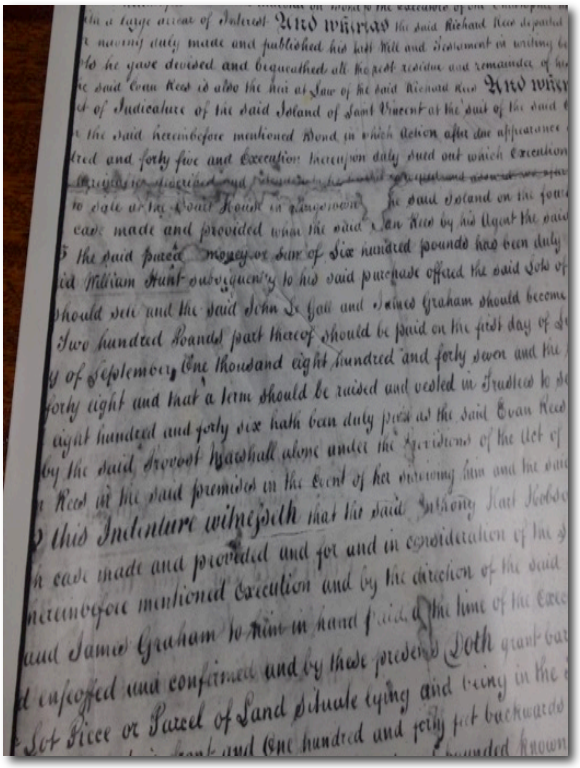


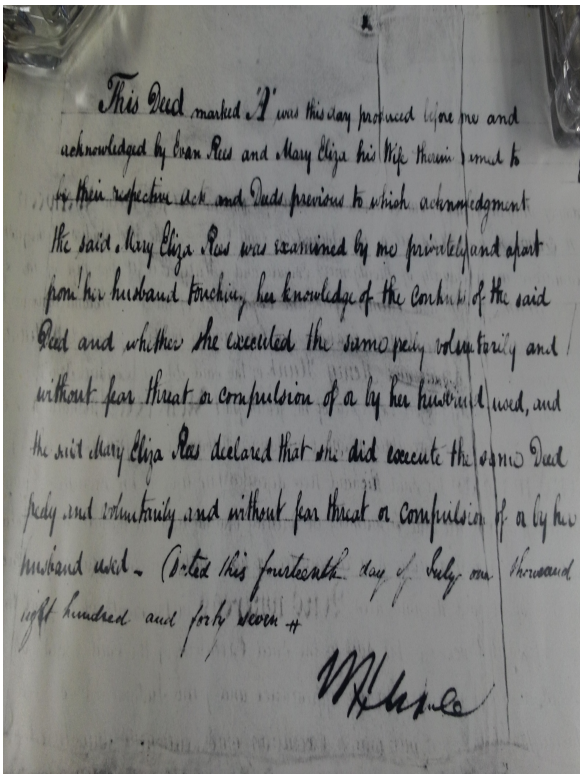
Source: Minutes of the John Hazells Sons and Company Limited 1845 - 1945

Used with permission, CEO Joel Providence – 2012 - 2013

APPENDIX 3 (3)

SECTIONS OF THE INDENTURE INSTRUMENT





This Deed marked "A" was this day produced before me and acknowledged by Evan Rees and Mary Eliza his Wife therein named to be their respective act and Deeds previous to which acknowledgment the said Mary Eliza Rees was examined by me privately and apart from her husband touching her knowledge of the Contents of the said Deed and whether she executed the same freely voluntarily and without fear threat or compulsion of or by her husband and the said Mary Eliza Rees declared that she did execute the same Deed freely and voluntarily and without fear threat or compulsion of or by her husband said. Dated this fourteenth day of July one thousand eight hundred and forty seven.

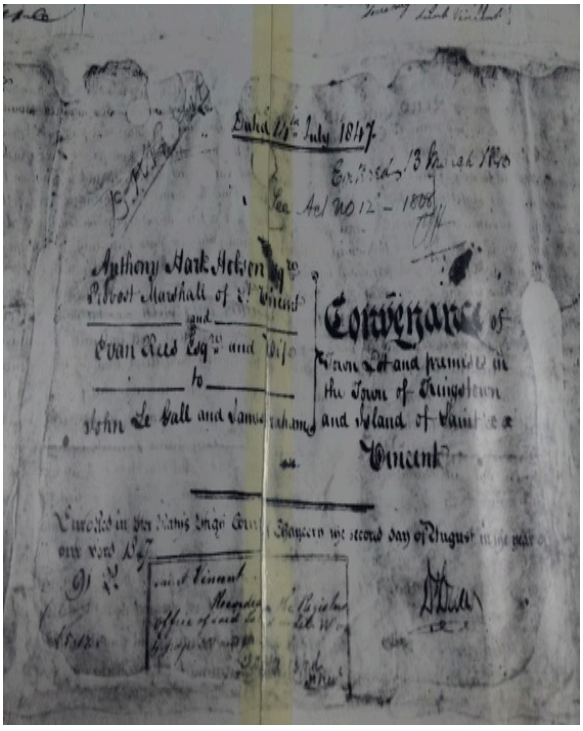
Source

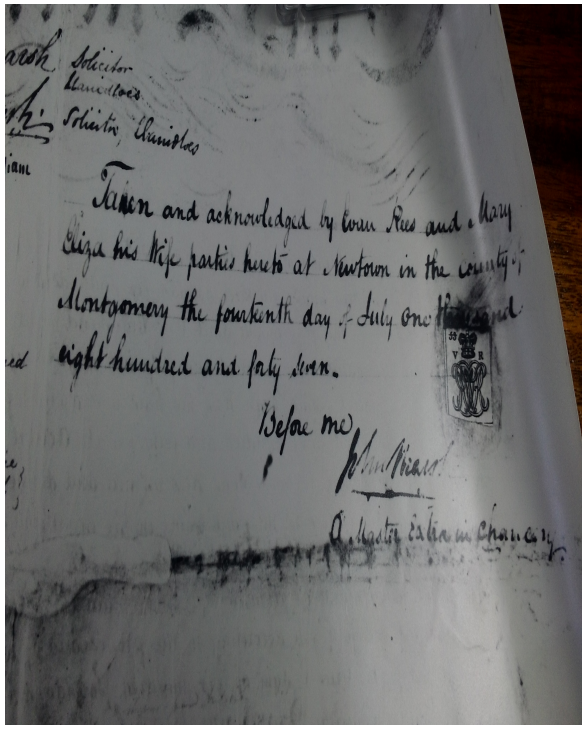
: Coreas Hazells Inc - Accessed with permission on 28 September 2012 in St. Vincent - Through the kind permission of Managing Director - Mr. Joel Providence

APPENDIX 3 (4)

DEED OF CONVEYANCE

NB: A conveyance did occur when the owner of this real estate did transfer ownership in said proprety to another. Reportedly, an action was filed in the Supreme Court in 1845 and it does appear that the owner did transfer more than a portion of the ownership interest. It ws the conveyance of the title of the whole of the real estate that was in writing as it does appear that it involved a sale. This action gave rise to all that property at Lot 35 (current location of one subsidiary of (amalgamated Coreas Hazells Inc -) to be so conveyed as actual conveyance did occur when the holder of legal and equitable title expressed their intent to transfer title to the other person (interested party). Thereafter it was reportedly conveyed to John Hazell Sons and Company Limited (a company limited by shares). The records of the company indicated that it was so established as the First House – First company in the island of St. Vincent and the Grenadines. The Deed of conveyance was reportedly registered in 1847.





Source:

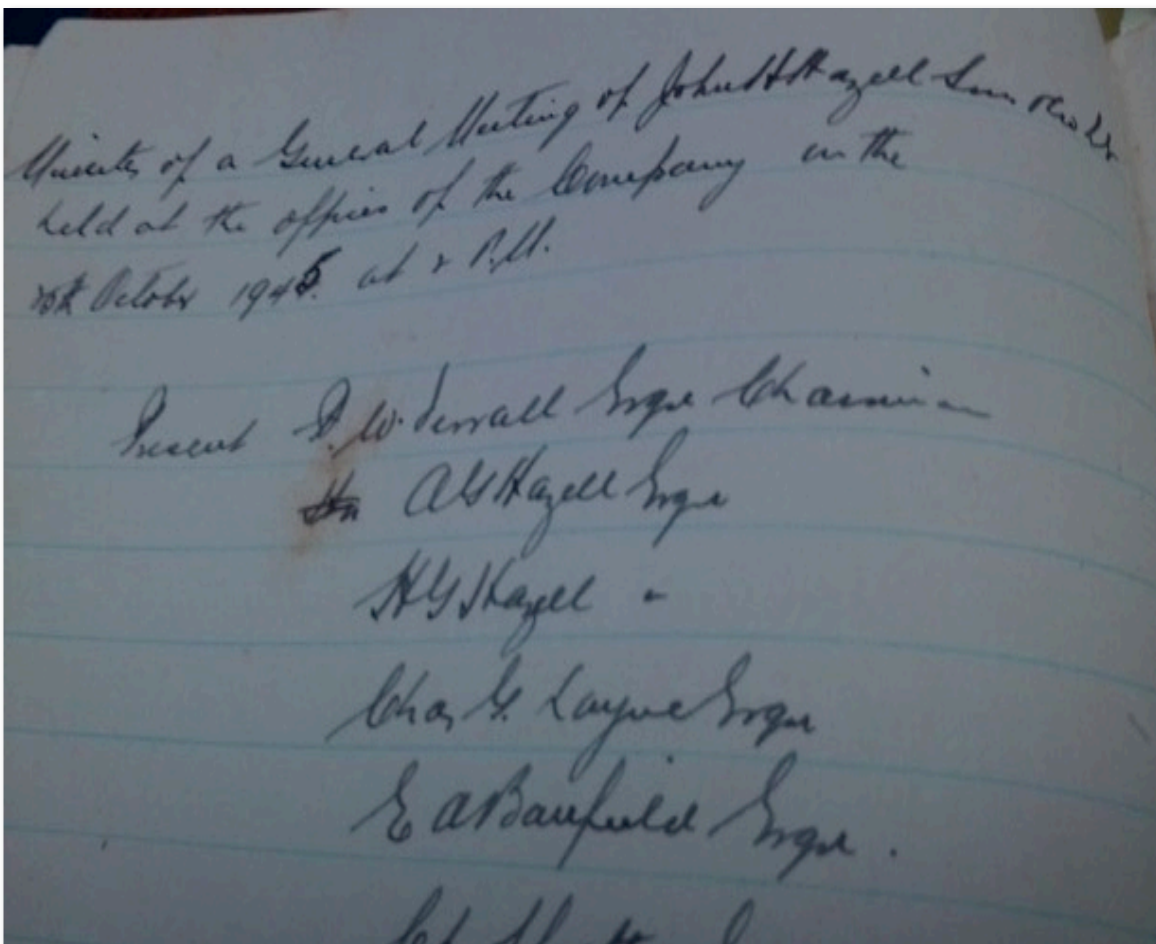
Coreas Hazells Inc - Accessed with permission on 28 September 2012 in SVG - Through the kind permission of Managing Director - Mr. Joel Providence – 2012 - 201

APPENDIX 3 (5)

NAMES OF SOME SHAREHOLDERS WHO ALSO SERVED AS DIRECTORS OF THE JOHN HAZELL SONS AND COMPANY LIMITED

(TWO MEMBERS OF THE HAZELL FAMILY ARE MENTIONED)

(NB : THERE WERE EIGHT SHAREHOLDERS ON RECORD - NAMES OF SOME OF SHAREHOLDERS MAY HAVE CHANGED DUE TO DEATH OR SALE OF SHARES BUT THE NUMBER OF SHAREHOLDERS WERE SUBJECT TO NO UPPER LIMIT ON MAXIMUM BUT NO LESS THAN TWO AS PER PREVAILING UK AND DOMESTIC COMPANY LEGISLATION)



Minutes of a General Meeting of John H Hazell Sons & Co Ld held at the offices of the Company on the 10th October 1945 at 2 P.M.

