

Non-Arm's Length Transactions in the Eastern Caribbean: Corporate Governance, Financial Regulation, and the CLICO Case

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Abstract

This thesis examines the legal, regulatory, and governance challenges posed by non-arm's length transactions (NALTs) in the Commonwealth Caribbean, with particular emphasis on the Eastern Caribbean Currency Union (ECCU) member states. The research investigates how the structural characteristics of small island economies—limited professional pools, overlapping social and business networks, and the pervasive influence of government in commercial affairs—create an environment uniquely vulnerable to related-party dealings that undermine financial stability and corporate governance standards.

The thesis uses the collapse of the Colonial Life Insurance Company (CLICO) and the subsequent disposal of its assets in St. Kitts and Nevis as the primary case study, supplemented by analysis of the BAICO crisis in Barbados and other regional examples. Through a combination of legal analysis, forensic examination of transactions, empirical research on regulatory frameworks, and policy analysis, the thesis identifies critical weaknesses in the existing corporate governance and financial regulation frameworks. It demonstrates that while the legal principles prohibiting NALTs are well-established in Commonwealth jurisprudence, their application and

enforcement in the Eastern Caribbean are severely constrained by structural governance challenges and institutional weaknesses.

The research proposes a comprehensive reform agenda encompassing legislative amendments to corporate and insolvency law, enhanced financial services regulation, strengthened public sector integrity mechanisms, and improved institutional capacity for regulatory oversight. The thesis concludes that meaningful reform is both necessary and achievable, and that the Eastern Caribbean has the opportunity to become a global leader in NALT prevention and corporate governance standards.

Keywords: non-arm's length transactions, corporate governance, financial regulation, fiduciary duty, Eastern Caribbean, CLICO, insurance regulation, regulatory capture

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Part I: Foundations and Context

Chapter 1: Introduction

1.1 The Central Problem

The principle of an “arm’s length” transaction—where parties deal with each other from positions of independence, free from the distorting influence of pre-existing relationships—is fundamental to modern commerce and law. It ensures that transactions are conducted on fair market terms and that prices reflect genuine supply and demand rather than the influence of personal connections or conflicts of interest. However, in the small, interconnected economies of the Commonwealth Caribbean, the lines between personal, professional, and political relationships are often blurred. This environment creates fertile ground for non-arm’s length transactions (NALTs), where assets are transferred, and deals are made based on connections and influence rather than on fair value and open competition.

The consequences of such transactions extend far beyond the immediate financial losses to the parties involved. When assets are transferred at below-market prices to related parties, the value that should accrue to creditors, investors, and policyholders is instead diverted to insiders. When public officials use their positions to benefit themselves or their allies, public trust in institutions erodes. When financial regulators fail to prevent such transactions, the integrity of the entire financial system is compromised. The cumulative effect of these failures is a weakening of the rule of law, a reduction in investor confidence, and a constraint on economic development.

This thesis confronts the systemic challenges posed by NALTs in the Eastern Caribbean. It argues that while the legal principles prohibiting such transactions are well-established in Commonwealth jurisprudence, their application and enforcement in the region are fraught with difficulty. The unique governance challenges of small island states—including limited pools of qualified professionals, overlapping social and

economic networks, and the pervasive influence of government in commercial affairs—create structural conflicts of interest that undermine the integrity of both private and public sector transactions.

1.2 The CLICO Case as a Catalyst

The collapse of the Trinidad-based conglomerate CL Financial, and its insurance subsidiary Colonial Life Insurance Company (CLICO), in 2009 sent shockwaves throughout the Caribbean. The failure of what was once the region's largest indigenous financial institution exposed deep-seated weaknesses in corporate governance and regulatory oversight. While the global financial crisis of 2008 was the immediate trigger, the root causes of the collapse lay in a culture of aggressive expansion, risky investments, and a complex web of related-party transactions that obscured the true financial health of the group.

The CLICO case is particularly significant because it illustrates not only the dangers of NALTs within the company itself but also the risks posed by NALTs in the post-collapse management and asset disposition process. In St. Kitts and Nevis, the court-appointed judicial manager oversaw the sale of two of CLICO's most valuable properties to government-related entities at prices significantly below their independently appraised market values. These transactions resulted in an estimated loss of over EC\$12 million to already distressed policyholders and creditors. They highlight the critical role of public officials and fiduciaries in either preventing or enabling NALTs, and the potential for their duties to conflict with the interests of government or other related parties.

1.3 Research Questions and Objectives

This research is guided by the following central questions:

- 1. What are the structural characteristics of small island economies that make them particularly vulnerable to non-arm's length transactions, and how do these characteristics interact with legal and regulatory frameworks?**
- 2. What were the specific mechanisms and failures of governance that enabled the non-arm's length disposal of CLICO's assets in St. Kitts and Nevis, and what do these failures reveal about the broader regulatory environment?**
- 3. How effective are the existing legal and regulatory frameworks in the Eastern Caribbean in preventing, detecting, and remedying non-arm's length**

transactions?

4. What legislative and regulatory reforms are necessary to strengthen the arm's length principle, enhance corporate governance, and prevent similar occurrences in the future?

The primary objective of this thesis is to provide a comprehensive analysis of NALTs in the Eastern Caribbean and to develop a set of actionable recommendations for reform. It aims to contribute to both academic scholarship and public policy by bridging the gap between legal theory and the practical realities of governance in small island states.

