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**TOWARD A MODEL CODE OF CORPORATE  
GOVERNANCE FOR PUBLIC BODIES: A CASE FROM  
THE CARIBBEAN**

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This article explores the genesis and implementation of a Caribbean (Jamaican) approach to improving corporate governance (CG) among public bodies. Public bodies (PB) are integral to the success of public management and administration vis-à-vis development and implementation of key policy objectives. There is the need for these state-controlled entities across the Caribbean to be accountable and fully compliant with several statutory requirements. In response to these challenges, the Government of Jamaica has sought to clarify the governance framework within which public bodies must operate by establishing a Corporate Governance Framework for Public Bodies of Jamaica. The article benefits from a mixed methodology of qualitative and quantitative streams of data collection and analysis. The key objectives in presenting these findings are to improve accountability and compliance and to achieve a more efficient and effective public service.

Keywords: Caribbean, code, corporate governance, framework, Jamaica, public bodies

## 1. BACKGROUND AND INTRODUCTION

The Caribbean, the focus of this article, is challenged by two governance problems. The first is a *corporate governance problem* while the second is a *public policy problem*. The corporate governance problem is three-fold. First is the lack of empirically sound data on any previous work in the area of corporate governance (CG) among public bodies in the Caribbean. Second is a lack of awareness and understanding of the importance of corporate governance. Third is inadequate corporate governance structures and practices in the private and public institutional spheres.<sup>1</sup>

The second challenge is the *public policy problem*. As with the CG problem, there are three underlying issues. First is a prevailing weak and relatively underdeveloped regulatory framework in both the private and public sectors, which has been proven to give way to collapses in the financial system and cases of public sector inefficiencies, fraud and misfeasance. Therefore, the need for public policy reform to improve CG, avoid corporate crises and minimize corruption in the public and private sectors is a matter of national importance (Ministry of Finance and Public Service, 2002). Second are systemic weaknesses in the local financial sector, which resulted in a collapse of the financial sector during the 1990s. The third challenge is related to perennial incidents of real cases of corporate and political corruption, particularly in the public sector.

The corporate governance problems overlap the public policy problems and vice versa. On the one hand, the lack of CG awareness, dearth of empirical literature, and inadequacies and poor state of CG in public bodies all implicate public policy. On the other hand, the weak regulatory structure, systemic weaknesses in the financial sector, and the perceptions and incidents of corruption in Jamaica all have serious implications for the private corporate sector in addition to their critical implications for government and the public service as a whole. The issues related to CG are inextricably linked with those of public policy and vice versa.

The *Sunday Observer* (October 17, 1999, 1, 4-7) in its front-page article, entitled 'Busting the Piggy Bank,' reported fat pay packets and disparities in public sector salaries. This revelation brought to public attention the fact that many public sector bosses were in breach of established pay guidelines and were paying themselves excessive salaries of millions of dollars at tax-payers' expense. After a full-scale investigation requested by the public and endorsed by the government into the operations of more than 80 percent of the approximately 200 public bodies,<sup>2</sup> then Prime Minister P. J. Patterson, reporting to Parliament on April 12, 1999 conceded that "the

Finance Ministry had lost control of the salaries in some of these state-owned companies” (Ibid).

During the 1990s, while prominent world financial markets (South East Asia, Russia and Argentina) collapsed, resulting in significant losses in assets, closures of many financial institutions, loss of jobs and the plunging of many once booming economies into depression, Jamaican institutions were in trouble as well. Between 1993 and 1999 several leading banks and other financial institutions collapsed, were bailed-out or were taken over by new owners. Four of Jamaica’s largest and oldest insurance companies and at least fifteen merchant and investment banks and other financial institutions, which accounted for approximately 30 percent of depositors’ value in all financial institutions, experienced closures (Bonnick, 1998)<sup>3</sup>

The Jamaican public has received no defensible explanation about these crises, which directly affected both public and private companies. However, what remains evident is that the failures were due (in large measure) to poor administration and outright neglect of the duties of responsibility, care and loyalty to shareholders on the part of board chairmen, directors, CEOs and management (Hilton, 1999).<sup>4</sup> The problem of poorly administered public bodies has significant implications for stakeholders, and for the performance of the economy as a whole. For example, when the financial system collapses, a “ripple effect” is triggered causing widespread failures of “satellite” businesses.

Public bodies have been in the forefront of their respective countries’ development for many decades. They play an integral role through their contribution to the economy and the overall competitiveness of a country. Public bodies collectively represent an important subset of the public sector of every country. They are integral to the development and implementation of a number of key policy objectives. These bodies are held accountable with regard to several statutory requirements. However, they often come into question for breaches, including breaches of procurement guidelines and incidents of fraud or negligence on the part of their fiduciaries – chairmen, directors, corporate secretaries, committee members. Operating in a dynamic and financially charged environment, they are further challenged by the need to be fully compliant within the development and regulatory requirements of a transforming economy, that is, keeping finances in good order, being driven by efficiency and motivated by a deep commitment to reducing poverty and strengthening the general economy.