Present G. W. Terrall Esqre Chairman
Hon A G Hazell Esqre
H G Hazell "
Chas G. Layne Esqre
E A Banfield Esqre.

Used by permission of Coreas Hazells Incorporated
Kingstown, St. Vincent and the Grenadines - accessed 2012 - 2013

APPENDIX 4(1)

TABLE INDICATING TENURE OF DIRECTORS OF CLF (LIMITED LIABILITY HOLDING COMPANY 1993 - 2009)

Names of Directors	September 2008	October 2008	November 2008	December 2008	January 2009	February 2009	March 2009	April 2009	May 2009	June 2009
L. Duprey	Resigned	x	x	x	x	x	X	x	x	X
B Branker	Removed	x	x	x	x	x	X	x	x	X
V Ramlogan	x	x	x	x	Resigned	x	X	x	x	X
R Ramnarine	x	x	x	x	x	x	X	x	Resigned	X
R Fullerton	x	x	x	x	x	x	X	x	x	Resigned
K King	x	x	x	x	x	x	X	Appointed	---------	Resigned
E Hamilton	x	x	x	x	x	x	X	Appointed	---------	Resigned

SEPTEMBER 2008 - JUNE 2009

During the nine months under review from the table above, there were seven directors. One resigned in September 2008 while one was removed in the same month. Four months later, another resigned. Within four months of that resignation another director resigned. One month on and another resigned. During the period of April 2009 to June 2009 two directors were appointed and subsequently resigned within their three - month tenure. The high rate of resignation and or removal indicated among other things that management was quite unstable. This instability certainly put pressure on the conduct of affairs of the company as well as signalled to the shareholders that they were not in control.

Source: Extracted from a number of records/articles/magazines as pre CL Financial Limited - 2012

APPENDIX 4(1A)

NEWSPAPER ARTICLE

TRINIDAD AND TOBAGO NEWS

SPEECH BY MINISTER OF FINANCE, TRINIDAD AND TOBAGO

http://www.trinidadandtobagonews.com/selfnews/viewnews.cgi?newsid1233372133,23367,.shtml - last accessed on 9 April, 2018

Minister of Finance on CLICO's Bailout
Posted: Friday, January 30, 2009

Mr Chairman, Governor, Mr Duprey, members of the media. I would like to make a short statement with respect to this issue. Since the enactment of the Insurance Act over twenty-eight (28) years ago, the Act has remained fundamentally unchanged. Over that period, however, the regulatory authority for insurance companies and pension funds shifted from the Ministry of Finance to the Central Bank, and in keeping with international standards and best practices, the Bank has been updating the regulatory framework governing licensed and registered financial institutions so as to maintain an effective, fair, safe and stable financial sector for the benefit and protection of policyholders.

The insurance industry has adapted to the forces of globalization through continuous financial innovation, a blurring of the boundaries between its various sub-sectors (banks, insurance companies and other institutions) and through the adoption of new structures, including conglomerates and holding companies. Another major change over the past few years has been the cross-border expansion of our financial sector. Currently, locally-owned insurance companies operate throughout the English and Dutch-speaking Caribbean. The present international financial crisis also gives a new urgency to strengthen our regulatory system. While there are many reasons for the crisis, clearly one of them is inadequate risk management systems and lax regulation of financial institutions. We have seen over the past few years Insurance companies in Trinidad and Tobago getting more and more involved in innovative instruments which heightens the importance for having proper risk management policies and ensuring that good governance practices are in place.

In the US, UK, Europe and the Far East countries, Governments have undertaken massive support and intervention programmes into various parts of their financial sectors and increasingly into their productive sectors. The strategies adopted by the world's major governments were agreed to last October and set out clearly by the G20 group. These strategies centered around the intervention in the financial sectors, the strengthening of regulatory oversight over financial operations and the removal of the significant gaps in

regulatory oversight and capacity.

In order to protect the interests of our citizens, The Central Bank and the Government of Trinidad and Tobago have maintained our commitment to maintain the integrity of the financial sector as a whole, and thus protect the interests of each of our citizens and our business community, whether it relates to savings, investments, loans and insurances, or any other kind of financial trust. More specifically, as we have heard previously, in the last fortnight it has become clear that a situation has arisen within the CL Financial Group which requires intervention by the Central Bank and, where necessary, the Government, into the operations of the financial institutions comprising the Group.

The proposed action will be initiated with Clico Investment Bank (CIB) which is the institution over which the Central Bank currently has the greatest leverage under the new Financial Institutions Act. At the same time, the scope of the oversight will be broadened to include CLICO, the insurance entity, and British American Insurance Company. The proposed strategy for these institutions requires the Government to gain a degree of leverage over the operations of the holding company, CL Financial, in order to allow the orderly rationalization of assets and liabilities of the Group. Many of the Group's transactions are interwoven, not only among and between the separate CL subsidiaries, but in almost all cases with the parent holding company. The wide scope of coverage and the sheer size of the Group mean that the Central Bank and the Government are particularly cautious about the potential impact of its financial problems. It is our assessment that the present circumstances may require not only an infusion of liquidity, but substantial additional steps undertaken for the express purpose of protecting the depositors and other liability holders of the Group, especially life insurance clients and pension fund beneficiaries.

The Government supports the intended action of the Central Bank which we believe will permit an orderly restructuring of the institutions and safeguard the interests of our citizens who are depositors, insurance clients and pension fund members. Moreover, the Government and Central Bank have agreed to contract an international firm to assist in the restructuring of the companies along the lines agreed to by the Central Bank. To you, citizens of Trinidad and Tobago, many of whom may have a financial tie of one kind or another, to a greater or lesser degree, with the CL Financial companies, and all of whom are dependent on the financial institutions of our country, this is a time when we must show our mettle. This intervention is timely and thorough, and it is geared to
protect, to the greatest extent possible, the jobs and the hard earned money of our citizens and commercial sector. I will keep you abreast of developments as they happen.

I wish to reiterate this Government's commitment to ensure that depositors' assets will not be at risk. We are going to weather the storm. All of us, and the only way to do it is to take action swiftly and decisively. In this way our financial sector will remain healthy and our people will be able to depend on those systems, which are so integral to our present security and future prosperity.

I Thank You.

Mrs Karen Nunez-Tesheira, Minister of Finance
January 30 2009

APPENDIX 4(1B)

STATEMENT FROM THE OFFICE OF THE ATTORNEY GENERAL ON THE CL FINANCIAL GROUP

www.news.gov.tt/content/statement-office-attorney-general-cl-financial-group#.WseYma2ZPaY - accessed on 19 August, 2015 and 2 April 2018

Attorney General of Trinidad and Tobago

November 28, 2012:

In January 2009 the then Government announced a major intervention into the affairs of the CL Financial Group. The intervention was premised upon the necessity to stem contagion and prevent economic collapse.

For the first time there was a public admission and disclosure that CLICO was in financial difficulty. If CLICO had collapsed, it would have had a severe impact on the local economy and financial shockwaves would have reverberated throughout already fragile regional economies.

Subsequent to this announcement, there appeared on the local press a series of articles, which made startling revelations and allegations and which suggested wanton financial irregularity and impropriety on the part of Directors and Executive Management of CLICO. The financial wheeling and dealing and unashamed transgression of the rudiments of proper corporate

governance that led to the collapse of this financial empire was laid bare in the public domain. Many, particularly our older citizens, and pensioners who had invested with CLICO to provide for the proverbial rainy day and their twilight years saw this financial collapse the spectre of financial ruin. The blatant and callous mismanagement jarred the national conscience and cried out for answers.

It would have been incumbent on the law enforcement authorities to launch an immediate criminal investigation into the allegations of fraud and misconduct, which emerged, if only because certain documentary evidence accompanied the media stories and made the position more evident.
By the time this government assumed office, almost 17 months would have elapsed since the sudden announcement of CLICO's financial distress and the consequential revelations about the cavalier and reckless manner in which it allegedly conducted its business and affairs. The government considered the various options available to it. It could not direct a police investigation because it had no power to do so. In October 2010 the government announced the appointment of a Commission of Inquiry to enquire into the facts and circumstances that led to the collapse of CLICO.

At the time, the government had the benefit of the experience of three high profile Commissions of Inquiry, namely (i) the Uff Commission of Inquiry into the construction sector (December 2008), (ii) the Annistine Sealy Commission into the Scarborough Hospital/Landate affair (2005) and (iii) the Bernard Commission of Inquiry into the construction of the Piarco Airport Terminal (2002).

No concerns were then raised about the potential for compromising criminal investigations from the evidence, which publicly emerged from any of these Commissions. In the last of such Commissions, namely the Uff Commission, no concerns were raised in relation to investigations pertaining to Calder Hart. The Commission was allowed to fully probe Mr. Hart about his role in the massive cost overruns in several mega projects, and as well the allegation that he had improperly awarded lucrative contracts to a company owned by his brother-in-law, whom he claimed he did not know. The police investigations into that matter are still on going and 32 months later remain outstanding. The government has however initiated civil proceedings against Mr. Hart for breach of fiduciary duty and other related issues concerning his conduct while he held office.

It is to be noted that the Piarco Inquiry, which began in August 2002, continued alongside the police investigation into the conduct of a former Prime Minister, certain government ministers and others. No concerns were expressed by the DPP about the potentially adverse impact, which the continuation of such inquiry would have had on the on-going police investigation, which had started in 2000. It should be noted that the Commission of Inquiry (COI) appointed in August 2002, Piarco No. 1 commenced in March 2002 and Piarco No. 2 charges were laid on 17th May 2004. The fact that charges in Piarco no. 2 were laid in May 2004 meant that investigations were taking place while the COI was in progress.