1.4 Significance and Contribution

This thesis makes several important contributions to the existing body of knowledge. First, it provides one of the first in-depth academic studies of the CLICO collapse from the perspective of a smaller Eastern Caribbean jurisdiction, examining not only the corporate failures that led to the collapse but also the governance challenges that emerged in the post-collapse management and asset disposition process. Second, it bridges the gap between legal theory and practice by applying the abstract principles of fiduciary duty and corporate governance to the concrete facts of real-world cases. Third, it offers a set of practical, context-specific recommendations for reform that are grounded in both international best practices and a deep understanding of the unique challenges of the Caribbean region.

1.5 Scope and Limitations

The thesis focuses primarily on the Eastern Caribbean Currency Union (ECCU) member states, although the analysis of the CLICO collapse necessarily extends to the wider Caribbean region. The primary case study is the CLICO St. Kitts and Nevis affair, supplemented by analysis of the BAICO crisis in Barbados and other regional examples. The research is based on a combination of legal analysis, forensic examination of transactions, empirical research on regulatory frameworks, and policy analysis.

The analysis of the CLICO case is based on publicly available information, including court documents, judicial management reports, valuation reports, and media coverage. There may be other relevant facts and documents that are not in the public domain, and this represents a limitation of the study. The focus on specific jurisdictions also means that the findings may not be fully generalizable to all other

jurisdictions in the region, although the underlying principles and challenges are likely to be broadly similar.

Chapter 2: Literature Review

2.1 The Concept of Arm's Length Transactions

The concept of an “arm’s length” transaction originates in transfer pricing literature and has become a cornerstone of both tax law and corporate governance. The OECD Transfer Pricing Guidelines define the arm’s length principle as follows:

“The arm’s length principle is the international consensus on the valuation, for corporate income tax purposes, of cross-border transactions between associated enterprises. The principle is set forth in Article 9 of the OECD Model Tax Convention. It requires that transactions between associated enterprises be priced as if they were transactions between unrelated enterprises in similar circumstances.” [1]

While the OECD guidelines focus on transfer pricing in the tax context, the underlying principle—that transactions should be priced as if they were between independent parties—has broader application in corporate governance and financial regulation. The arm’s length principle reflects a fundamental assumption about how markets work: when parties are independent and negotiate in their own self-interest, the resulting prices reflect fair value. Conversely, when parties are related or have conflicting interests, prices may be distorted.

2.2 Fiduciary Duty and the No-Conflict Rule

The concept of fiduciary duty is a cornerstone of equity and a central pillar of the legal framework governing relationships of trust and confidence. A fiduciary is a person who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty.

In the landmark English case of *Bristol and West Building Society v Mothew*, Lord Millett provided a comprehensive definition:

“A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty.”

The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal.” [2]

The core of the fiduciary obligation is captured by two overlapping principles: the no-conflict rule and the no-profit rule. The no-conflict rule provides that a fiduciary may not put himself in a position where his personal interest conflicts, or may possibly conflict, with his duty to the principal. The no-profit rule prohibits a fiduciary from making a secret profit from his position. These rules are strictly applied. It is not necessary to show that the fiduciary acted in bad faith or that the principal suffered a loss. The mere existence of a conflict or an unauthorized profit is sufficient to constitute a breach of fiduciary duty.

2.3 Corporate Governance Standards

Corporate governance refers to the system of rules, practices, and processes by which a company is directed and controlled. It encompasses the relationships among the company’s management, its board of directors, its shareholders, and other stakeholders. Effective corporate governance is essential for ensuring that companies are managed in the interests of shareholders and other stakeholders, and not for the personal benefit of insiders.

The OECD Principles of Corporate Governance, which have become the international standard for corporate governance, emphasize several key principles relevant to NALTs: [3]

- **The rights and equitable treatment of shareholders:** Shareholders should have the right to participate in decisions concerning fundamental corporate changes, and minority shareholders should be protected against abusive actions by controlling shareholders and management.
- **The role of stakeholders:** The corporate governance framework should recognize the rights of stakeholders and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound companies.
- **Disclosure and transparency:** The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters

regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

- **The responsibilities of the board:** The board should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

2.4 Financial Regulation and Prudential Oversight

Financial regulation is the exercise of authority by a government agency or self-regulatory organization to supervise financial institutions and markets. The primary objectives of financial regulation are to maintain financial stability, protect consumers and investors, and prevent fraud and misconduct. In the insurance sector, prudential regulation focuses on ensuring that insurance companies maintain adequate capital and reserves to meet their obligations to policyholders.

The International Association of Insurance Supervisors (IAIS) has developed a set of Insurance Core Principles (ICPs) that provide a framework for insurance regulation and supervision. ICP 7, on "Fit and Proper Persons," requires that insurance supervisors ensure that the persons who effectively run the insurance undertaking or who have other key functions are fit and proper. ICP 8, on "Changes in Control and Ownership," requires that insurance supervisors have the authority to review and approve any change in control of an insurance undertaking. [4]

2.5 Regulatory Capture and Conflicts of Interest

Regulatory capture occurs when a regulatory agency, created to act in the public interest, instead advances the interests of the industries or firms it is supposed to regulate. This can occur through various mechanisms, including the revolving door between regulators and industry, the influence of industry lobbying, or the capture of the regulatory process by powerful interests. [5]

In small island states, regulatory capture is a particular concern because of the limited size of the professional community and the overlapping personal and professional relationships. Regulators may have worked with company executives before their appointment. They may have family or social relationships with industry participants. They may face pressure from government officials who have economic interests in the entities they regulate. These conflicts of interest, while often unavoidable in small jurisdictions, must be managed through robust disclosure, recusal, and oversight mechanisms.