The leadership and management of PBs present an experience distinct from private enterprises given their unique environment and objectives. They are unique in that the owners are the government, i.e., the public – the voters. Private enterprises have a very

clear profit motive and active shareholder participation in adjudicating and monitoring governance and leadership. While such checks and balances among PBs are often well-defined, they are either developed on a piecemeal basis, deficient in content or not efficiently and prudently enforced. Public-sector organizations sometimes find it hard to comply because they are insulated from the competition that fuels innovation in the private sector. They must therefore organize themselves in ways that stimulate performance from within.<sup>5</sup>

In response to the preceding challenges, the Government of Jamaica (GOJ) has for the past several years been pursuing a comprehensive program of public sector modernization and reform. The broad goals are to achieve greater efficiency, effectiveness and economy in resource utilization and service delivery and, critically, to address perennial concerns of poor performance and management, financial irresponsibility of government, and weak mechanisms of accountability monitoring. In response to these challenges, the GOJ has sought to clarify the governance framework within which public bodies must operate by establishing a Corporate Governance Framework for Public Bodies (CG Framework). The key objective of the CG Framework is to improve accountability, transparency and probity while achieving a more compliant, efficient and effective public service. In keeping with these crucial aims, the Cabinet of Jamaica has given approval for its adoption and the implementation of the recommendations of the framework.

This article explores the genesis and implementation of Jamaica's innovativeness in improving corporate governance in public bodies. To achieve this end, the article draws on local, regional and international social science literature on CG for public bodies; an internet survey of local and international CG experts; focus group study with senior corporate governance practitioners and policy makers; stakeholder consultation sessions; and personal interviews with carefully selected corporate governance informants.

For the purposes of this article, the term 'framework' shall be used interchangeably with 'code'. A corporate governance framework or code delineates a set of principles, practices or key elements which are best-in-class international standards, procedures and operating guidelines appropriate for a public body. The term 'corporate governance' in this paper embodies processes and systems by which public bodies are directed, managed and held to account. CG influences how objectives are set and achieved, how risk is monitored and assessed and how performance is optimized. In essence, CG includes a combination of legal and voluntary practices that ensure the long-term survival of an organization while meeting the needs of all stakeholders. Improved

corporate governance is important at this time and particularly for emerging economies like Jamaica for several reasons.

The CG framework for public bodies of Jamaica is the first of its kind to be initiated by a national economy in the English-speaking Caribbean. It is indeed a novel innovation in its objectives in addressing specifically the needs of public bodies, while it is more comprehensive by far than other codes in scope and depth of coverage (key principles/elements and recommendations), methodological approach and mode of implementation. Essentially, when completely implemented, it will have surpassed all other existing national codes (e.g., PSOJ,<sup>6</sup> TTNCGC<sup>7</sup> Code and King III Report, South Africa) in effecting needed CG reforms, and particularly in a developing island state such as Jamaica.

The remainder of this article features a conceptual framework for corporate governance, its methodological approach, highlights of key findings, implementation and promulgation of the recommendations of the corporate governance code and conclusions.

## **2. THE CORPORATE GOVERNANCE CONCEPTUAL FRAMEWORK**

For the purposes of this article, corporate governance embodies processes and systems by which public bodies are directed, managed and held to account. CG influences how objectives are set and achieved; how risk is monitored and assessed; and how performance is optimized.<sup>8</sup> In essence, CG includes a combination of legal and voluntary practices that ensure the long-term survival of an organization while meeting the needs of all stakeholders. Improved corporate governance is important at this time and particularly for emerging economies like Jamaica for several reasons.

First, the principal-agent problem is at the center of what makes CG important. This problem grows out of the separation of ownership and control and of corporate outsiders and insiders (Berle and Means, 1932).<sup>9</sup> In the absence of the protection and checks-and-balances that good CG provides, asymmetry of information and difficulties of monitoring mean that capital providers who lack control over the corporation will find it risky and costly to protect themselves from the opportunistic behaviour of managers or controlling shareholders.

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

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

Third, Oman (2001)<sup>10</sup> argues that, increasingly, firms, individual investors, funds, banks and other financial institutions are basing their decisions not only on a company's outlook, but also on its reputation and its governance. It is the growing need to attract and access financial resources, domestic and foreign, and to harness the power of the private sector for economic and social progress that has brought CG into prominence the world over.

Fourth and final, sound CG is important not only to attract long term "potent capital", but more so to broaden and deepen local capital markets by attracting local investors, both individual and institutional. Unlike international investors, who can diversify their risks, Jamaican investors are often captive to the system and face greater risks, particularly in an environment that is opaque and does not protect the rights of minority shareholders (Kerr, 2005, 182-193).<sup>11</sup>

### **3. METHODOLOGY**

To adequately assess challenges faced by public bodies in the Caribbean in an effort to recommend an appropriate model code requires an intellectual framework (research strategy and methodology) that is built on a scientifically sound research protocol. The techniques and approaches were therefore selected to ensure the participation and influence of a wide constituency of stakeholders, and to obtain information and results that could impact policy governance reform among public bodies. Before specific methods and techniques for information gathering and data collection were undertaken, it was necessary to accurately interpret the expected deliverables which would eventually impact such a CG framework and to respond with the most appropriate methodological approach.

In seeking clarity on an appropriate corporate governance code for public bodies, it is helpful to consult the Terms of Reference<sup>12</sup> issued by the GOJ, which identify six key "good" corporate governance drivers (CG drivers).<sup>13</sup> These consist of the following:

- 1) clarification of the roles and responsibilities of the board and its directors;
- 2) procedures for appointing the board of directors;
- 3) a competency framework for the selection of board members;
- 4) a code of conduct for the board and its members;

- 5) a protocol to define relationships between management, its board, shareholders and other stakeholders; and
- 6) an effective monitoring arrangement for the operations of public bodies within their parent ministries.