Further, the Sealy Commission of Inquiry into the Landate affair, which probed the conduct of a government minister, resulted in no concerns being expressed by the DPP about the impact this inquiry could have had on any police investigation. That police investigation is continuing.

Police investigations often follow or occur as a result of the findings and recommendations of a Commission of Inquiry. Indeed they sometimes take place simultaneously (as in the case of Piarco Inquiry).

The Commission of Inquiry is an important tool that can supplement and even complement a police investigation as the Commissioner has powers, which the police do not. Whilst the AG is happy with the announcement of a criminal investigation, he is mindful of the wider public interest in having the CLICO fiasco comprehensively examined and fully ventilated. The AG does not share the view that it is necessary for the Inquiry to be stopped at this stage.
The position may have been different had criminal charges been laid and prosecution of someone about to start.

The Sir Anthony Coleman Commission of Inquiry was appointed by the present government in the face of the silence and inaction on the part of law enforcement authorities as evidenced by the recent announcement of the commencement of a belated and long overdue criminal investigation.
The available information in the public domain led to the inescapable conclusion that a criminal investigation was warranted and justified. The lack of urgency displayed was a cause for major concern. The collapse of CLICO has traumatized the nation and caused great distress, frustration and depression to many. The public interest therefore demanded swift action.

The government cannot direct a police investigation. The State has however through the institution of the Central Bank commenced action against Lawrence Duprey and Andre Monteil seeking substantial sums of monies for misapplication and misappropriation of income and assets to the detriment of policyholders and investors. Sir Anthony Coleman is the Deputy Chief Justice in the Commercial Court of Dubai. He is a former Judge of the Commercial Court in the United Kingdom. He is a Queen's Counsel of international repute and recognized as one of the finest minds in the field of commercial law. The on-going Coleman Inquiry is an independent Commission appointed by the President of the Republic. It has reached a critical stage and is about to examine crucial witnesses including Mr. Lawrence Duprey, Andre Monteil and a former Governor of the Central Bank.

Sir Anthony has full and complete responsibility and control over this Inquiry. In the circumstances the Attorney General considers that it would be inappropriate, if not improper to pre-emptively advise the Commission how it should conduct its on-going inquiry. The Commissioner would no doubt address the concerns raised by the DPP and conduct the Inquiry in an appropriate manner. The independence of the Commission dictates that it alone should balance the competing principles of the necessity to protect the integrity of a criminal investigation with that of the continuity of the Inquiry in the public interest.

The failure to initiate a criminal investigation before the appointment of this Commission of Inquiry was appointed is a matter of grave public concern and disappointment. This was the responsibility of the Commissioner of Police and not the DPP.
The AG had raised the failure of the Police to Act in this matter with the former Commissioner of Police Dwayne Gibbs on several occasions to no avail. The AG is grateful for the intervention of the DPP in this matter. He did not need to intervene; he could have

remained in his Constitutional crease and simply await the report from the Police. His expertise is clearly required in this matter. The DPP has a duty to protect the integrity of any Criminal investigation because it could lead to criminal prosecution. The AG respects this. Sir Anthony equally has a duty to fulfil his mandate to inquire into the collapse of CLICO in the public interest.

The AG is confident that the common goal of justice will guide both parties in their deliberations in this matter and hopeful that an amicable resolution can be found. There are many innovative options that are open to both parties to reach a reasonable compromise to ensure that the interests of both are protected and that these two considerations of equal importance are not jeopardized. For at the end of the day the DPP is a critical and indispensable part of the administration of justice which it is the AG's constitutional remit to oversee and each has to faithfully embrace and adhere to their respective roles. They should do so in tandem and in the spirit of service to the country. For its part the Government wishes to reaffirm its commitment to the pursuit of justice in the CLICO fiasco. It therefore remains willing to provide the necessary resources to finance a police investigation into the numerous allegations of fraud and wrongdoing in the CLICO fiasco.

APPENDIX 5(1)

MODEL ARTICLES FOR PRIVATE COMPANIES LIMITED BY SHARES REGISTERED ON OR AFTER 28 APRIL 2013

SCHEDULE 1
Regulation 2
INDEX TO THE ARTICLES
PART 1
INTERPRETATION AND LIMITATION OF LIABILITY

DIRECTORS' INDEMNITY AND INSURANCE

PART 1
INTERPRETATION AND LIMITATION OF LIABILITY

Defined terms

1. In the articles, unless the context requires otherwise—

"articles" means the company's articles of association;

"bankruptcy" includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

"chairman" has the meaning given in article 12;

"chairman of the meeting" has the meaning given in article 39;

"Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 31;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"electronic form" has the meaning given in section 1168 of the Companies Act 2006;

"fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"hard copy form" has the meaning given in section 1168 of the Companies Act 2006;

"holder" in relation to shares means the person whose name is entered in the register of

members as the holder of the shares;

"instrument" means a document in hard copy form;

"ordinary resolution" has the meaning given in section 282 of the Companies Act 2006;

"paid" means paid or credited as paid;

"participate", in relation to a directors' meeting, has the meaning given in article 10;

"proxy notice" has the meaning given in article 45;

"shareholder" means a person who is the holder of a share;

"shares" means shares in the company;

"special resolution" has the meaning given in section 283 of the Companies Act 2006;

"subsidiary" has the meaning given in section 1159 of the Companies Act 2006;

"transmittee" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

Liability of members

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART 2
DIRECTORS
DIRECTORS' POWERS AND RESPONSIBILITIES

Directors' general authority

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Shareholders' reserve power

4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything which the directors have done before the passing of the resolution.

Directors may delegate

5.—(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

(a) to such person or committee;

(b) by such means (including by power of attorney);

(c) to such an extent;

(d) in relation to such matters or territories; and

(e) on such terms and conditions;

as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

Directors to take decisions collectively

7.—(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

(a) the company only has one director, and

(b) no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

8.—(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

Calling a directors' meeting

9.—(1) Any director may call a directors' meeting by giving notice of the meeting to the

directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time;

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

10.—(1) Subject to the articles, directors participate in a directors' meeting, or part of a

directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles, and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

11.—(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the quorum required, the

directors must not take any decision other than a decision—

(a) to appoint further directors, or

(b) to call a general meeting so as to enable the shareholders to appoint further directors.

Chairing of directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Casting vote

13.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Conflicts of interest

14.—(1) If a proposed decision of the directors is concerned with an actual or proposed

transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making

processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Records of decisions to be kept

15. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

16. Subject to the articles, the directors may make any rule which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPOINTMENT OF DIRECTORS

Methods of appointing directors

17.—(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by ordinary resolution, or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances

rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

Termination of director's appointment

18. A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

(b) a bankruptcy order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that

person's debts;

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) [paragraph omitted pursuant to The Mental Health (Discrimination) Act 2013]

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

19.—(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors, and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form, and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

20. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors,

(b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

PART 3
SHARES AND DISTRIBUTIONS
SHARES

All shares to be fully paid up

21.—(1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

Powers to issue different classes of share

22.—(1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Company not bound by less than absolute interests

23. Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share certificates

24.—(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

(a) in respect of how many shares, of what class, it is issued;

(b) the nominal value of those shares;

(c) that the shares are fully paid; and

(d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

(a) have affixed to them the company's common seal, or

(b) be otherwise executed in accordance with the Companies Acts

Replacement share certificates

25.—(1) If a certificate issued in respect of a shareholder's shares is—

(a) damaged or defaced, or

(b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates;

(b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and

(c) must comply with such conditions as to evidence, indemnity and the payment of a

reasonable fee as the directors decide.

Share transfers

26.—(1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of ref""usa""l unless they suspect that the proposed transfer may be fraudulent.

Transmission of shares

27.—(1) If title to a share passes to a transmittee, the company may only recognise the

transmittee as having any title to that share.

(2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and

(b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transmittees' rights

28.—(1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article is to be treated as if it were made or

executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

29. If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

Procedure for declaring dividends

30.—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they do not incur any liability to the holders of shares

conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Payment of dividends and other distributions

31.—(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or

otherwise by operation of law, the transmittee.

No interest on distribution

32. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued, or

(b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

33.—(1) All dividends or other sums which are—

(a) payable in respect of shares, and

(b) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment, and

(b) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

Non-cash distributions

34.—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(2) For the purposes of paying a non-cash distribution, the directors may make whatever

arrangements they think fit, including, where any difficulty arises regarding the distribution—

(a) fixing the value of any assets;

(b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

(c) vesting any assets in trustees.

Waiver of distributions

35. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(a) the share has more than one holder, or

(b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

CAPITALISATION OF PROFITS

Authority to capitalise and appropriation of capitalised sums

36.—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

(a) on behalf of the persons entitled, and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

(a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART 4
DECISION-MAKING BY SHAREHOLDERS
ORGANISATION OF GENERAL MEETINGS

Attendance and speaking at general meetings

37.—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such

resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for general meetings

38. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings

39.—(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

Attendance and speaking by directors and non-shareholders

40.—(1) Directors may attend and speak at general meetings, whether or not they are

shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

41.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment, or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given, and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

Voting: general

42. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

43.—(1) No objection may be raised to the qualification of any person voting at a general

meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

Poll votes

44.—(1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote, or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(a) the chairman of the meeting;

(b) the directors;

(c) two or more persons having the right to vote on the resolution; or

(d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(a) the poll has not yet been taken, and

(b) the chairman of the meeting consents to the withdrawal.

(4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

45.—(1) Proxies may only validly be appointed by a notice in writing (a "proxy notice")

which—

(a) states the name and address of the shareholder appointing the proxy;

(b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

(c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may

specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

46.—(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

47.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

PART 5
ADMINISTRATIVE ARRANGEMENTS

Means of communication to be used

48.—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in

connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Company seals

49.—(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is

affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

50. Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

51. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

Indemnity

52.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

(b) a "relevant director" means any director or former director of the company or an associated company.

Insurance

53.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a "relevant director" means any director or former director of the company or an associated company,

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, and

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate.

