

Executive Summary: Non-Arm's Length Transactions in the Eastern Caribbean

Policy Brief for Legislative Reform

Overview

This doctoral thesis examines the systemic vulnerability of Eastern Caribbean financial institutions to non-arm's length transactions (NALTs) and proposes comprehensive legislative and regulatory reforms to strengthen corporate governance and financial regulation. The research is grounded in a forensic analysis of the Colonial Life Insurance Company (CLICO) collapse, which resulted in losses exceeding EC\$2 billion across the region and exposed catastrophic governance failures rooted in related-party dealings.

The Problem

Small island economies in the Eastern Caribbean possess unique structural characteristics that create vulnerability to abusive NALTs. Limited professional pools and overlapping social and political networks compromise the independence required for true arm's length dealing. The CLICO case exemplifies this vulnerability. Between 2009 and 2010, the judicial manager disposed of CLICO's assets in St. Kitts and Nevis to government-related entities at discounts ranging from 40 to 72 percent below fair market value, resulting in direct losses of EC\$8.5 million to policyholders in that jurisdiction alone.

These transactions were not anomalies. Empirical research conducted as part of this thesis reveals that 67 percent of surveyed practitioners have encountered suspicious related-party transactions in their professional practice. The current legal and

regulatory framework is fundamentally inadequate to prevent, detect, or remedy these transactions.

Root Causes

Three systemic failures enabled the CLICO value-stripping:

First, Regulatory Capture: The Registrar of Insurance, responsible for supervising the judicial management, was a government employee. The government, as the beneficiary of the discounted asset sales, had a direct interest in the Registrar's inaction. This structural conflict of interest rendered regulatory oversight ineffective.

Second, Definitional Gaps: The Companies Act definition of "director" is narrow, capturing only formally appointed board members. Individuals exercising de facto control through informal channels—"shadow directors"—escape fiduciary accountability entirely.

Third, Inadequate Remedial Mechanisms: Even when fiduciary duty breaches are identified, the legal framework provides limited remedies. The two-year look-back period in insolvency law is insufficient to recover assets disposed of in breach of duty.

The Six-Point Reform Plan

This thesis proposes a comprehensive reform agenda:

1. Corporate Law Reform: Amend the Companies Act to require detailed disclosure of all related-party transactions and mandatory shareholder approval for transactions exceeding specified thresholds.

2. Fiduciary Duties Legislation: Enact a Fiduciary Duties Act that codifies director duties, extends them to shadow directors, and clarifies that public officials managing stakeholder assets owe fiduciary duties to those stakeholders, not to the government.

3. Regulatory Independence: Establish an independent regulatory commission with statutory authority to intervene in related-party transactions, remove directors, and impose civil penalties. Insulate the regulator from political pressure through structural independence measures.

4. Insolvency Law Reform: Extend the look-back period for reviewing related-party transactions from two to five years, enabling judicial managers to recover assets disposed of in breach of fiduciary duty.

5. Public Sector Integrity Legislation: Require annual asset declarations for all ministers and senior public servants, implement cooling-off periods prohibiting regulators from employment with regulated entities for two years after leaving office, and establish protocols for recusal from decision-making involving conflicts of interest.

6. Asset Disposal Transparency: Require two independent valuations and competitive public tender processes for all public asset sales.

Expected Outcomes

Implementation of these reforms would:

- **Prevent Value-Stripping:** Clear fiduciary duty standards and regulatory oversight would deter abusive NALTs and enable early intervention.
 - **Enhance Stakeholder Protection:** Policyholders, creditors, and minority shareholders would have clear rights and effective remedies.
 - **Strengthen Financial Stability:** By preventing asset depletion through related-party dealings, the reforms would enhance the resilience of financial institutions.
 - **Promote Good Governance:** A culture of accountability and transparency would develop as the legal framework clarifies expectations and consequences.
 - **Align with International Standards:** The reforms would bring the Eastern Caribbean into alignment with Commonwealth best practices in the UK, Canada, and Australia.
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Implementation Considerations

While implementation presents challenges—including political resistance from entrenched interests, resource constraints in small regulatory agencies, and the need for judicial capacity-building—these challenges are not insurmountable. International

development partners have committed resources to supporting financial sector reform in the Caribbean. The OECS has a track record of successful regional cooperation. The cost of reform is modest compared to the cost of another CLICO-like collapse.

Conclusion

The CLICO collapse was not inevitable; it was the result of systemic governance failures that are preventable. By implementing the six-point reform plan outlined in this thesis, the Eastern Caribbean can establish a modern, effective framework for preventing and detecting NALTs, protecting stakeholders, and promoting a culture of good governance. The time for action is now.

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