To ensure the CG framework achieves its objectives, eight additional “first cut”<sup>14</sup> CG drivers were identified from a review of *international best practice literature*,<sup>15</sup> with relevance validated by the author’s expert knowledge of governance for state-owned enterprises. These additional CG drivers are:

- 1) board composition and performance;
- 2) board orientation, training and continual development;
- 3) roles and responsibilities of key fiduciaries;
- 4) independence and powers of board decision making;
- 5) board information management and disclosure;
- 6) role and independence of public body audit and internal controls;
- 7) role of co-opted board members, invitees and ex officio officers; and
- 8) code of ethics for directors and officers.

To further authenticate the importance of the preceding CG drivers among the stakeholder/respondent constituents, four additional streams of information gathering and data collection techniques (stakeholder consultations) were employed. These included: an internet survey among (n=116) local and international public sector CG experts utilizing the Likert Scale (see appendix 1); focus group sessions among senior corporate governance practitioners and policy makers; a series of town hall meetings involving various public and private sector actors; and personal interviews with selected key public body CG informants.

The results of the data and information gathering were used to inform the analysis and discussion of findings and the recommendations proffered. As far as possible, a combination of stratified random and purposive sampling was employed to ensure the inclusion of as many stakeholders as possible from across the public and private sectors. Based upon stakeholders’ feedback, some CG drivers were eliminated or amended, or others added. Key findings are presented in the next section.

#### **4. KEY FINDINGS**

This analysis utilizes results and observations from across the methodological approaches outlined above. The primary data collection effort sought to validate “first cut” CG drivers while unearthing new realities as experienced by respondents and to evaluate how these findings relate to existing CG best practices as derived from review

of local and international literature relevant to public bodies. Essentially, the analysis gave primacy to the majority views of respondents on crucial issues in confirming the importance of the proposed CG drivers while documenting the stories told and suggestions and recommendations proffered.

Based on sixteen “first cut” CG drivers that were sent initially to CG expert respondents for their ranking on a scale from 1 to 5, 1 being not important to 5 being critically important, all CG drivers received overwhelming endorsement except one (co-opted members, invitees and ex officio officers (57 percent)). The remaining fifteen “first cut” drivers received a combined ranking of very important and critically important from between 76 percent (board processes – meeting management and dynamics) and 100 percent (board composition and clarifying the relationship between board and management) of respondents. This therefore signals the wishes of stakeholders for at least fifteen of the initially proposed “good” CG drivers to be considered in a CG code for public bodies (see table 1). Several of these CG drivers were subjected to further stakeholder consultation via focus groups and town hall meetings in addition to personal interviews. The following section presents snippets of respondent views from personal interviews on key CG drivers as indicated and discussed below.

### *Role and Responsibilities of the Board*

The legal basis for the roles and responsibilities of the board is limited to the provisions in the *Companies Act of Jamaica 2004* and *Public Bodies Management and Accountability Act 2001 (amended 2012)*. However, prevailing public bodies legislation is significantly deficient in having not delineated the role of the chairman vis-à-vis the CEO and other key fiduciaries. Respondents agreed that the lack of formal codification of the role and responsibilities of the board has given rise to many issues regarding board members.

Some of these frequent pitfalls of directors include too frequent involvement in the day-to-day activities of the organization; inappropriate channels of communications (directors instructing executives without going through the CEO or chairman); directors, chairmen and responsible ministers frequently issue instructions to supervisees of the CEO, to accept or reject a particular contract or to hire a crony of the minister or well-known political activist; and a chairman may place unreasonable demands on a CEO for salaried compensation or other forms of remuneration outside the remit of the Ministry of Finance and Planning guidelines for compensating board members. There have been reported cases of chairmen and members of the HR



committee of the board interfering in the process of recruiting subordinates of the CEO other than the Chief Internal Auditor and the Corporate Secretary – each of whom ought to be reporting to the board of directors.

### *Board Composition*

Many respondents related their experiences in the following ways:

- “Boards are not always composed with the right mix of skills and competence among their membership.”
- “Many boards are selected with little attention paid to ensuring that critically required skills such as auditing, financial, legal and business-specific training and experience are possessed by its members.”
- “Boards are often made up of supporters of the responsible minister and are not usually intellectually adept for the rigours of board directorship.”
- “Competencies, time commitment and value-adding capacity of a person should be the core requirements for board membership.”

### *Board Appointment*

Focus group participants and individual expert interviewees expressed a desire to see only competent directors appointed, based on business-specific knowledge, qualifications, experience and general capabilities. This, respondents believed, would add immeasurable value to the public body. Other points expressed by respondents were the need for background checks, especially for directors of self-financed PBs, to clear each director on grounds of criminal record, potential and obvious issues of conflict of interest and any pending or recently concluded legal disputes with the PB. One respondent in supporting this point related a case of a director who had been duly appointed to the board of a PB with which he had outstanding legal issues.

### *Director Orientation and Training and Development*

It was felt by respondents that the lack of a structured program of director orientation had compounded the problem of a dearth of business-specific knowledge among directors. This was argued to be a contributing factor to their low level of understanding of what their duties and responsibilities are; their propensity to interfere in the day-to-day affairs of the PBs; and their resorting to employing inappropriate communication channels to obtain information from management officers.