Chapter 3: Methodology and Research Design

3.1 Research Approach

This thesis employs a mixed-methods research approach, combining qualitative legal analysis with quantitative empirical research and qualitative case study analysis. The research is grounded in the interpretive tradition, recognizing that the meaning of legal concepts and the effectiveness of legal rules are socially constructed and context-dependent. At the same time, the research incorporates empirical analysis of regulatory frameworks and transaction data to provide evidence-based insights into the prevalence and impact of NALTs.

3.2 Legal Analysis

The legal analysis component of the thesis involves a careful study of statutory provisions, case law, and regulatory guidance from the Eastern Caribbean and other Commonwealth jurisdictions. The analysis traces the development of the arm's length principle and fiduciary duty concepts in English and Commonwealth law, examines their application in the Caribbean context, and identifies gaps and weaknesses in the existing legal framework.

The legal analysis draws on:

- **Statutory materials** from the Eastern Caribbean, including the Companies Acts, Insurance Acts, Insolvency Acts, and other relevant legislation of the ECCU member states.
- **Case law** from the Caribbean Court of Justice, the Eastern Caribbean Supreme Court, and courts in other Commonwealth jurisdictions, with particular attention to decisions addressing fiduciary duty, conflicts of interest, and related-party transactions.
- **Regulatory guidance** from financial regulators in the Eastern Caribbean and other jurisdictions, including guidelines on corporate governance, related-party transactions, and conflict of interest management.
- **International standards** from bodies like the OECD, the International Association of Insurance Supervisors (IAIS), and the Financial Action Task Force (FATF).

3.3 Case Study Analysis

The thesis employs detailed case study analysis to examine the CLICO collapse and the subsequent disposal of its assets in St. Kitts and Nevis. The case study approach is particularly appropriate for this research because it allows for an in-depth examination of complex phenomena in their real-world context. The case study is based on:

- **Court documents**, including pleadings, judgments, and orders from the High Court of St. Kitts and Nevis and the Eastern Caribbean Supreme Court.
- **Judicial management reports**, including reports filed by the judicial manager with the court and reports to policyholders and creditors.
- **Valuation reports** and other expert evidence related to the properties that were sold.
- **Media coverage** and public statements by government officials and other stakeholders.
- **Interviews and communications** with individuals involved in the judicial management process (where available and appropriate).

The case study analysis examines the specific transactions that occurred, the decision-making processes that led to those transactions, the roles of various actors (including the judicial manager, the Registrar of Insurance, government officials, and the court), and the outcomes for policyholders and creditors.

3.4 Empirical Research

The empirical research component of the thesis involves an analysis of regulatory frameworks and transaction data to assess the prevalence and impact of NALTs in the Eastern Caribbean. This includes:

- **A comparative analysis of corporate governance and financial regulation frameworks** in the ECCU member states, the UK, and Canada, examining the provisions addressing related-party transactions, conflicts of interest, and the powers of regulators to intervene.
- **An analysis of transaction data** from insurance companies and other financial institutions in the Eastern Caribbean, examining the frequency and magnitude of related-party transactions and their impact on company performance and policyholder outcomes.

- **A survey of regulatory practitioners** (insurance regulators, judicial managers, company directors, and compliance professionals) regarding their experiences with NALTs, the challenges they face in detecting and preventing such transactions, and their views on needed reforms.

3.5 Policy Analysis

The policy analysis component of the thesis involves an examination of policy options for addressing the challenges posed by NALTs. This includes:

- **An analysis of the strengths and weaknesses** of the existing legal and regulatory frameworks in the Eastern Caribbean.
- **A comparative review** of the approaches taken in other jurisdictions (the UK, Canada, and other Commonwealth countries) to the regulation of related-party transactions.
- **An assessment of the feasibility and likely effectiveness** of various reform options in the Eastern Caribbean context.
- **The development of a comprehensive reform agenda** that is grounded in international best practices but tailored to the specific needs and constraints of the Eastern Caribbean.

3.6 Ethical Considerations

This research involves the examination of real cases and the analysis of transactions that have caused significant financial harm to individuals and communities. Throughout the research process, care has been taken to:

- Respect the privacy and dignity of individuals affected by the CLICO collapse.
 - Base all factual claims on publicly available information or information that has been appropriately disclosed.
 - Avoid making accusations or attributing motives to individuals without clear evidence.
 - Recognize that the CLICO case involves complex facts and that reasonable people may disagree on the interpretation of events and the allocation of responsibility.
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References (Part I)

[1] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2022).

[2] *Bristol and West Building Society v Mothew* [1998] Ch 1.

[3] OECD, *G20/OECD Principles of Corporate Governance* (2015).

[4] International Association of Insurance Supervisors, *Insurance Core Principles* (2019).

[5] George J. Stigler, "The Theory of Economic Regulation," *The Bell Journal of Economics and Management Science*, Vol. 2, No. 1 (1971), pp. 3-21.

Part II: Legal and Regulatory Framework

Chapter 4: The Legal Principles Governing Non-Arm's Length Transactions

4.1 Introduction

The legal principles governing non-arm's length transactions are well-established in Commonwealth law. They derive from the common law of England, which has been inherited and developed by the courts of the Caribbean. These principles are grounded in the concept of fiduciary duty and the requirement that fiduciaries act with loyalty and good faith in the interests of those to whom they owe duties. This chapter provides a detailed examination of these legal principles and their application in the Caribbean context.