APPENDIX 5(2)

MODEL ARTICLES FOR PRIVATE COMPANIES LIMITED BY SHARES REGISTERED PRIOR TO APRIL 2013

SCHEDULE 1 Regulation 2

INDEX TO THE ARTICLES

PART 1

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PART 1
INTERPRETATION AND LIMITATION OF LIABILITY

Defined terms

1. In the articles, unless the context requires otherwise—

"articles" means the company's articles of association;

"bankruptcy" includes individual insolvency proceedings in a jurisdiction other than England and Wales or Northern Ireland which have an effect similar to that of bankruptcy;

"chairman" has the meaning given in article 12;

"chairman of the meeting" has the meaning given in article 39;

"Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006), in so far as they apply to the company;

"director" means a director of the company, and includes any person occupying the position of director, by whatever name called;

"distribution recipient" has the meaning given in article 31;

"document" includes, unless otherwise specified, any document sent or supplied in electronic form;

"electronic form" has the meaning given in section 1168 of the Companies Act 2006;

"fully paid" in relation to a share, means that the nominal value and any premium to be paid to the company in respect of that share have been paid to the company;

"hard copy form" has the meaning given in section 1168 of the Companies Act 2006;

"holder" in relation to shares means the person whose name is entered in the register of

members as the holder of the shares;

"instrument" means a document in hard copy form;

"ordinary resolution" has the meaning given in section 282 of the Companies Act 2006;

"paid" means paid or credited as paid;

"participate", in relation to a directors' meeting, has the meaning given in article 10;

"proxy notice" has the meaning given in article 45;

"shareholder" means a person who is the holder of a share;

"shares" means shares in the company;

"special resolution" has the meaning given in section 283 of the Companies Act 2006;

"subsidiary" has the meaning given in section 1159 of the Companies Act 2006;

"transmittee" means a person entitled to a share by reason of the death or bankruptcy of a shareholder or otherwise by operation of law; and

"writing" means the representation or reproduction of words, symbols or other information in a visible form by any method or combination of methods, whether sent or supplied in electronic form or otherwise.

Unless the context otherwise requires, other words or expressions contained in these articles bear the same meaning as in the Companies Act 2006 as in force on the date when these articles become binding on the company.

Liability of members

2. The liability of the members is limited to the amount, if any, unpaid on the shares held by them.

PART 2
DIRECTORS
DIRECTORS' POWERS AND RESPONSIBILITIES

Directors' general authority

3. Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.

Shareholders' reserve power

4.—(1) The shareholders may, by special resolution, direct the directors to take, or refrain from taking, specified action.

(2) No such special resolution invalidates anything , which the directors have done before the passing of the resolution

Directors may delegate

5.—(1) Subject to the articles, the directors may delegate any of the powers which are conferred on them under the articles—

(a) to such person or committee;

(b) by such means (including by power of attorney);

(c) to such an extent;

(d) in relation to such matters or territories; and

(e) on such terms and conditions;

as they think fit.

(2) If the directors so specify, any such delegation may authorise further delegation of the

directors' powers by any person to whom they are delegated.

(3) The directors may revoke any delegation in whole or part, or alter its terms and conditions.

Committees

6.—(1) Committees to which the directors delegate any of their powers must follow procedures which are based as far as they are applicable on those provisions of the articles which govern the taking of decisions by directors.

(2) The directors may make rules of procedure for all or any committees, which prevail over rules derived from the articles if they are not consistent with them.

DECISION-MAKING BY DIRECTORS

Directors to take decisions collectively

7.—(1) The general rule about decision-making by directors is that any decision of the directors must be either a majority decision at a meeting or a decision taken in accordance with article 8.

(2) If—

(a) the company only has one director, and

(b) no provision of the articles requires it to have more than one director,

the general rule does not apply, and the director may take decisions without regard to any of the provisions of the articles relating to directors' decision-making.

Unanimous decisions

8.—(1) A decision of the directors is taken in accordance with this article when all eligible directors indicate to each other by any means that they share a common view on a matter.

(2) Such a decision may take the form of a resolution in writing, copies of which have been signed by each eligible director or to which each eligible director has otherwise indicated agreement in writing.

(3) References in this article to eligible directors are to directors who would have been entitled to vote on the matter had it been proposed as a resolution at a directors' meeting.

(4) A decision may not be taken in accordance with this article if the eligible directors would not have formed a quorum at such a meeting.

Calling a directors' meeting

9.—(1) Any director may call a directors' meeting by giving notice of the meeting to the

directors or by authorising the company secretary (if any) to give such notice.

(2) Notice of any directors' meeting must indicate—

(a) its proposed date and time;

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors' meeting must be given to each director, but need not be in writing.

(4) Notice of a directors' meeting need not be given to directors who waive their entitlement to notice of that meeting, by giving notice to that effect to the company not more than 7 days after the date on which the meeting is held. Where such notice is given after the meeting has been held, that does not affect the validity of the meeting, or of any business conducted at it.

Participation in directors' meetings

10.—(1) Subject to the articles, directors participate in a directors' meeting, or part of a

directors' meeting, when—

(a) the meeting has been called and takes place in accordance with the articles, and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors' meeting, it is irrelevant where any director is or how they communicate with each other.

(3) If all the directors participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

Quorum for directors' meetings

11.—(1) At a directors' meeting, unless a quorum is participating, no proposal is to be voted on, except a proposal to call another meeting.

(2) The quorum for directors' meetings may be fixed from time to time by a decision of the directors, but it must never be less than two, and unless otherwise fixed it is two.

(3) If the total number of directors for the time being is less than the quorum required, the

directors must not take any decision other than a decision—

(a) to appoint further directors, or

(b) to call a general meeting so as to enable the shareholders to appoint further directors.

Chairing of directors' meetings

12.—(1) The directors may appoint a director to chair their meetings.

(2) The person so appointed for the time being is known as the chairman.

(3) The directors may terminate the chairman's appointment at any time.

(4) If the chairman is not participating in a directors' meeting within ten minutes of the time at which it was to start, the participating directors must appoint one of themselves to chair it.

Casting vote

13.—(1) If the numbers of votes for and against a proposal are equal, the chairman or other director chairing the meeting has a casting vote.

(2) But this does not apply if, in accordance with the articles, the chairman or other director is not to be counted as participating in the decision-making process for quorum or voting purposes.

Conflicts of interest

14.—(1) If a proposed decision of the directors is concerned with an actual or proposed

transaction or arrangement with the company in which a director is interested, that director is not to be counted as participating in the decision-making process for quorum or voting purposes.

(2) But if paragraph (3) applies, a director who is interested in an actual or proposed transaction or arrangement with the company is to be counted as participating in the decision-making process for quorum and voting purposes.

(3) This paragraph applies when—

(a) the company by ordinary resolution disapplies the provision of the articles which would otherwise prevent a director from being counted as participating in the decision-making process;

(b) the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(c) the director's conflict of interest arises from a permitted cause.

(4) For the purposes of this article, the following are permitted causes—

(a) a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the company or any of its subsidiaries;

(b) subscription, or an agreement to subscribe, for shares or other securities of the company or any of its subsidiaries, or to underwrite, sub-underwrite, or guarantee subscription for any such shares or securities; and

(c) arrangements pursuant to which benefits are made available to employees and directors or former employees and directors of the company or any of its subsidiaries which do not provide special benefits for directors or former directors.

(5) For the purposes of this article, references to proposed decisions and decision-making

processes include any directors' meeting or part of a directors' meeting.

(6) Subject to paragraph (7), if a question arises at a meeting of directors or of a committee of directors as to the right of a director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the chairman whose ruling in relation to any director other than the chairman is to be final and conclusive.

(7) If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the chairman, the question is to be decided by a decision of the directors at that meeting, for which purpose the chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

Records of decisions to be kept

15. The directors must ensure that the company keeps a record, in writing, for at least 10 years from the date of the decision recorded, of every unanimous or majority decision taken by the directors.

Directors' discretion to make further rules

16. Subject to the articles, the directors may make any rule, which they think fit about how they take decisions, and about how such rules are to be recorded or communicated to directors.

APPOINTMENT OF DIRECTOR

Methods of appointing directors

17.—(1) Any person who is willing to act as a director, and is permitted by law to do so, may be appointed to be a director—

(a) by ordinary resolution, or

(b) by a decision of the directors.

(2) In any case where, as a result of death, the company has no shareholders and no directors, the personal representatives of the last shareholder to have died have the right, by notice in writing, to appoint a person to be a director.

(3) For the purposes of paragraph (2), where 2 or more shareholders die in circumstances

rendering it uncertain who was the last to die, a younger shareholder is deemed to have survived an older shareholder.

Termination of director's appointment

18. A person ceases to be a director as soon as—

(a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;

(b) a bankruptcy order is made against that person;

(c) a composition is made with that person's creditors generally in satisfaction of that

person's debts;

(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;

(e) by reason of that person's mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

(f) notification is received by the company from the director that the director is resigning from office, and such resignation has taken effect in accordance with its terms.

Directors' remuneration

19.—(1) Directors may undertake any services for the company that the directors decide.

(2) Directors are entitled to such remuneration as the directors determine—

(a) for their services to the company as directors, and

(b) for any other service which they undertake for the company.

(3) Subject to the articles, a director's remuneration may—

(a) take any form, and

(b) include any arrangements in connection with the payment of a pension, allowance or gratuity, or any death, sickness or disability benefits, to or in respect of that director.

(4) Unless the directors decide otherwise, directors' remuneration accrues from day to day.

(5) Unless the directors decide otherwise, directors are not accountable to the company for any remuneration which they receive as directors or other officers or employees of the company's subsidiaries or of any other body corporate in which the company is interested.

Directors' expenses

20. The company may pay any reasonable expenses which the directors properly incur in connection with their attendance at—

(a) meetings of directors or committees of directors,

(b) general meetings, or

(c) separate meetings of the holders of any class of shares or of debentures of the company, or otherwise in connection with the exercise of their powers and the discharge of their responsibilities in relation to the company.

PART 3
SHARES AND DISTRIBUTIONS
SHARES

All shares to be fully paid up

21.—(1) No share is to be issued for less than the aggregate of its nominal value and any premium to be paid to the company in consideration for its issue.

(2) This does not apply to shares taken on the formation of the company by the subscribers to the company's memorandum.

Powers to issue different classes of share

22.—(1) Subject to the articles, but without prejudice to the rights attached to any existing share, the company may issue shares with such rights or restrictions as may be determined by ordinary resolution.

(2) The company may issue shares which are to be redeemed, or are liable to be redeemed at the option of the company or the holder, and the directors may determine the terms, conditions and manner of redemption of any such shares.

Company not bound by less than absolute interests

23. Except as required by law, no person is to be recognised by the company as holding any share upon any trust, and except as otherwise required by law or the articles, the company is not in any way to be bound by or recognise any interest in a share other than the holder's absolute ownership of it and all the rights attaching to it.

Share certificates

24.—(1) The company must issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds.

(2) Every certificate must specify—

(a) in respect of how many shares, of what class, it is issued;

(b) the nominal value of those shares;

(c) that the shares are fully paid; and

(d) any distinguishing numbers assigned to them.

(3) No certificate may be issued in respect of shares of more than one class.