### *Role of the CEO*

There have been several reports and instances of this position being undermined by chairmen, directors and ministers. The CEO's authority is often circumvented, and direct access is obtained to his/her subordinates for information and/or cooperation on self-serving contractual and procurement issues. In other instances, the chairman and or a director may sometimes show up at the offices of the CEO and attempt to issue instructions to CEO subordinates on matters related to the board or committee, or request a personal favour.

There was unanimous agreement among stakeholders that training and continual development should be made mandatory for all directors of boards of PBs, and that such training should be accessible within three months of appointment. Additionally, there is call for a formal training course for permanent secretaries (PSs) and ministers to be made a core requirement of their orientation process. Respondents (the relevant beneficiaries) suggest that such a course should address, inter alia, the entire procurement process; their roles as ministers and PSs; and the relationship between a minister and PS. There is currently no such mandatory program of learning and development for permanent secretaries and ministers, chairmen and directors of PBs in Jamaica.

### **Director Performance Evaluation**

While it was obvious from discussions that not all stakeholders were familiar with the practice of board performance evaluation and how it works, consensus was obtained that PBs should adopt a formal process of appraising the performance of the board of directors annually. Respondents suggested that such a process should include the board committees as well. Participants felt that constructive feedback from the evaluation

process could inform individual members on how they are doing and guide adjustments towards improved performance and value-adding.

### *Board Information Management and Disclosure*

Respondents suggested that the full compensation packages of all CEOs of PBs should be published annually in a special edition of the local print media, especially those of the self-financing entities. Also, respondents suggested that there be a statement in each public body's annual report (probably one page) on its corporate governance activities, membership of audit committee and attendance record of directors.

### *Enterprise Risk Management (ERM)*

Not all respondents understood the role and importance of an integrated approach to risk management, but were made more aware from a brief overview provided by the consultant, after which they endorsed the idea of a policy and strategy to introduce and implement ERM in each PB and government ministry. Informed participants suggested that more risk-based auditing needed to be practiced by both the Auditor General's Department and by all internal auditors of PBs and government ministries.

### *Code of Ethics for Directors*

Respondents believed that PBs would be better served if they toned down the rhetoric about ethics and did more to institute and inculcate ethical standards into their day-to-day operations. Respondents suggested that a standard ethical code be designed and adopted for all PBs across the public sector and that individual entities make slight amendments to address individual situations as required.

The preceding discussion and analysis underscore the importance respondents have placed on the majority of the sixteen "first cut" CG drivers tested (see table 1). Respondents also suggested new CG drivers they believed were important for consideration while identifying others to be merged or eliminated. For example, the following five additional new CG drivers have emerged: governance of board, corporate social responsibility, managing stakeholder relations, monitoring arrangement of ministries, and enterprise risk management. Items e and m of table 1 were recommended for separation, hence forming six separate CG drivers, namely: role of the board, role

of the chairman, role of the CEO, role and authority of board invitees and role and authority of ex officio officers.

**Table 1: Endorsement and Ranking of Key “First Cut” CG Drivers**

| How important are the following key corporate governance benchmark drivers? Each factor has been ranked based on a scale from 1-5. Rating scale: 1=not important; 2=of little importance; 3=fairly important; 4=very important; and 5=of critical importance. | Respondents' aggregate scores of 4 (very important) and 5 (of critical importance) only |
|---|---|
| (a) Board composition   | 100%  |
| (b) Criteria for nominating and selection of board members  | 96.4%   |
| (c) Procedures for appointing board of directors  | 79%   |
| (d) Board orientation, training and continual development   | 89%   |
| (e) Roles and responsibilities of the board and key fiduciaries – chairman, directors, CEO, corporate secretary, committees   | 96.4%   |
| (f) Clarifying the relationship between board and management  | 100%  |
| (g) Clarifying the relationship between board and management vis-à-vis stakeholders   | 96.4%   |
| (h) Board processes – meeting management and dynamics   | 76%   |
| (i) Independence and powers of board in decision making   | 89.3%   |
| (j) Public bodies information management and disclosure   | 82%   |
| (k) Internal audit and controls   | 92.8%   |
| (l) External audit and controls   | 87.3%   |
| (m) Co-opted members, invitees and ex officio officers  | 57.1%   |
| (n) Board and CEO accountability, performance and monitoring and evaluation   | 89.3%   |
| (o) Code of ethics for directors and officers   | 89.3%   |
| (p) Gender equality issues  | 88.3%   |

Note: (n=116)

In the final analysis, twenty CG drivers were confirmed and subsequently accepted as the key elements or principles on which the CG Framework for Public Bodies of Jamaica was developed. See Appendix 2 for an abridged version of this framework. A more detailed version was submitted to and approved by the cabinets and both houses of parliament of two recent successive governments of Jamaica after a series of vetting and amendments.<sup>16</sup>

## 5. RECOMMENDATIONS FOR IMPLEMENTATION AND PROMULGATION

The Ministry of Finance & Planning (MF&P), Public Sector Enterprise Division, and the Public Sector Transformation Unit (PSIU), with the support of the Office of the Cabinet, have responsibility for developing appropriate action plans to outline the mechanisms by which the policy goals and objectives will be achieved, detailing the strategies, roles and responsibilities and timeframe (personal communication).<sup>17</sup> In addition, the MF&P is responsible for the framework, including implementation and oversight of the agreed action plans and subsequent evaluation and revision of the framework.