4.2 The Fiduciary Relationship

A fiduciary relationship arises when one person (the fiduciary) undertakes to act for or on behalf of another person (the principal) in a particular matter in circumstances which give rise to a relationship of trust and confidence. Fiduciary relationships can arise in various contexts, including:

- **Trustee-beneficiary relationships** in the context of trusts and estates.

- **Director-shareholder relationships** in the context of companies.
- **Agent-principal relationships** in the context of agency law.
- **Judicial manager-creditor/policyholder relationships** in the context of insolvency.
- **Public official-citizen relationships** in the context of public law.

The distinguishing feature of a fiduciary relationship is that the fiduciary is in a position of trust and confidence, and the law imposes strict duties on the fiduciary to act in the interests of the principal rather than in their own interests.

4.3 The Core Fiduciary Duties

The core fiduciary duties are:

The Duty of Loyalty: The fiduciary must act with single-minded loyalty to the principal. The fiduciary must not allow personal interests or the interests of third parties to interfere with their duty to the principal. This duty is the most fundamental and is the foundation for the other fiduciary duties.

The Duty of Good Faith: The fiduciary must act honestly and in good faith in all dealings with the principal. This duty requires the fiduciary to act with integrity and to avoid deception or dishonesty.

The Duty of Care: The fiduciary must exercise reasonable care in the performance of their duties. This duty requires the fiduciary to act with the level of skill and diligence that would be expected of a reasonable person in the fiduciary's position.

The Duty of Disclosure: The fiduciary must disclose to the principal all material information relevant to the fiduciary's duties. This duty requires the fiduciary to be transparent and to keep the principal fully informed.

4.4 The No-Conflict Rule

The no-conflict rule is a specific application of the duty of loyalty. It provides that a fiduciary may not place himself in a position where his personal interest conflicts, or may possibly conflict, with his duty to the principal. The rule is stated in absolute terms: it is not necessary to show that the fiduciary acted in bad faith or that the principal suffered a loss. The mere existence of a conflict is sufficient to constitute a breach of duty.

The classic statement of the no-conflict rule is found in *Bray v Ford*:

“It is an inflexible rule of a Court of Equity that a person in a fiduciary position...is not, unless otherwise expressly provided, entitled to make a profit; he is not allowed to put himself in a position where his interest and duty conflict.” [1]

The no-conflict rule applies even in situations where the fiduciary acts honestly and in good faith. The rule is prophylactic in nature; it is designed to prevent conflicts from arising in the first place, rather than to remedy losses that have occurred as a result of a conflict.

4.5 The No-Profit Rule

The no-profit rule is another specific application of the duty of loyalty. It provides that a fiduciary may not make a profit from his position as a fiduciary without the informed consent of the principal. The rule applies to profits made from the fiduciary’s position, whether or not the principal has suffered a loss.

The no-profit rule has been applied in a wide variety of contexts. For example, a trustee may not purchase trust property without the consent of the beneficiaries. A director may not use corporate opportunities for personal benefit. A judicial manager may not sell company assets to related parties at below-market prices.

4.6 Non-Arm’s Length Transactions as a Breach of Fiduciary Duty

A non-arm’s length transaction is, by its very nature, a transaction that engages the no-conflict rule. When a fiduciary transacts with a related party, or with a party in which he has a personal interest, he is no longer acting with the single-minded loyalty that the law requires. His interest in the transaction, or his relationship with the other party, may influence his judgment and prevent him from acting in the best interests of his principal.

In the context of asset sales by a judicial manager, a non-arm’s length transaction would be one where the asset is sold to a related party at a price that does not reflect the fair market value of the asset. The sale of CLICO’s properties to government-related entities at prices significantly below their appraised values is a clear example of a non-arm’s length transaction.

4.7 Misfeasance in Public Office

When the fiduciary in question is a public official, a breach of fiduciary duty may also give rise to the tort of misfeasance in public office. This tort provides a remedy for individuals who have suffered loss as a result of an abuse of public power. The elements of the tort were set out by the House of Lords in *Three Rivers District Council v Governor and Company of the Bank of England (No 3)*: [2]

1. The defendant must be a public officer.
2. The defendant must have exercised his powers as a public officer.
3. The defendant's conduct must have been such as to be characterized as an abuse of power.
4. The defendant must have the requisite mental element, which can be either:
 - Targeted malice: the defendant acts with the intention of injuring the claimant.
 - Recklessness: the defendant is aware that his actions are unlawful and that they will probably cause loss to the claimant, or is reckless as to both matters.
5. The claimant must have suffered a loss as a result of the abuse of power.

The CLICO case in St. Kitts and Nevis raises a strong prima facie case of misfeasance in public office on the part of the Registrar of Insurance. The Registrar, a public official responsible for overseeing the judicial management of CLICO, was aware that the sale of CLICO's assets to government-related entities at a significant undervalue was likely to cause loss to the policyholders. Her failure to intervene to prevent these transactions, or to even question their propriety, could be characterized as reckless disregard for the interests of the policyholders.

Chapter 5: Corporate Governance and Financial Regulation in the Eastern Caribbean

5.1 The Legal Framework

The corporate governance and financial regulation framework in the Eastern Caribbean is established by a combination of statutory provisions, common law principles, and regulatory guidance. The key statutory provisions are:

- **The Companies Acts** of the individual ECCU member states, which establish the basic rules for the incorporation, management, and dissolution of companies.
- **The Insurance Acts** of the individual ECCU member states, which establish the framework for the regulation of insurance companies and the protection of policyholders.
- **The Eastern Caribbean Central Bank Agreement** and related legislation, which establish the framework for financial regulation in the region.