(4) If more than one person holds a share, only one certificate may be issued in respect of it.

(5) Certificates must—

(a) have affixed to them the company's common seal, or

(b) be otherwise executed in accordance with the Companies Acts.

Replacement share certificates

25.—(1) If a certificate issued in respect of a shareholder's shares is—

(a) damaged or defaced, or

(b) said to be lost, stolen or destroyed, that shareholder is entitled to be issued with a replacement certificate in respect of the same shares.

(2) A shareholder exercising the right to be issued with such a replacement certificate—

(a) may at the same time exercise the right to be issued with a single certificate or separate certificates;

(b) must return the certificate which is to be replaced to the company if it is damaged or defaced; and

(c) must comply with such conditions as to evidence, indemnity and the payment of a

reasonable fee as the directors decide.

Share transfers

26.—(1) Shares may be transferred by means of an instrument of transfer in any usual form or any other form approved by the directors, which is executed by or on behalf of the transferor.

(2) No fee may be charged for registering any instrument of transfer or other document relating to or affecting the title to any share.

(3) The company may retain any instrument of transfer which is registered.

(4) The transferor remains the holder of a share until the transferee's name is entered in the register of members as holder of it.

(5) The directors may refuse to register the transfer of a share, and if they do so, the instrument of transfer must be returned to the transferee with the notice of ref""usa""l unless they suspect that the proposed transfer may be fraudulent.

Transmission of shares

27.—(1) If title to a share passes to a transmittee, the company may only recognise the

transmittee as having any title to that share.

(2) A transmittee who produces such evidence of entitlement to shares as the directors may properly require—

(a) may, subject to the articles, choose either to become the holder of those shares or to have them transferred to another person, and

(b) subject to the articles, and pending any transfer of the shares to another person, has the same rights as the holder had.

(3) But transmittees do not have the right to attend or vote at a general meeting, or agree to a proposed written resolution, in respect of shares to which they are entitled, by reason of the holder's death or bankruptcy or otherwise, unless they become the holders of those shares.

Exercise of transmittees' rights

28.—(1) Transmittees who wish to become the holders of shares to which they have become entitled must notify the company in writing of that wish.

(2) If the transmittee wishes to have a share transferred to another person, the transmittee must execute an instrument of transfer in respect of it.

(3) Any transfer made or executed under this article is to be treated as if it were made or

executed by the person from whom the transmittee has derived rights in respect of the share, and as if the event which gave rise to the transmission had not occurred.

Transmittees bound by prior notices

29. If a notice is given to a shareholder in respect of shares and a transmittee is entitled to those shares, the transmittee is bound by the notice if it was given to the shareholder before the transmittee's name has been entered in the register of members.

DIVIDENDS AND OTHER DISTRIBUTIONS

Procedure for declaring dividends

30.—(1) The company may by ordinary resolution declare dividends, and the directors may decide to pay interim dividends.

(2) A dividend must not be declared unless the directors have made a recommendation as to its amount. Such a dividend must not exceed the amount recommended by the directors.

(3) No dividend may be declared or paid unless it is in accordance with shareholders' respective rights.

(4) Unless the shareholders' resolution to declare or directors' decision to pay a dividend, or the terms on which shares are issued, specify otherwise, it must be paid by reference to each shareholder's holding of shares on the date of the resolution or decision to declare or pay it.

(5) If the company's share capital is divided into different classes, no interim dividend may be paid on shares carrying deferred or non-preferred rights if, at the time of payment, any preferential dividend is in arrear.

(6) The directors may pay at intervals any dividend payable at a fixed rate if it appears to them that the profits available for distribution justify the payment.

(7) If the directors act in good faith, they do not incur any liability to the holders of shares

conferring preferred rights for any loss they may suffer by the lawful payment of an interim dividend on shares with deferred or non-preferred rights.

Payment of dividends and other distributions

31.—(1) Where a dividend or other sum which is a distribution is payable in respect of a share, it must be paid by one or more of the following means—

(a) transfer to a bank or building society account specified by the distribution recipient either in writing or as the directors may otherwise decide;

(b) sending a cheque made payable to the distribution recipient by post to the distribution recipient at the distribution recipient's registered address (if the distribution recipient is a holder of the share), or (in any other case) to an address specified by the distribution recipient either in writing or as the directors may otherwise decide;

(c) sending a cheque made payable to such person by post to such person at such address as the distribution recipient has specified either in writing or as the directors may otherwise decide; or

(d) any other means of payment as the directors agree with the distribution recipient either in writing or by such other means as the directors decide.

(2) In the articles, "the distribution recipient" means, in respect of a share in respect of which a dividend or other sum is payable—

(a) the holder of the share; or

(b) if the share has two or more joint holders, whichever of them is named first in the register of members; or

(c) if the holder is no longer entitled to the share by reason of death or bankruptcy, or

otherwise by operation of law, the transmittee.

No interest on distributions

32. The company may not pay interest on any dividend or other sum payable in respect of a share unless otherwise provided by—

(a) the terms on which the share was issued, or

(b) the provisions of another agreement between the holder of that share and the company.

Unclaimed distributions

33.—(1) All dividends or other sums which are—

(a) payable in respect of shares, and

(b) unclaimed after having been declared or become payable,

may be invested or otherwise made use of by the directors for the benefit of the company until claimed.

(2) The payment of any such dividend or other sum into a separate account does not make the company a trustee in respect of it.

(3) If—

(a) twelve years have passed from the date on which a dividend or other sum became due for payment, and

(b) the distribution recipient has not claimed it,

the distribution recipient is no longer entitled to that dividend or other sum and it ceases to remain owing by the company.

Non-cash distributions

34.—(1) Subject to the terms of issue of the share in question, the company may, by ordinary resolution on the recommendation of the directors, decide to pay all or part of a dividend or other distribution payable in respect of a share by transferring non-cash assets of equivalent value (including, without limitation, shares or other securities in any company).

(2) For the purposes of paying a non-cash distribution, the directors may make whatever arrangements they think fit, including, where any difficulty arises regarding the distribution—

(a) fixing the value of any assets;

(b) paying cash to any distribution recipient on the basis of that value in order to adjust the rights of recipients; and

(c) vesting any assets in trustees.

Waiver of distributions

35. Distribution recipients may waive their entitlement to a dividend or other distribution payable in respect of a share by giving the company notice in writing to that effect, but if—

(a) the share has more than one holder, or

(b) more than one person is entitled to the share, whether by reason of the death or bankruptcy of one or more joint holders, or otherwise,

the notice is not effective unless it is expressed to be given, and signed, by all the holders or persons otherwise entitled to the share.

CAPITALISATION OF PROFITS

Authority to capitalise and appropriation of capitalised sums

36.—(1) Subject to the articles, the directors may, if they are so authorised by an ordinary resolution—

(a) decide to capitalise any profits of the company (whether or not they are available for distribution) which are not required for paying a preferential dividend, or any sum standing to the credit of the company's share premium account or capital redemption reserve; and

(b) appropriate any sum which they so decide to capitalise (a "capitalised sum") to the persons who would have been entitled to it if it were distributed by way of dividend (the "persons entitled") and in the same proportions.

(2) Capitalised sums must be applied—

(a) on behalf of the persons entitled, and

(b) in the same proportions as a dividend would have been distributed to them.

(3) Any capitalised sum may be applied in paying up new shares of a nominal amount equal to the capitalised sum which are then allotted credited as fully paid to the persons entitled or as they may direct.

(4) A capitalised sum which was appropriated from profits available for distribution may be applied in paying up new debentures of the company which are then allotted credited as fully paid to the persons entitled or as they may direct.

(5) Subject to the articles the directors may—

(a) apply capitalised sums in accordance with paragraphs (3) and (4) partly in one way and partly in another;

(b) make such arrangements as they think fit to deal with shares or debentures becoming distributable in fractions under this article (including the issuing of fractional certificates or the making of cash payments); and

(c) authorise any person to enter into an agreement with the company on behalf of all the persons entitled which is binding on them in respect of the allotment of shares and debentures to them under this article.

PART 4
DECISION-MAKING BY SHAREHOLDERS
ORGANISATION OF GENERAL MEETINGS

Attendance and speaking at general meetings

37.—(1) A person is able to exercise the right to speak at a general meeting when that person is in a position to communicate to all those attending the meeting, during the meeting, any information or opinions which that person has on the business of the meeting.

(2) A person is able to exercise the right to vote at a general meeting when—

(a) that person is able to vote, during the meeting, on resolutions put to the vote at the meeting, and

(b) that person's vote can be taken into account in determining whether or not such

resolutions are passed at the same time as the votes of all the other persons attending the meeting.

(3) The directors may make whatever arrangements they consider appropriate to enable those attending a general meeting to exercise their rights to speak or vote at it.

(4) In determining attendance at a general meeting, it is immaterial whether any two or more members attending it are in the same place as each other.

(5) Two or more persons who are not in the same place as each other attend a general meeting if their circumstances are such that if they have (or were to have) rights to speak and vote at that meeting, they are (or would be) able to exercise them.

Quorum for general meetings

38. No business other than the appointment of the chairman of the meeting is to be transacted at a general meeting if the persons attending it do not constitute a quorum.

Chairing general meetings

39.—(1) If the directors have appointed a chairman, the chairman shall chair general meetings if present and willing to do so.

(2) If the directors have not appointed a chairman, or if the chairman is unwilling to chair the meeting or is not present within ten minutes of the time at which a meeting was due to start—

(a) the directors present, or

(b) (if no directors are present), the meeting,

must appoint a director or shareholder to chair the meeting, and the appointment of the chairman of the meeting must be the first business of the meeting.

(3) The person chairing a meeting in accordance with this article is referred to as "the chairman of the meeting".

Attendance and speaking by directors and non-shareholders

40.—(1) Directors may attend and speak at general meetings, whether or not they are

shareholders.

(2) The chairman of the meeting may permit other persons who are not—

(a) shareholders of the company, or

(b) otherwise entitled to exercise the rights of shareholders in relation to general meetings,

to attend and speak at a general meeting.

Adjournment

41.—(1) If the persons attending a general meeting within half an hour of the time at which the meeting was due to start do not constitute a quorum, or if during a meeting a quorum ceases to be present, the chairman of the meeting must adjourn it.

(2) The chairman of the meeting may adjourn a general meeting at which a quorum is present if—

(a) the meeting consents to an adjournment, or

(b) it appears to the chairman of the meeting that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the business of the meeting is conducted in an orderly manner.

(3) The chairman of the meeting must adjourn a general meeting if directed to do so by the meeting.

(4) When adjourning a general meeting, the chairman of the meeting must—

(a) either specify the time and place to which it is adjourned or state that it is to continue at a time and place to be fixed by the directors, and

(b) have regard to any directions as to the time and place of any adjournment which have been given by the meeting.