The implementation success of a project of this scope requires not only a clearly defined strategy and step-by-step approaches to addressing capacity needs; it must also be anchored by an overarching monitoring framework mechanism for checks and balances and the effective deployment of each and all components. Figure 1 provides an illustrative perspective of the project's organizational structure. In further support of this structure, the following were adopted:

- *Capacity needs assessment:* The MF&P has reviewed the capacity requirements to lead the implementation of the Corporate Governance Framework and has since identified, recruited and deployed relevant staff.
- *Ministry monitoring framework established:* The permanent secretaries, as chief advisors to the ministers, are required to monitor performance against expected results, manage risks and advise/inform the minister accordingly on public bodies which operate within the portfolio responsibility of the ministry.
- *Implementation Oversight Committee constituted:* This committee has responsibility for the review of deliverables and quality control of the consultancy.

Upon the approval of cabinet, a select number of critical CG principles were targeted for full-fledged development and roll-out across all public bodies (see table 2).

Critical to the successful implementation of any organizational change process is a program of promulgation and enforcement. Key to this was awareness and sensitization of all relevant constituents soon after the CG Framework received the nod of approval from the Cabinet of Jamaica. There were in excess of 15 sensitization sessions, half-day in duration, held during 2013 covering all government ministries and targeting boards of directors of all PBs (personal interviews).<sup>18</sup> Alerts through the mass media, including

all radio stations, government controlled TV stations, cable networks and printed media were utilized.

The CG Framework has become one of the most renowned change initiatives within the GOJ in recent years. Many public bodies have been proactive in adapting and amending the CG Framework in shaping their own corporate governance codes or board charters, while others have posted the CG Framework at their websites with supporting statements to the effect that they are in compliance with same. Some of these public bodies are the National Solid Waste Management Authority, the Consumer Affairs Commission, the Heart Trust/NTA, the Broadcasting Commission and E-Learning Jamaica, just to list a few. A distinctive novelty of this framework, and hence its impact, can be felt in the instance where when a new board is approved or directors added, the respective PBs would contact their responsible ministry, which in turn would request some level of CG orientation or sensitization regarding the CG Framework principles and recommendations for these new directors.

## **6. CONCLUSIONS**

The Corporate Governance Framework for Public Bodies Jamaica has been designed to embody best practices, in keeping with international standards and appropriateness for prevailing realities of Jamaica. It is recognized that some public bodies, depending on their size and resources, may need to adapt specific rules in the framework to meet their particular circumstances. This flexibility that the CG code affords can serve as a distinct advantage when compared to all other similar codes internationally. To the extent that there is a departure, the board will be required to provide sufficient, reasonable explanation in the annual report.

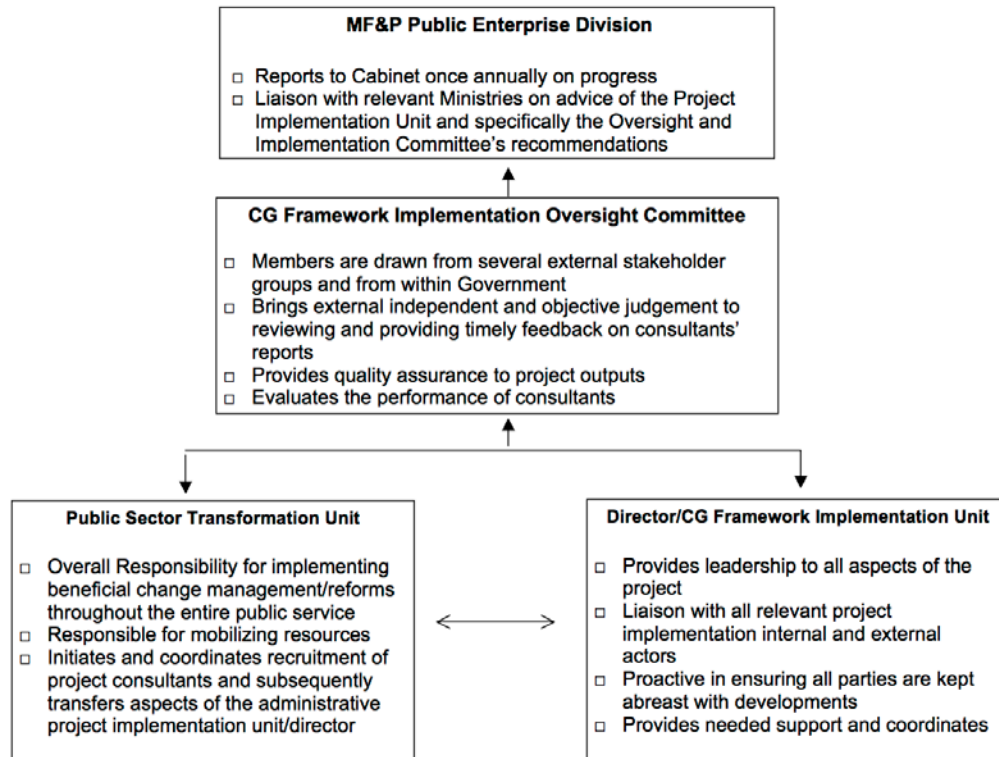
The accepted key principles presented in this article have sought to clarify the CG Framework within which public bodies should operate. It is important to note, however, that within these principles additional work is required to establish specific guidelines, standards and tools, many of which are in advanced stages of development or are being prepared for the issuance of requests for proposal (RFPs)<sup>19</sup> to solicit consultants for execution. Some of the threats to effective governance among public bodies include, inter alia, a chronic shortage of local CG expertise, lack of appropriate technology, the judicial systems being poorly equipped to address effective governance practices, lack of transparency in the management of companies and public bodies, and various kinds of resource limitation. The process of implementing this CG Framework will require large capital outlays. In the end, the gains from increased efficiency, effectiveness and economy in the deployment of public service will more than compensate the efforts.