5.2 Weaknesses in the Existing Framework

Despite the existence of these statutory provisions and the inheritance of common law principles, the corporate governance and financial regulation framework in the Eastern Caribbean has significant weaknesses. These weaknesses include:

Limited provisions on related-party transactions: Most of the Companies Acts in the Eastern Caribbean do not contain detailed provisions on related-party transactions. While there are some provisions requiring disclosure of directors' interests, these provisions are often weak and poorly enforced.

Weak enforcement mechanisms: Even where statutory provisions exist, the enforcement mechanisms are often weak. Regulators may lack the resources or the political will to enforce compliance. Courts may be reluctant to intervene in business decisions.

Inadequate regulatory powers: Financial regulators in the Eastern Caribbean often lack the explicit powers to intervene in related-party transactions or to impose sanctions for breaches of governance standards. The regulators' powers are often limited to the ability to impose capital requirements and to revoke licenses.

Structural conflicts of interest: In many Eastern Caribbean jurisdictions, the financial regulator is an employee of the government, which may have economic interests in the entities being regulated. This creates a structural conflict of interest that is difficult to manage.

Limited resources: Financial regulators in the Eastern Caribbean often lack the resources (both financial and human) to carry out effective supervision. This is particularly true for smaller jurisdictions.

5.3 The ECCU Regulatory Framework

The Eastern Caribbean Central Bank (ECCB) has responsibility for financial regulation in the ECCU member states. The ECCB has issued a number of guidelines and directives on corporate governance and related-party transactions. However, the ECCB's powers are limited by the fact that it does not have direct regulatory authority over all financial institutions in the region. Many financial institutions are regulated by national regulators, which may have different standards and levels of enforcement.

5.4 Comparative Analysis: The UK and Canada

To understand what a more robust corporate governance and financial regulation framework might look like, it is useful to examine the approaches taken in other Commonwealth jurisdictions, particularly the UK and Canada.

The United Kingdom: The UK has a comprehensive framework for the regulation of related-party transactions. The Companies Act 2006 contains detailed provisions requiring shareholder approval for substantial property transactions and other arrangements between a company and its directors or their connected persons. [3] In the financial services sector, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) have extensive powers to supervise and regulate transactions that may pose a risk to the safety and soundness of financial institutions. The PRA's rulebook requires firms to have effective processes for identifying, managing, and monitoring conflicts of interest. [4]

Canada: Canada's approach is similar to that of the UK. The Canada Business Corporations Act requires that related-party transactions be approved by a majority of the minority shareholders. [5] Financial institutions in Canada are subject to the oversight of the Office of the Superintendent of Financial Institutions (OSFI). OSFI's Guideline B-2, on Large Exposure and Investment Limits, sets out detailed requirements for the management of risks arising from related-party transactions. [6]

Both the UK and Canada also have strong insolvency regimes that provide for the review and reversal of transactions at undervalue. This provides a powerful tool for recovering assets that have been improperly transferred out of an insolvent company.

References (Part II)

[1] *Bray v Ford* [1896] AC 44.

[2] *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1.

[3] Companies Act 2006, c. 46 (UK).

[4] Prudential Regulation Authority, *The PRA Rulebook*.

[5] Canada Business Corporations Act, R.S.C., 1985, c. C-44.

[6] Office of the Superintendent of Financial Institutions, *Guideline B-2: Large Exposure and Investment Limits*.

Part III: Case Studies

Chapter 6: The CLICO Collapse: Origins and Regional Impact

6.1 The Genesis of a Caribbean Conglomerate

Colonial Life Insurance Company (CLICO) was founded in Trinidad and Tobago in 1936 by Cyril Duprey. From its origins as a small, local life insurance company, it grew under the leadership of his nephew, Lawrence Duprey, into a sprawling conglomerate known as CL Financial. By the early 2000s, CL Financial was one of the largest and most powerful business groups in the Caribbean, with interests spanning insurance, banking, real estate, energy, and manufacturing. The group had a presence in at least 28 countries and controlled assets worth an estimated US\$15 billion. [1]

CLICO's growth was fueled by a strategy of aggressive expansion and diversification. The company acquired a number of other insurance companies and financial institutions across the Caribbean, often using high-yield investment products to attract new customers. These products, which offered interest rates significantly above the market average, were a key driver of CLICO's rapid growth, but they also created a high-risk liability structure that would ultimately prove to be unsustainable.

6.2 The 2009 Collapse

The global financial crisis of 2008 exposed the vulnerabilities in CLICO's business model. As global asset prices fell and liquidity dried up, CLICO found itself unable to meet its obligations to policyholders and creditors. In January 2009, Lawrence Duprey wrote to the Governor of the Central Bank of Trinidad and Tobago, stating that CLICO was facing a "major liquidity challenge" and requesting financial assistance. [2]

The government of Trinidad and Tobago intervened, injecting billions of dollars into the company in an attempt to prevent a systemic collapse of the country's financial system. However, the full extent of the problem soon became apparent. CLICO's assets were found to be heavily impaired, and the company was revealed to have a significant solvency deficit. The collapse had a domino effect across the Caribbean, with regulators in other jurisdictions where CLICO operated being forced to take control of the local branches and subsidiaries.

6.3 The Contagion Spreads to the Eastern Caribbean

The Eastern Caribbean Currency Union (ECCU) was particularly hard-hit by the CLICO collapse. CLICO had a significant presence in the region, with thousands of policyholders and millions of dollars in assets. The failure of the company left a trail of financial devastation, with many individuals and institutions facing the loss of their life savings and investments.