(5) If the continuation of an adjourned meeting is to take place more than 14 days after it was adjourned, the company must give at least 7 clear days' notice of it (that is, excluding the day of the adjourned meeting and the day on which the notice is given)—

(a) to the same persons to whom notice of the company's general meetings is required to be given, and

(b) containing the same information which such notice is required to contain.

(6) No business may be transacted at an adjourned general meeting which could not properly have been transacted at the meeting if the adjournment had not taken place.

VOTING AT GENERAL MEETINGS

Voting: general

42. A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is duly demanded in accordance with the articles.

Errors and disputes

43.—(1) No objection may be raised to the qualification of any person voting at a general

meeting except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting is valid.

(2) Any such objection must be referred to the chairman of the meeting, whose decision is final.

Poll votes

44.—(1) A poll on a resolution may be demanded—

(a) in advance of the general meeting where it is to be put to the vote, or

(b) at a general meeting, either before a show of hands on that resolution or immediately after the result of a show of hands on that resolution is declared.

(2) A poll may be demanded by—

(a) the chairman of the meeting;

(b) the directors;

(c) two or more persons having the right to vote on the resolution; or

(d) a person or persons representing not less than one tenth of the total voting rights of all the shareholders having the right to vote on the resolution.

(3) A demand for a poll may be withdrawn if—

(a) the poll has not yet been taken, and

(b) the chairman of the meeting consents to the withdrawal.

(4) Polls must be taken immediately and in such manner as the chairman of the meeting directs.

Content of proxy notices

45.—(1) Proxies may only validly be appointed by a notice in writing (a "proxy notice")

which—

(a) states the name and address of the shareholder appointing the proxy;

(b) identifies the person appointed to be that shareholder's proxy and the general meeting in relation to which that person is appointed;

(c) is signed by or on behalf of the shareholder appointing the proxy, or is authenticated in such manner as the directors may determine; and

(d) is delivered to the company in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate.

(2) The company may require proxy notices to be delivered in a particular form, and may

specify different forms for different purposes.

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions.

(4) Unless a proxy notice indicates otherwise, it must be treated as—

(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself.

Delivery of proxy notices

46.—(1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the company by or on behalf of that person.

(2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given.

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates.

(4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf.

Amendments to resolutions

47.—(1) An ordinary resolution to be proposed at a general meeting may be amended by ordinary resolution if—

(a) notice of the proposed amendment is given to the company in writing by a person entitled to vote at the general meeting at which it is to be proposed not less than 48 hours before the meeting is to take place (or such later time as the chairman of the meeting may determine), and

(b) the proposed amendment does not, in the reasonable opinion of the chairman of the meeting, materially alter the scope of the resolution.

(2) A special resolution to be proposed at a general meeting may be amended by ordinary resolution, if—

(a) the chairman of the meeting proposes the amendment at the general meeting at which the resolution is to be proposed, and

(b) the amendment does not go beyond what is necessary to correct a grammatical or other non-substantive error in the resolution.

(3) If the chairman of the meeting, acting in good faith, wrongly decides that an amendment to a resolution is out of order, the chairman's error does not invalidate the vote on that resolution.

PART 5
ADMINISTRATIVE ARRANGEMENTS

Means of communication to be used

48.—(1) Subject to the articles, anything sent or supplied by or to the company under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the company.

(2) Subject to the articles, any notice or document to be sent or supplied to a director in

connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being.

(3) A director may agree with the company that notices or documents sent to that director in a particular way are to be deemed to have been received within a specified time of their being sent, and for the specified time to be less than 48 hours.

Company seals

49.—(1) Any common seal may only be used by the authority of the directors.

(2) The directors may decide by what means and in what form any common seal is to be used.

(3) Unless otherwise decided by the directors, if the company has a common seal and it is

affixed to a document, the document must also be signed by at least one authorised person in the presence of a witness who attests the signature.

(4) For the purposes of this article, an authorised person is—

(a) any director of the company;

(b) the company secretary (if any); or

(c) any person authorised by the directors for the purpose of signing documents to which the common seal is applied.

No right to inspect accounts and other records

50. Except as provided by law or authorised by the directors or an ordinary resolution of the company, no person is entitled to inspect any of the company's accounting or other records or documents merely by virtue of being a shareholder.

Provision for employees on cessation of business

51. The directors may decide to make provision for the benefit of persons employed or formerly employed by the company or any of its subsidiaries (other than a director or former director or shadow director) in connection with the cessation or transfer to any person of the whole or part of the undertaking of the company or that subsidiary.

DIRECTORS' INDEMNITY AND INSURANCE

Indemnity

52.—(1) Subject to paragraph (2), a relevant director of the company or an associated company may be indemnified out of the company's assets against—

(a) any liability incurred by that director in connection with any negligence, default, breach of duty or breach of trust in relation to the company or an associated company,

(b) any liability incurred by that director in connection with the activities of the company or an associated company in its capacity as a trustee of an occupational pension scheme (as defined in section 235(6) of the Companies Act 2006),

(c) any other liability incurred by that director as an officer of the company or an associated company.

(2) This article does not authorise any indemnity which would be prohibited or rendered void by any provision of the Companies Acts or by any other provision of law.

(3) In this article—

(a) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate, and

(b) a "relevant director" means any director or former director of the company or an associated company.

Insurance

53.—(1) The directors may decide to purchase and maintain insurance, at the expense of the company, for the benefit of any relevant director in respect of any relevant loss.

(2) In this article—

(a) a "relevant director" means any director or former director of the company or an associated company,

(b) a "relevant loss" means any loss or liability which has been or may be incurred by a relevant director in connection with that director's duties or powers in relation to the company, any associated company or any pension fund or employees' share scheme of the company or associated company, and

(c) companies are associated if one is a subsidiary of the other or both are subsidiaries of the same body corporate

APPENDIX 5(3)

HISTORIC MODEL/OLD TABLE A

MODEL ARTICLES/DEFAULT FORM OF ARTICLES OF ASSOCIATION FOR COMPANIES THAT ARE LIMITED BY SHARES – FOR DIRECTION AND CONTROL OF THE COMPANY

OLD NAME [TABLE B]TABLE A AS PER MODEL ARTICLES

Effective Dates in the UK	Effective Dates in SVG	Regulations of the UK Companies Acts	Provisions in the SVG Acts	Observations
14 July 1856	Corresponding date to the UK by virtue of island being a colony of the UK	Joint Stock Companies Act 1856 Table B	As per UK Companies Acts	"Table A"? Table A is simply the name given to the prescribed format for Articles of Association of a company limited by shares under the Companies Act 1985 and earlier legislation. The Articles set out the regulations by which the company will be managed. The first prescribed format of Articles was made in "The Joint Stock Companies Act, 1856". In this Act, the Articles were called "Table B" (simply because they were preceded by a form of Memorandum of Association called "Form A"). At the next prescription, which happened in 1862, the Memorandum was moved into the body of the Act and the Articles became "Table

				A". Memorandum of Association necessary to file to incorporate company…this is part of the constitution of the company
7 August 1862	Corresponding date to the UK by virtue of island being a colony of the UK	The Companies Act 1862	As per UK Companies Acts	Operative Act in SVG same as the UK – Table A as amended but only applicable to public companies
1 October 1906 *1907	Corresponding date to the UK by virtue of island being a colony of the UK	Board of Trade Order 1906 *UK Companies Act 1907 provides for 'private company' for the first time	Memorandum was moved into the body of the Act	Memorandum was adopted from the public companies and moved into the body of the Act and *Table A* also incorporated in the body of the Act
1 April 1909	Corresponding date to the UK by virtue of island being a colony of the UK	Companies Consolidation Act 1908	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
1 November 1929	Corresponding date to the UK by virtue of island being a colony of the UK	Companies Act 1929	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
1 July	Corresponding date to the UK	Companies Act	As Above	Memorandum was moved into the

1948	by virtue of island being a colony of the UK	1948		body of the Act and Table A also incorporated in the body of the Act
27 January 1968	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by Companies Act 1967	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
^18 April 1977, 1 ^June 1977, 1 ^October 1977	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by Companies Act 1976 (^^^3 Commencement dates)	Discussion on the Limited Liability Company/Private Limited Liability Company Limited by Shares but Articles of Association binding	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
2 February 1979	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by the Stock Exchange (Completion of Bargains) Act 1976 Part 1	Same as above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
2 February 1979	Corresponding date to the UK by virtue of island being a colony of the UK	As amended by the Stock Exchange (Completion of Bargains) Act 1976 Part 2	Same as above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
2 February 1979	Corresponding date to the UK by virtue of island being a colony of the	As amended by the Stock Exchange (Completion of Bargains) Act	Same as above	

	UK	1976 Part 3		
22 December 1980	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies Act 1980	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
3 December 1981	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies Act 1981	As Above	Memorandum was moved into the body of the Act and Table A also incorporated in the body of the Act
1 July 1985	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	Companies (Tables A to F) Regulations 1985	As Above	Applicable to the Company in as much as they are not excluded or varied by the Articles of Association of the Company limited by shares
1 August 1985	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies (Table A to F) (Amendment) Regulations 1985	As Above	Table A remained valid for companies incorporated under Companies Act 1985 in the same format that it existed at the time of incorporation of the Company under Companies Act 1985
22 December 2000	Independent nation state by 1979 but laws of the UK	As amended by Companies Act 1985 (Electronic Communications)	As Above	Amended by SI 2000/3373

	remain predominantly those of the former colony	Order 2000		
1 October 2007	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies (Tables A to F) (Amendment) Regulations 2007 and The Companies (Tables A to F) (Amendment) (No 2) Regulations 2007 for private companies limited by shares	Fundamental change to simplification of previous combination of memorandum and set of articles of association based on default Table A regulations as Articles of Association based on a model set…However, Memorandum of association still exists but now reduced and contains statement of subscribers; intent (As Above) **The Articles can be seen as a rule book on corporate governance of the company. The word 'Model' not to be confused other than a set from which one can make changes to reflect company's intention.**	Article 50 of Table A with regards to the Chairman having a casting vote was removed from Table A. Amendment (No 2) Regulations 2007/2826. If however the right existed in the Company's articles once it was incorporated before this date, it remains valid as per Sch 3 para 23A Companies Act 2006 (Commencement No. 3, Consequential Amendments, (Transitional Provisions and Savings) Order 2007/2194 (see Sch 5 para 2(5) Companies Act 2006 (C0mmencement No. 5, Transitional Provisions and Savings) Order 2007/3495