The limitation to this study was the inaccessibility to a greater number of directors and officers of public bodies to obtain first hand realities of their respective challenges and triumphs with the implementation of the CG Framework, which, if obtained, could have enriched the study.

**Table 2:** Select Key Corporate Governance Principles/Recommendations for Implementation

| <b>CG Framework Principle</b>                                       | <b>Critical Tasks Required and Status of Implementation</b>  |
|---|--|
| Competency profile for boards                                       | To develop procedures for identifying the competency profile for boards. This has been completed about a month before the time of writing. To be fully deployed throughout all public bodies.  |
| Selection, nomination, appointment & termination of board directors | To develop procedures for the selection, nomination, appointment and termination of board directors. Consultancy almost complete at the time of writing.   |
| Board performance evaluation  | To develop instrument for the conduct of board performance evaluation. This has been put to tender at the time of writing and shortlisted subsequently notified.   |
| Managing stakeholder communication & relationship                   | To develop protocol on communicating with stakeholders and the media and to seek amendment to the PBMA to provide for the annual report to detail the methods of communicating and engaging with stakeholders. The RFP has been publicized at the time of writing. |
| Enterprise risk management  | To develop enterprise risk management mechanism to be used by boards. This is yet to be put to tender.   |

**Figure 1:** Corporate Governance Framework for Public Bodies implementation structure.



The CG Framework for Public Bodies of Jamaica is the first of its kind to be initiated by a national economy in the English-speaking Caribbean. It is indeed a novel innovation in the motivation of its grounding, its objectives, methodological approaches and depth and breadth of scope. Essentially, when completely implemented, it will have surpassed all other existing national codes in effecting needed CG reforms across public bodies in the context of small, developing, island-state economies. The author concludes that a bureaucratic paradigm such as governmental institutions presents both challenges and opportunities for achieving innovative beneficial reforms. Success in implementing CG reforms will be more likely when there is willingness and commitment by both internal and external influencers to challenge bureaucratic barriers with creativity, flexibility, adaptability and risk-taking as necessary for innovation in contemporary public institutions.



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Interview.

### Appendix 1: Key Corporate Governance Benchmark Drivers

| <b>(1) How important are the following key corporate governance benchmark drivers? (Score each factor as follows: 1 = not important, 5 = of critical importance)</b> | <b>Rating:</b> 1 = not important, 2 = of little importance, 3 = fairly important, 4 = very important, 5 = of critical importance. |   |   |   |   |
|--|---|---|---|---|---|
| (a) board composition  | 1   | 2 | 3 | 4 | 5 |
| (b) criteria for nomination and selection of board members   | 1   | 2 | 3 | 4 | 5 |
| (c) procedures for appointing board of directors   | 1   | 2 | 3 | 4 | 5 |
| (d) board orientation, training and continual development  | 1   | 2 | 3 | 4 | 5 |
| (e) roles and responsibilities of the board and key fiduciaries – chairman, directors, committees, corporate secretary   | 1   | 2 | 3 | 4 | 5 |
| (f) clarifying the relationship between board vis-à-vis management   | 1   | 2 | 3 | 4 | 5 |
| (g) clarifying the relationship between board and management vis-à-vis stakeholders  | 1   | 2 | 3 | 4 | 5 |
| (h) board processes – meeting management and processes   | 1   | 2 | 3 | 4 | 5 |
| (i) independence and powers of board in decision making  | 1   | 2 | 3 | 4 | 5 |
| (j) public bodies information management and disclosure  | 1   | 2 | 3 | 4 | 5 |
| (k) internal audit and controls  | 1   | 2 | 3 | 4 | 5 |
| (l) external audit and controls  | 1   | 2 | 3 | 4 | 5 |
| (m) co-opted members, invitees and ex officio officers   | 1   | 2 | 3 | 4 | 5 |
| (n) board and CEO accountability, performance monitoring and evaluation  | 1   | 2 | 3 | 4 | 5 |
| (o) code of ethics for directors and officers  | 1   | 2 | 3 | 4 | 5 |
| (p) gender and equality issues   | 1   | 2 | 3 | 4 | 5 |

Source: Kerr, V. L. 2012. *Corporate Governance Framework for Public Bodies Jamaica*. Cabinet Office (Jamaica).

The above key benchmark drivers are meant to reflect the broad elements of a good corporate governance framework for public bodies of Jamaica. The scope, nature, extent and other features of each of these drivers will be further informed by a review of the social science literature on corporate governance, existing international CG codes, focus group studies and consultant expertise.