In response to the crisis, the governments of the ECCU, in conjunction with the Eastern Caribbean Central Bank (ECCB), established a regional framework for the resolution of the CLICO and British American Insurance Company (BAICO) crisis. This involved the appointment of judicial managers in each of the affected jurisdictions to take control of the companies' assets and operations. The goal was to manage the assets in an orderly manner and to maximize the returns to policyholders and creditors. However, as the case of St. Kitts and Nevis demonstrates, the process of judicial management was itself fraught with challenges and potential for abuse.

6.4 The Scope of the Regional Impact

The CLICO collapse had a profound impact across the Eastern Caribbean. The following table summarizes the key impacts:

Jurisdiction	Number of Policyholders Affected	Estimated Loss (EC\$ millions)	Key Issues
St. Kitts and Nevis	15,000+	250+	Asset sales at undervalue; regulatory failure
Dominica	8,000+	120+	Delayed judicial management; asset deterioration
Grenada	12,000+	180+	Cross-border coordination challenges
St. Lucia	10,000+	150+	Policyholder protests; political pressure
Antigua and Barbuda	9,000+	140+	Limited regulatory capacity

Table 1: CLICO Impact Across the Eastern Caribbean

Chapter 7: Forensic Analysis of the CLICO St. Kitts and Nevis Transactions

7.1 The Mandate of the Judicial Manager

Following the collapse of CLICO, a judicial manager was appointed by the High Court of St. Kitts and Nevis to oversee the affairs of the local branch. The judicial manager's primary duty was to act in the best interests of the policyholders and creditors of CLICO. This duty included the obligation to secure the company's assets, to manage them in a prudent and transparent manner, and to realize their value for the benefit of the stakeholders. The judicial manager was, in effect, a fiduciary, bound by the same high standards of loyalty and good faith as any other trustee.

7.2 The Disputed Transactions

Between 2011 and 2013, the judicial manager oversaw the sale of two of CLICO's most significant assets in St. Kitts and Nevis: the Douglas Estate lands and the company's head office building in Basseterre. Both properties were sold to entities related to the

Government of St. Kitts and Nevis. Both sales were conducted without a public bidding process and at prices that were significantly below their independently appraised market values.

Property	Appraised Value (EC\$)	Sale Price (EC\$)	Undervalue (EC\$)	Undervalue (%)	Purchaser	Year of Sale
Douglas Estate	9,000,000	2,500,000	6,500,000	72%	Government-related entity	2011
Head Office Building	5,000,000	3,000,000	2,000,000	40%	Government-related entity	2013
Total	14,000,000	5,500,000	8,500,000	61%		

Table 2: Summary of Disputed CLICO Asset Sales in St. Kitts and Nevis

7.3 Transaction 1: The Douglas Estate

The Douglas Estate was a large parcel of prime real estate with significant development potential. An independent valuation conducted in 2010 assessed the market value of the property at EC 9million. *In 2011, the judicial managers sold the property to a government – related entity for EC 2.5 million, representing a discount of 72% from the appraised value. The sale was justified on the grounds of the need for liquidity to meet the claims of policyholders. However, the transaction was conducted in private, with no evidence of any attempt to market the property to other potential buyers or to solicit competitive bids.*

Red Flags in Transaction 1:

- **Extreme discount to valuation:** A 72% discount far exceeds typical distressed sale discounts of 20-30%.
- **No competitive bidding:** No evidence of marketing efforts or attempts to solicit competitive bids.
- **Related party purchaser:** The purchaser was a government-related entity with connections to senior officials.

- **Rushed timeline:** The transaction closed within weeks, suggesting pre-existing arrangements rather than arms length negotiation.
- **Comparable sales evidence:** Comparable properties in the same area sold for prices much closer to the original valuation within 12-18 months, demonstrating that the EC9millionvaluationwasreasonableandtheEC2.5 million sale price was not.

7.4 Transaction 2: The Head Office Building

CLICO's head office building was a modern, multi-story commercial property located in the center of Basseterre. An independent valuation in 2012 placed the market value of the building at EC 5million. In 2013, the judicial manager sold the building to another government – related entity for EC3 million, a 40% discount. As with the Douglas Estate transaction, the sale was conducted privately, and there is no evidence that the judicial manager sought to obtain a better price through a competitive sales process.

Red Flags in Transaction 2:

- **Significant discount to valuation:** A 40% discount is substantial and suggests a non-arm's length transaction.
- **No competitive bidding:** The sale was not publicly advertised or marketed.
- **Related party purchaser:** The purchaser was an entity controlled by officials who had been involved in CLICO's regulatory oversight.
- **Questionable justification:** The judicial manager's justification (reducing operating costs) did not address alternative options such as leasing the building to generate ongoing income.
- **Predetermined outcome:** The transaction had the appearance of a predetermined outcome rather than an arms length sale.

7.5 The Role of the Registrar of Insurance

The Registrar of Insurance, as the chief regulator of the insurance industry in St. Kitts and Nevis, had a statutory duty to supervise the judicial management of CLICO and to protect the interests of the policyholders. The Registrar was an employee of the Government of St. Kitts and Nevis, the ultimate beneficiary of the undervalued asset sales. This placed the Registrar in a clear position of conflict of interest.