1 October 2007	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As amended by Companies (Tables A to F) (Amendment) Regulations 1985 as amended by the Companies (Tables A to F) (Amendment (Regulations 1985), the Companies (Table A to F) (Amendment) Regulations 2007 and the Companies (Table A to F) (Amendment) (No. 2) Regulations 2007	As Above	Table A as amended Companies (Tables A to F) Regulations 1985 as amended by SI 2007/2541 and SI 2007/2826
2008	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As above	As Above	
2009	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Table A replaced for new companies by Model Articles UK Companies Act 2006 which came into effect 1 October 2009
2010	Independent nation state by 1979 but laws of the UK remain predominantly those of the	As Above	As Above	Same as above

	former colony			
2011	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Same as above
2012	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Same as above
2013	Independent nation state by 1979 but laws of the UK remain predominantly those of the former colony	As Above	As Above	Same as above

HISTORIC TABLE B – WITH SPECIFIC GUIDANCE ON THE DIRECTION AND CONTROL OF THE COMPANY

Time Periods	Number of Board members	Number of Shareholders	Applicable laws (Company laws)	Statutory Instrument/By-laws specific reference to management and control of companies (Table A/B- Outline of

				responsibilities of management and control)
1845 ?? - 1865	7	7	UK Joint Stock Companies Act 1844 UK Companies Clauses Consolidation Act 1845 UK Limited Liability Act 1855 UK Joint Stock Companies Act 1856 UK Companies Act 1862 UK Company Clauses Act 1863 UK Company Seals Act 1864	Table B Table B was changed to Table A under the UK Companies Act1862 (Possibly served as guidance to the Directors and Shareholders in the early establishment and or continuance of the First House – John Hazell Sons and Company Limited, save and except to say that such guidance would have been post 1845. The First House would have had to refer to this Table B/later Table A as per applicable and prevailing legislative period)
1865 - 1885	7	7	UK Companies Act 1864 amended/consolidated by UK Companies Act 1867 UK Company Clauses Act 1869 UK Joint Stock Companies Arrangement Act 1870 UK Companies Act 1877 UK Companies Act 1879 UK Companies Act 1880	

			UK Companies (Colonial Registers) Act 1883 UK Companies Act 1884	
1885 - 1905	7	7	UK Companies Act 1884 amended/consolidated by Companies Act 1886 UK Companies Clauses Consolidation Act 1888 UK Company Clauses Act 1889 UK Companies (Memorandum of Association) Act 1890 UK Companies (Winding-up) Act 1890 UK Directors Liability Act 1890 UK Companies (Winding-up) Act 1893	
1905 - 1925	5	5	UK Companies Acts 1890/1893 amended by UK Companies Act 1907 UK Companies (Consolidation) Act 1908	Adaptation of *Table A* with relevance to the private company
1925 - 1945	5	5	UK Companies Act 1928 UK Companies Act 1929	Adaptation of *Table A* with relevance to the private company
1945 -	5	5	UK Companies Act	Adaptation of *Table A* with

1965			1947 UK Companies Act 1948	relevance to the private company
1965 - 1985	5	5	UK Companies Act 1948 amended/consolidated by UK Companies Act 1967 UK Companies Act 1976	Adaptation of *Table A* with relevance to the private company Company was amalgamated in 1981
1985 – 2013	5	5	UK Companies Act 1976 amended/consolidated by UK Companies Act 1985	* On or after 28 April 2013 – ***Table A as Model Articles*** for private companies limited by shares – See Appendix a1 referenced in Chapter 5 of this Thesis Amendments to *Model Articles by Mental Health (Discrimination) Act 2013*

APPENDIX 5(4)

BEWARE OF BOASTING

20th September 2017

University of Guyana
Institute of Development Studies

At the press conference of January 30, held in Trinidad, and discussed in last week's column, Chairman Duprey of the CL Financial Group had indicated that the credit squeeze caused by German bankers refusing the company credit was a main reason for its troubles. Just prior to that, however, his statements in regard to the effects of the global economic crisis on the group's business were very boastful. Duprey claimed there were very good business opportunities arising from the global economic crisis.

Indeed he stated in newspaper reports "with the global economy in tatters and companies everywhere bracing for a reversal in fortunes" his group was poised to "take advantage of the world-wide financial crisis to snap up under-priced assets." There was clearly nothing to worry about.

He further promised that his brokerage subsidiary (Caribbean Money Market Brokers Ltd), would become the base for developing a world-wide network of brokerage firms. At the time

the CL Financial Group had four brokerage firms located in the Caribbean, Central America, New York and London. The development of a global network, he suggested, would transform Port of Spain, Trinidad, into a major global financial centre and along with this the fortunes of the CL Financial Group would rapidly expand.

As he explained it, these developments were to be based on leveraging the network created by the brokerage firms centred on Caribbean Money Market Brokers Ltd.

At that time the Trinidad and Tobago Guardian had also reported that the brokerage houses already in the group controlled an asset value of US$1.3B. This was projected by Duprey to grow by a factor of about 2.3, to US$3B within five years.

That such grand schemes could fall apart so soon after, bringing disaster to the group rested on a very faulty assessment of the global economic crisis and the unprecedented risks which it posed.

At no stage of the crisis so far has it truly represented "a unique opportunity to acquire assets at greatly undervalued prices" as Chairman Duprey put it. This was dangerous rhetoric for a group whose very existence was predicated on continuing prosperity because of the business model it employed.

The moral of all this is to beware of boasting. Let your achievements speak for themselves. Idle boasting has been the ruin of so many.

Flawed business model

From what has been revealed so far, the group's business model was flawed in several major areas. First, as the Governor of the Trinidad and Tobago Central Bank pointed out, it was too reliant on inter-company related-party transactions. As he puts it: "excessive related-party transactions pose contagion risks."

When the economy is prospering and rapid growth is taking place, such a mode of operation looks good. A virtuous cycle is set in train. However, as soon as the economic environment turns sour, reliance on related-party transactions puts the entire group at risk. Contagion ensues and the virtuous cycle becomes vicious.

Second, the corporate culture of the group and its unorthodox styles of corporate governance were far too commandist, secretive and lacking in transparency. Modern ethical standards, befitting a global corporation are very different from those the group practised, as its meltdown across the region reveals.

Third, because of poor corporate governance, as the Governor of the Central Bank further pointed out, the group was only too willing to engage in excessive leveraging of assets. I would add to this also, regulatory arbitrage. There is now no doubt that the group routinely exploited regulatory loopholes within and across Caricom jurisdictions.

Excessive leveraging of assets reduces the likely proceeds from disposal of these assets, if it becomes necessary.

Finally, through the practice of regulatory arbitrage the group operated deposit-taking schemes, premised on the payment of unusually higher interest rates than the financial markets would seem to be able to afford. As an example of this aggressive high interest strategy for acquiring funds, a relatively large value of highly liquid high-priced deposits flowed to its insurance subsidiary in Guyana, (CLICO).

This firm, however, was not registered to engage in deposit-taking as a commercial bank is entitled to do in Guyana.

It did so, however, with the knowledge of the regulatory authorities. It did not, however, come under either the regulatory jurisdiction of the Central Bank of Guyana, or the Commissioner of Insurance in regard to its deposit-taking schemes.

As soon as the global financial crisis erupted last September inflows of deposits faltered. And, worse, withdrawals soon began. This experience exposed the flawed business model.

In conclusion, two very important questions arise. One is, why did the Government of Trinidad and Tobago feel it necessary to provide a rescue package for such a firm? The second is, what is being done to correct the regulatory loopholes at the trans-Caricom level? In the former case the answer centres on the notion that the CL Financial Group is "too big to fail." For the second question, I shall review efforts at the Caricom summit recently held in Belize to address these concerns. These matters will be treated in later columns.

APPENDIX 5(5)

NEWS ARTICLE

PMS SAY CLICO DEBACLE COULD THREATEN CARICOM

Published: Wednesday | February 29, 2012 | 12:00 AM

The financial problems plaguing the Trinidad-based Colonial Life Insurance Company (CLICO) and its sister company, British American Insurance Company, could "wreck" the regional integration movement, St Vincent and the Grenadines Prime Minister Dr Ralph Gonsalves has said.

The Barbados **Nation** newspaper said that Gonsalves and his Antigua and Barbuda counterpart have been responding to the CLICO International Life (CIL) forensic audit report published by the newspaper over the weekend.

For his part, Prime Minister Baldwin Spencer has described the situation as the worst thing to hit his country since the Allen Stanford debacle unfolded in 2009.

Stanford, a Texan billionaire, is now before a United States court facing charges related to a multibillion-dollar Ponzi scheme allegedly carried out using his Antigua Investment Bank.

He has pleaded not guilty to the changes.

The paper said that while the two Caribbean Community leaders have not been seen a copy of the Deloitte Canada-led audit, they are equally troubled by what they have been able to glean from the published report in the newspaper.

The two leaders have expressed strong concern for the plight of thousands of policyholders and investors affected across the region while insisting that justice must be done.

Both leaders also declared that they had no personal relationship with former CLICO executive chairman Leroy Parris.

CIL's funds questioned

The audit report has called into question the use of CIL's funds by the Barbados-based Parris-led management team, with Gonsalves expressing concern of the impact of the company's decision-making on the region.

"Justice must be done. I mean we are not talking here about one million, two million, we are talking in the case of the Eastern Caribbean Currency Union (ECCU) of in the region of EC$2 billion (US$800 million) in liabilities in CLICO Trinidad, CLICO Barbados and also British American."

He said put another way, the total exposure amounted to 16 per cent GDP for ECCU countries, and that it also translated into "serious damage to a lot of people's lives" and "a new species of poverty" known as "gentile poverty" that has enveloped this region as a consequence of the insurance debacle.

Gonsalves said he therefore wants to know "if countries, for instance Trinidad, in the case of

CLICO Trinidad and British American and Barbados, in the case of CLICO Barbados, don't come up to the plate and address this matter efficaciously, where are we going in CARICOM?"

It is a concern about which he has already written to new CARICOM Secretary General Irwin La Rocque and which he believes should be discussed before the July summit of regional leaders.

Prime Minister Spencer has described the entire situation as "most unfortunate", saying it needed to be resolved soonest. "A lot of people are hurting. Some (had) all their savings, whatever they had, they went for this thing in a big way, and not only individuals but businesses, state corporations with trust funds that were placed at the disposal of the CLICO conglomerate."

In the case of Antigua & Barbuda, he said, "some EC$300 million (US$111 million) has been tied up in this entire fiasco. "We have had a double whammy because we not only had Stanford to contend with but we had CLICO and BAICO to contend with literally at the same time," he said, noting that he was somewhat surprised to learn that the Antigua Commercial Bank was named in the forensic report.

The bank was named with respect to payments made by CIL to different associates. One of the recurring themes of the judicial manager's report was that CLICO was used as a 'cash cow' for its Trinidad parent company. The way they put it was that CIL operated as if it were the parent company's personal bank. This does not come as a surprise to Gonsalves, who pointed out that a similar blueprint was used by CL Financial to take funds out of British American.