**Appendix 2: Corporate Governance Framework for Public Bodies of Jamaica (Summarized)**

| <b>Key Corporate Governance Principle</b> |   | <b>Recommendation</b>  |
|---|---|--|
| 1   | Every public body should be headed by an effective board, which is collectively responsible for corporate governance oversight and is accountable to the responsible minister and stakeholders.                 | The board should decide on the public body's values and strategy and provide the necessary leadership to secure human, physical and financial resources required for the organization to meet its objectives.  |
| 2   | The board is the primary decision making authority of the public body and constitutes the fundamental base for corporate governance for the organization.   | Each board must have a charter that defines the roles and responsibilities, and should establish and disclose their roles and responsibilities to avoid any misunderstanding between the board's role and that of executive management.  |
| 3   | The minister appoints the chairperson as head of the board, who in turn is directly responsible to the minister on the policy and strategy of the organization.   | The chairperson should be an independent outsider and hold no executive position or material connection with the public body. The position of chairperson should at all times be separated from that of CEO and, consistent with the GOJ Accountability Framework, should be selected from an industry not related to, or conflicting with, the nature of the business of the public body. |
| 4   | The CEO reports to the board through the chairperson, and the CEO's role should be to run the day-to-day operation of the public body in accordance with mutually agreeable and written performance objectives. | The CEO's contract should be void of any ambiguity whatsoever, with the clear definition of roles and responsibility for management, inclusive of the authority delegated from the board.  |
| 5   | Every board should appoint a corporate secretary (CS) to execute governance, administrative and compliance functions demanding a high degree of skill, competence and ethical conduct.                          | The appointment of a CS is a requirement under Jamaican business law, where the organization is a limited liability company irrespective of ownership. The CS should report to the board directly.   |
| 6   | There should be a formal and documented procedure for recruiting board invitees. This should be established in a code of conduct for boards of public bodies.   | Board invitees should be allowed to vote at neither board nor board committee meetings, as they are not members of a board. They are usually invited to provide specialist advice not readily available on the board.  |
| 7   | There should be a formal and documented procedure for the treatment of ex officio officers. This should be established in a code of conduct for boards of public bodies.  | Ex officio officers should have the same duties, responsibilities, rights and privileges as do all appointed board members, including the right to vote, and should not be expected to commit the government in respect of matters which are required to be referred to a higher level of authority.   |

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|----|--|---|
| 8  | Every business is unique and should likewise be matched with the appropriate set of skills and competencies to enable it to carry out its functions effectively, efficiently and productively.   | Key competencies such as auditing, financial, accounting and, for some, legal skills are required to meet specific government regulations and guidelines. There should be a periodic review of the existing skills and competencies of board members against the competencies required for the effective operation of the public body.          |
| 9  | The board should be composed of a diversity of skills, knowledge, qualifications, experience, gender and age to assist the public body in achieving its objectives and performing its functions, to add optimal value to the public body.  | Diversity should be a key feature of board composition, with keen attention paid to the balance of skills, experience, diverse backgrounds, gender and youth representation, where possible, which can enhance the quality of the board.  |
| 10 | The responsible minister or other relevant authority should appoint board members based on merit, against objective criteria, with due regard for the benefits of diversity and commitment to the policy objectives of the government.   | There should be a defined policy for the nomination, selection, appointment and termination of directors that is transparent and inclusive, and that lends itself to continuous review.   |
| 11 | The Ministry of Finance & Planning should provide leadership for the formal process of orientation and sensitization for new directors, which should encompass a description of their role, duties, responsibilities, board practices, procedures, inter alia.   | The board should identify opportunities for professional development of all members in order to update their skills and improve their knowledge of the business environment in which the organization operates.   |
| 12 | Each board of a public body should be subject to a formal and rigorous annual appraisal of its performance and that of its committees and individual directors.  | The Ministry of Finance & Planning should develop a performance evaluation template to be used by all boards. The evaluation should address whether the objectives of the board or committee are being met in an effective and efficient manner and be used constructively as a mechanism to improve board effectiveness.                       |
| 13 | The board should ensure that the public body has effective internal control systems. These systems are critical to the corporate governance regime of the public body, and include internal audit and procurement, for which board committees should be assigned responsibility.   | Every board should establish an audit committee with at least three members. All members should have suitable qualifications, skills and experience and be independent non-executive directors.   |
| 14 | The systems of internal control should be based on an ongoing process to identify and prioritize the principal risks to the public body. Every board should therefore put in place a formal enterprise risk management (ERM) framework, developed by the Ministry of Finance & Planning, to manage risk across all functional areas and business units of the public body. | The framework should be designed to identify, assess, monitor and manage risk. The risk profile of a public body may include operational, business, regulatory, market, credit, economic, capital and HR related risks. Any material changes to the risk profile of the public body should be reported to the minister and permanent secretary. |