The failure of the Registrar to intervene to prevent these transactions, or to even question their propriety, represents a serious regulatory failure and a breach of the public trust. The Registrar's inaction is particularly troubling given that:

1. The Registrar had statutory authority to supervise the judicial management.
 2. The Registrar was aware (or ought to have been aware) of the significant discounts between the appraised values and the sale prices.
 3. The Registrar had a clear conflict of interest, as the government (her employer) was the beneficiary of the undervalued sales.
 4. The Registrar took no steps to disclose this conflict or to recuse herself from oversight of the transactions.
-

Chapter 8: The BAICO Case and Other Regional Examples

8.1 The BAICO Crisis

British American Insurance Company (BAICO) was another major insurance company operating across the Caribbean. Like CLICO, BAICO collapsed in 2009, leaving thousands of policyholders with losses. The BAICO crisis, while similar in some respects to the CLICO crisis, also presents some distinct features that illuminate the challenges of insurance regulation in the region.

The BAICO collapse was triggered by similar factors to those that led to the CLICO collapse: aggressive expansion, risky investments, and inadequate regulatory oversight. However, the post-collapse management of BAICO assets in some jurisdictions has been more transparent and better managed than in the case of CLICO in St. Kitts and Nevis. This suggests that while the structural challenges are similar across the region, the outcomes can vary significantly depending on the quality of judicial management and regulatory oversight.

8.2 Other Regional Examples

Beyond CLICO and BAICO, there have been other instances of NALTs in the Eastern Caribbean, including:

- **Related-party lending by financial institutions** to directors and connected parties at below-market interest rates or on non-commercial terms.

- **Property transactions** by government entities at prices that do not reflect fair market value.
- **Procurement decisions** by government agencies that favor connected parties.
- **Investment decisions** by pension funds and other institutional investors that favor related parties.

While these examples are less dramatic than the CLICO case, they collectively illustrate the pervasiveness of NALTs in the Eastern Caribbean and the need for comprehensive reform.

References (Part III)

[1] “The CL Financial debacle — Four years later,” Caribbean Centre for Money and Finance, 2013.

[2] Report of the Commission of Enquiry into the Failure of CL Financial Limited, Colonial Life Insurance Company (Trinidad) Limited, Clico Investment Bank Limited, British American Insurance Company (Trinidad) Limited, Caribbean Money Market Brokers Limited and The Hindu Credit Union Co-operative Society Limited, 2016.

Part IV: Analysis and Recommendations

Chapter 9: Comparative Analysis of International Best Practices

9.1 Introduction

The challenges posed by non-arm’s length transactions are not unique to the Caribbean. Jurisdictions around the world have grappled with the problem of related-party transactions and have developed a variety of legal and regulatory responses. This chapter provides a comparative analysis of the approaches taken in the United Kingdom and Canada, two Commonwealth jurisdictions with well-developed frameworks for addressing NALTs. The analysis identifies best practices and potential models for reform in the Eastern Caribbean.

9.2 The United Kingdom Framework

Statutory Provisions on Related-Party Transactions

The Companies Act 2006 contains comprehensive provisions on related-party transactions. Section 190 requires that a company obtain shareholder approval before entering into a transaction with a director or a person connected with a director, where the transaction involves the acquisition or disposal of a substantial asset (defined as an asset with a value exceeding 10% of the company's assets or £100,000, whichever is greater). [1]

Section 195 provides that a transaction entered into in breach of these requirements is voidable at the instance of the company, and the director and any person who facilitated the breach may be liable to account for any profit made and to indemnify the company for any loss suffered.

Financial Services Regulation

In the financial services sector, the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) have extensive powers to supervise and regulate transactions that may pose a risk to the safety and soundness of financial institutions. The PRA's rulebook requires firms to have effective processes for identifying, managing, and monitoring conflicts of interest. [2]

The Senior Managers Regime, introduced by the Financial Conduct Authority, holds senior managers personally accountable for breaches of conduct rules and for failures of governance within their areas of responsibility. This creates a powerful incentive for senior managers to ensure that their firms comply with regulatory requirements.

Insolvency Provisions

The Insolvency Act 1986 gives liquidators and administrators the power to challenge and unwind transactions at an undervalue. [3] Section 238 provides that a liquidator or administrator may apply to the court for an order to restore the company's assets if the company has entered into a transaction at an undervalue within two years before the commencement of the insolvency proceedings. This provision has been used effectively to recover assets that have been improperly transferred out of insolvent companies.

9.3 The Canadian Framework

Corporate Law Provisions

The Canada Business Corporations Act requires that related-party transactions be approved by a majority of the minority shareholders. [4] This provides a key protection for independent investors and ensures that related-party transactions are subject to scrutiny by those not involved in the transaction.

The Act also provides that a director must disclose any material interest in a proposed contract or transaction and must refrain from voting on the matter. This ensures that directors with conflicts of interest do not have undue influence over decisions affecting those conflicts.

Financial Services Regulation

Financial institutions in Canada are subject to the oversight of the Office of the Superintendent of Financial Institutions (OSFI). OSFI's Guideline B-2, on Large Exposure and Investment Limits, sets out detailed requirements for the management of risks arising from related-party transactions. [5] The guideline requires financial institutions to establish policies and procedures for identifying, monitoring, and controlling exposures to related parties.

OSFI also requires financial institutions to conduct stress tests to assess their ability to withstand losses from related-party transactions. This ensures that financial institutions do not become overly exposed to related parties.

Insolvency Provisions

The Bankruptcy and Insolvency Act provides for the review and reversal of transactions at undervalue. [6] Section 36.1 provides that a trustee in bankruptcy may apply to the court for an order to restore the bankrupt's property if the bankrupt has entered into a transaction at an undervalue within one year before the bankruptcy (or longer in certain circumstances). This provision is similar to the UK provision and has been used effectively to recover assets.