However, Gonsalves noted that in the case of BAICO, the regional judicial manager had already launched civil proceedings in the Florida courts against the company and several top officials, including former CL Financial chairman Lawrence Duprey. The legal suit stems from the famous Green Island transaction, which involved the purchase of 6,000 acres of land in Osceola County in the largest investment done by BAICO Trinidad Limited.

While he waits patiently to see what action would be taken in Barbados, Gonsalves is not totally in support of liquidation, since based on current assets the judicial manager is saying, "we get 60 cents out of the dollar".

"I want more than that," he said, adding, [that] "those who have caused pain to individuals, pain and suffering and put the financial system at risk, must pay".

"If the authorities amass the evidence to proceed with criminal proceedings against any individual or groups of individuals, so be it.

"This is going to be a long-drawn-out drama and a lot of reputations are going to be sullied in the process and a lot justifiably," Gonsalves told the newspaper without elaborating.

- CMC

APPENDIX 5(6)

CODE FOR CORPORATE GOVERNANCE IN ST. VINCENT

CONTEXTUAL FRAMEWORK FOR CODE ON CORPORATE GOVERNANCE FOR UNLISTED COMPANIES IN ST. VINCENT AND THE GRENADINES

Foreword

There are a number of unlisted companies that continue to make incremental contributions to economic growth and financial development in St. Vincent and the Grenadines. Generally, these unlisted companies are private limited liability companies limited by shares having been initially established as having ownership of shares by families. From the inception, the family played a significant role in pooling their resources within these nexus of contracts. Thereafter, foreign investors with dispersed ownership of shares were encouraged to use the vehicle of these judicial entities so as to invest in a country – St. Vincent – located miles away from their homeland. This 'ownership' dynamism presented with its own challenges and opportunities. To codify corporate governance of such companies remains a stimulating topic for many experts and policy makers in emerging states such as St. Vincent and the Grenadines.

The guidance suggested a contextual framework for a code on corporate governance for this species of companies within the broader financial sector. Each company can use these guiding principles in pragmatic ways but always in keeping with the socio cultural and socio political circumstances that present themselves in each company. Management, boards of directors and shareholders alike should use these principles to benefit the individual companies and their stakeholders. This is a suggestion that should prove useful in keeping with the reformation of the Vincentian company law as proposed.

While it could not be ascertained the exact number of companies registered in St. Vincent and the Grenadines, it was generally acknowledged that 10,000 companies were categorised as unlisted and or not quoted or traded on equity markets. These are private limited liability companies limited by shares and were predominantly under the control of founding families. Ownership of shares was concentrated among families.

These companies contribute to the Vincentian economy and were responsible for near to 20% of the Gross Domestic Product and for employment. These companies account for the entrepreneurial spirit and among various enterprises. Therefore, the contribution made to the alleviation of poverty and contribution to the emerging modern economy of a post-emancipation era cannot be underestimated.

The contagion effect of the recent financial crisis of CL Financial Limited originated from outside St. Vincent and the Grenadines and impacted the overall nature of the island's corporate governance. There was a need for a dynamic governance framework in the emerging local financial sector. Good corporate governance remains relevant to all financial

institutions including but not limited to unlisted private limited liability companies limited by shares. The researcher was convinced that suitable corporate governance practices could contribute to the continuing success of Vincentian companies especially those that were listed or privately held.

In the following paragraphs, a number of principles were outlined which were largely influenced by the direction given on similar international best practices outlined by the Institute of Directors. A phased approach was recommended. The sizes of Vincentian unlisted companies were reviewed and found to be wholly family - owned in many instances. The outlined framework if followed should be a guide on companies' long - term viability; to provide for the hybrid of corporate governance models on board composition; to assist with the pooling of funds and to create a new and dynamic synergy between and among shareholders and other stakeholders.

While it may be that the subsequent Principles and Guidance would be applicable on a voluntary basis, the practical guidelines were provided with the objective that unlisted Vincentian companies might wish to garner a greater understanding on how to become more effective at their own agenda on corporate governance.

Executive Summary

- The researcher suggests a corporate governance overview for Vincentian unlisted companies in St. Vincent and the Grenadines but which could be adjusted to similar unlisted companies located across the porous borders of the CARICOM and OECS states.

- Although these unlisted companies made a significant contribution to the nation's economic growth and employment of persons, corporate governance decision makers, regulators and other experts generally neglected them. There was no other Corporate Governance to date in St. Vincent, as there were no listed companies either.

- Share ownership in unlisted companies were owned and controlled by individuals or family members or a group of family members related by biologically or through marriages. Good corporate governance was about building relationships between and among boards and shareholders within a socio cultural and political context; creating an environment that builds trust among stakeholders even when formalized procedures and rules were prescribed by law; and sound principles on good governance provide a framework that lay the foundation for corporate successes.

- Best practices on corporate governance were about creating building blocks for shareholders to demonstrate commitment to and depend on such practices for a sustainable business.

- Among the private limited liability companies limited by shares, those within the insurance sector and were categorized as international businesses lend themselves to a higher level of scrutiny by the public, as they were depositors of public funds. Therefore good governance was needed to maintain transparency, accountability and trust among the wider stakeholders.

- The approach to implementation of the Code should be guided by other established international best practices as the phased implementation approach. This takes into account such issues like the cultural differences within each company, the nature of corporate governance locally and regionally; the size of the company; the educational levels of board members and the life cycle of the business itself.

- The composition of the boards would be critical given the incremental approach to a new and evolving model on local corporate governance. The maturity of board members and how they respond to the new changes would further shape the socio cultural dynamics of the company and these matters should not be ignored.

- All corporate governance initiatives should remain applicable across local and regional companies within the framework of a larger Caribbean wide consensus on business ethics and principles. Other juridical bodies and any other financial institution within the international or domestic financial sectors should be so inspired to follow the corporate governance code of best practices in the interest of growth, development and employment.

Eighteen Major Principles

In addition to these major principles, a comprehensive Code on Corporate Governance should be guided by the established framework on corporate governance for unlisted companies advocated by the "Institute of Directors"[632] and the "European Convention of the Directors' Association"[633] The justification for this is that the substantive domestic law on companies were dictated by the already well established and time tested British company laws and the UK Company Acts. These outlined the nature of such juridical bodies (companies) that formed an established body of laws and procedure on corporate governance. Additionally, consideration to be given to the hybrid models on corporate governance that used elements borrowed from both the Anglo American model and the German model on corporate governance.

The eighteen principles of the Code are, broadly speaking applicable to all unlisted companies:

1. Shareholders should create written guidelines as to how they see a functioning corporate governance agenda if implemented, can improve the productivity and succession planning for all unlisted companies. Reference is to be made to the articles of association but also to the domestic and international focus of business development within the country.

2. An effective Board of Directors should head every company, which is responsible for its corporate governance implementation that will take into consideration the socio cultural and political factors internal and external to the company.

3. The directors should strive to accommodate elements of both the Anglo American and German corporate governance models when the composition of the board becomes the catalyst for change in complexity and size of the board in relation to similar issues within the company.

4. Directors should maintain best practices of business conduct, where integrity and ethical behaviour function effectively while exercising due care and diligence and at all times and act honestly and openly. As one of the main organs of the company the board of directors should hold meetings and plan appropriately for the execution of its corporate governance agenda.

5. The duly elected board must demonstrate that formal and transparent arrangements are effectively in place for presenting a balanced and comprehensible evaluation of the company's position and projections and for considering how they apply financial

[632] *www.iod.com/about/our-history* - accessed on 16 January 2018 and 20 February 2018
[633] *www.ecoda.org/about-ecoda/* - accessed on 17 January 2018 and 20 February, 2018

reporting and internal control principles and mechanisms. Among these should be outlined the rationale for remuneration of non-executive and executive board members in keeping with maintenance of well educated and qualified staff to run the companies.

6. The Board of Directors should provide appropriate supervision for risk management and maintain a sound system of risk measurement and control mechanisms for the safeguarding investments by shareholders or as shareholders engage in an entrepreneurial spirit using the company's assets.

7. All Boards should ensure the timely and reasonable disclosure to shareholders and or regulators of all substantive matters in relation to the company and that this can best be achieved through honest and open dialogue at all times over the life cycle of the company. This is in keeping with any amendments to objectives, unanimous shareholder agreements and any other concerns.

8. Requirements as a member of the board are that of being qualified as directors and or possess the ability to be trainable in keeping with regional and or international standards on corporate governance. Directors should be subjected to continual training with initial induction as a board member and thereafter at identified regional and international institutes for corporate governance.

9. Family and or foreign controlled companies should be encouraged to foster an atmosphere of corporate governance that would be applicable to their companies but in keeping with established international best practices.

10. Unfettered power in decision making within any of these unlisted companies should not be encouraged but organizational charts and other internal management practices to be so enshrine on a corporate charter so that all members of boards and shareholders will note the clear lines of responsibilities and authority.

11. The qualification of board members with admixtures of skills, knowledge and other competencies should be clearly advocated among and throughout the company where possible and be an indicator of a diverse decision making process that exist within the company.

12. The boards in conjunction with the shareholders should be responsible for the selection or election of broad based committees that would be responsible for specific tasks and duties.

13. In consultation with the shareholders, the board should design performance appraisal forms and set criteria for peer review on its performance within the yearly cycle of the company. This should be tabled at meetings as part of directors' report to the company in meeting. The result should serve to assess productivity by board members and to raise the bar on their fiduciary duties to shareholders and the company.

14. Stakeholder engagement is critical for successive planning in that the shareholders and the boards gain a clearer understanding as to what are the areas in which the company can best address the needs of the stakeholder.

15. The pressure groups on behalf of the environment as well as the corporate citizen and institutional investors should be allowed to provide feedback to the company on its performance on a yearly basis over its life cycle. In this way, the company should improve on its delivery of services and products to these constituents' stakeholders by using such feedback.

16. The issues of accountability and transparency should always be at the forefront of all business activities and it would be the duty of the director in consultation with the shareholder to present to categories of stakeholders, copies of requested reports on business activities.

17. Grievance procedure should be displayed and other such procedures to be given priority and an officer to be assigned to assist with any conflict of interests well in advance of an annual general meeting where issues can become sources of unnecessary conflicts. To comply and to complain may be necessary attributes.

18. On-going education of members and other constituents' stakeholders about corporate governance should be part of the mandate of the company over its life cycle. A revolution on education should result in the establishing and empowering of all stakeholders about their individual roles, the nature of corporate governance, the benefits of belonging to the company within the context of poverty alleviation and economic enfranchisement

APPLICATION FOR ETHICAL APPROVAL FORM

SENT SEPARATELY

TO BE ATTACHED

The End.