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|---|---|---|
| 17  | The Ministry of Finance and Planning is responsible for developing a Board Information & Disclosure Policy, which should include the types of information to be disclosed and the time for it to be disclosed.  | On first appointment, and at any time when circumstances dictate, all directors should, in good faith, disclose to the board, for recording and disclosure to external auditors, any business or other interests that are likely to create a potential conflict of interest. The board is responsible for the public body maintaining effective communications with stakeholders. |
| 18  | Every board should ensure that its public body has a procedure and strategy for responding to stakeholders' concerns on a continual basis, and such communication should be proactive and transparent, which is important for building and maintaining relationships.   | The public body should have a clear and coherent understanding of its key stakeholders, their information needs and the most effective means of communicating with them. The board is responsible for the public body maintaining effective communications with stakeholders and the media.   |
| 19  | Each board should observe the code of ethics developed by the Ministry of Finance & Planning as part of its corporate governance regime. However, each board may enhance aspects of the code where necessary, based on its particular operations, in keeping with guidelines established by the Ministry of Finance & Planning. | The code of ethics should clarify the standards of ethical behaviour required and should provide guidance as to the practices necessary to maintain the public body's integrity. The board should monitor and enforce the observance of these standards.  |
| 20  | Every board should ensure that measures for managerial performance take into account the financial, social, cultural and environmental issues (known as the triple bottom-line approach) with a focus on their customers and other stakeholders.  | Each board should make the issues of corporate social responsibility (CSR) a priority on the public body's business agenda.   |
| <p><b>KEY:</b> Key corporate governance drivers: 1- Governance of the board; 2- Roles and responsibilities; 3- Role of the chairman; 4- Role of the CEO; 5- Role of the corporate secretary; 6- Role and authority of board invitees; 7- Role and authority of ex officio officers; 8- Board composition; 9- Board diversity &amp; equity issues; 10- Board selection and appointment; 11- Board orientation, sensitization; 12- Board performance evaluation; 13- Role and independence of audit &amp; international control; 14- Role of the board in ERM; 15- Monitoring arrangement of ministries; 16- Role of the Ministry of Finance; 17- Board information management and disclosure; 18- Managing stakeholder relations; 19- Code of ethics; 20- Corporate social responsibilities.</p> |   |   |

Source: Kerr, V. L. (2016), *CAPAM Innovation Review* 22 (3): 49-50

## Endnotes

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- <sup>1</sup> Kerr, Vindel L. 2009. Corporate Governance Structures and Practices: Toward Policy Reform. Unpublished doctoral thesis. Accessed at <https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:90523&datastreamId=FULL-TEXT.PDF> [April 26, 2017]
- <sup>2</sup> These are state-owned, limited liabilities companies; statutory bodies; authorities; commissions; executive agencies and others, usually wholly-owned or controlled by the Government of Jamaica.
- <sup>3</sup> Bonnicks, G. 1998. Storm in a teacup or crisis in Jamaica's financial sector? Presented at the XXX Annual Conference of the Caribbean Centre for Monetary Studies of The University of the West Indies, St. Augustine, Trinidad and Tobago.
- <sup>4</sup> Hilton, P. 1999. Address to the Jamaica British Businessmen Association, Le Meridian Jamaica Pegasus Hotel (July 31).
- <sup>5</sup> Clarifying the Corporate Governance for Public Bodies (RFP 2006/POO6), Section IV, pg. 22: Scope of Work.
- <sup>6</sup> The Private Sector Organisation of Jamaica (PSOJ) Corporate Governance Code is specifically framed for private sector listed and unlisted companies. <http://psoj.org/corporate-governance/> [accessed March 12, 2016] MFPS Paper No. 56, September 2002.
- <sup>7</sup> The Trinidad and Tobago National Code Corporate Governance Code (TTNCGC) is a project of the Trinidad and Tobago Chamber of Commerce, Trinidad and Tobago Stock Exchange and the Caribbean Corporate Governance Institute. It is not a governmental initiative and neither does it emphasize the needs of public bodies. <http://chamber.org.tt/projects/ttcgc/> [accessed March 12, 2016].
- <sup>8</sup> *Corporate Governance Framework for Public Bodies Jamaica*. Ministry of Finance and Planning, page 12.
- <sup>9</sup> Berle, A. A., and G. C. Means. 1932. *The Modern Corporation and Private Property*. Reprinted 1991. New York: McMillan.
- <sup>10</sup> Oman, C. P. 2001. Corporate governance and national development. Technical Papers No. 180. OECD Centre.
- <sup>11</sup> Kerr, V.L. 2005. *Effective Corporate Governance: An Emerging Market (Caribbean) Perspective on Governing Corporations in a Disparate World*. USA: Outskirt Press.
- <sup>12</sup> Clarifying the Corporate Governance for Public Bodies (RFP 2006/POO6), Section IV, pg. 22: Scope of Work 4.1. Government of Jamaica/Office of Cabinet, Public Sector Modernization Division, September 2009.
- <sup>13</sup> "Benchmark drivers" are key elements, components or themes that have been accepted internationally and constitute good corporate governance practices in the context of the Corporate Governance Framework for Public Bodies.

<sup>14</sup> Provisional or tentative until proven worthy or accepted by relevant stakeholders through the process of consultations.

<sup>15</sup> Based on Filatotchev, I., G. Jackson, and H. Gospel. 2007. Key drivers of good corporate governance and the appropriateness of UK Policy Responses: Final Report. Department of Trade and Industry, U.K., Kenya Principles on Corporate Governance and Code of Practices for State-Owned Enterprises.

<sup>16</sup> Dr. Vindel L. Kerr was the sole consultant who developed the CG Framework for Public Bodies of Jamaica.

<sup>17</sup> Interview with Ms. Audrey Thomas, Director, Public Sector Enterprise Division, MF&P, Jamaica.

<sup>18</sup> Director, CG Framework Implementation Unit, Ministry of Finance and The Public Service.

<sup>19</sup> *The Gleaner*, Wednesday, February 3, 2016, page B11. *Sunday Gleaner*, March 13, page J13.