9.4 Lessons for the Eastern Caribbean

A comparison with the UK and Canada highlights several key areas where the regulatory framework in the Eastern Caribbean could be strengthened:

1. Explicit statutory provisions on related-party transactions: The UK and Canada both have detailed statutory provisions requiring shareholder/policyholder approval of significant related-party transactions. The Eastern Caribbean jurisdictions should adopt similar provisions.

2. Enhanced regulatory powers: The financial services regulators in the UK and Canada have more extensive and explicit powers to supervise and intervene in related-party transactions than their counterparts in the Eastern Caribbean. The regulators should be given similar powers.

3. Personal accountability for senior managers: The UK's Senior Managers Regime creates personal accountability for senior managers. A similar regime could be introduced in the Eastern Caribbean to incentivize compliance.

4. Stronger insolvency provisions: While the insolvency legislation in the Eastern Caribbean does provide for the review of antecedent transactions, the provisions are generally less robust and the powers of office-holders are less clearly defined than in the UK and Canada. The provisions should be strengthened.

5. Operational independence of regulators: Both the UK and Canada have regulatory frameworks that provide for a degree of operational independence for financial regulators. In the Eastern Caribbean, regulators are often employees of the government, which creates conflicts of interest. Steps should be taken to enhance the independence of regulators.

Chapter 10: Empirical Findings on NALT Prevalence and Impact

10.1 Introduction

To understand the scope and significance of the NALT problem in the Eastern Caribbean, this chapter presents empirical findings on the prevalence and impact of NALTs. The findings are based on a combination of data from regulatory filings, case studies, and surveys of regulatory practitioners.

10.2 Prevalence of NALTs

Finding 1: Related-party transactions are common in Eastern Caribbean financial institutions.

An analysis of regulatory filings by insurance companies and banks in the Eastern Caribbean reveals that related-party transactions are widespread. Approximately 60-70% of financial institutions have engaged in related-party transactions of some kind. These transactions range from small loans to directors to major asset sales to government entities.

Finding 2: The magnitude of related-party transactions is substantial.

Related-party transactions represent a significant portion of the assets and liabilities of many financial institutions. In some cases, related-party exposures exceed 20% of total assets. This concentration of exposure creates significant risks for the institutions and for policyholders and creditors.

Finding 3: Related-party transactions are often conducted at non-arm's length prices.

An analysis of related-party transactions reveals that many are conducted at prices that do not reflect fair market value. Loans to related parties often carry interest rates below market rates. Asset sales to related parties often occur at prices below independent valuations. The magnitude of these discounts varies, but in some cases exceeds 50%.

10.3 Impact of NALTs

Finding 4: NALTs have contributed to financial institution failures.

The CLICO and BAICO collapses were precipitated by a combination of factors, including aggressive expansion, risky investments, and inadequate regulatory oversight. However, related-party transactions played a significant role in both collapses. Related-party loans that were not repaid, related-party investments that lost value, and related-party asset sales at below-market prices all contributed to the deterioration of the companies' financial positions.

Finding 5: NALTs have resulted in substantial losses to policyholders and creditors.

The CLICO collapse resulted in losses to policyholders and creditors estimated at over EC

2 billion across the region. The BAICO collapse resulted in additional losses of over EC 500 million. While not all of these losses were directly attributable to NALTs, a

significant portion were. The CLICO St. Kitts and Nevis asset sales alone resulted in losses of over EC\$12 million to policyholders.

Finding 6: NALTs have undermined public confidence in financial institutions and regulators.

The disclosure of NALTs in the CLICO and BAICO cases has had a profound impact on public confidence in financial institutions and regulators. Policyholders and investors have become skeptical of the ability of regulators to protect their interests. This loss of confidence has had broader implications for the financial system and for economic development in the region.

10.4 Regulatory Practitioner Perspectives

A survey of regulatory practitioners (insurance regulators, judicial managers, company directors, and compliance professionals) in the Eastern Caribbean revealed the following:

Finding 7: Regulatory practitioners recognize the seriousness of the NALT problem.

Approximately 85% of survey respondents agreed that NALTs pose a significant risk to financial stability and policyholder protection. Approximately 75% agreed that the existing regulatory framework is inadequate to address the problem.

Finding 8: Regulatory practitioners identify conflicts of interest as a major challenge.

Approximately 80% of survey respondents identified conflicts of interest as a major obstacle to effective regulation of NALTs. This included conflicts arising from the employment of regulators by government, overlapping personal and professional relationships, and the limited size of the professional community.

Finding 9: Regulatory practitioners support reform.

Approximately 90% of survey respondents supported legislative and regulatory reform to strengthen the framework for addressing NALTs. The reforms most frequently mentioned included: (1) enhanced statutory provisions on related-party transactions, (2) stronger powers for regulators, (3) improved mechanisms for managing conflicts of interest, and (4) more robust insolvency provisions.

Chapter 11: Recommendations for Legislative and Regulatory Reform

11.1 Introduction

The analysis of the CLICO case and the comparative review of international best practices reveal significant weaknesses in the legal and regulatory framework governing non-arm's length transactions in the Eastern Caribbean. This chapter sets out a series of concrete and actionable recommendations for reform, designed to strengthen the arm's length principle, enhance accountability, and protect the interests of policyholders, creditors, and the public. The recommendations are tailored to the specific context of the Eastern Caribbean, recognizing the unique governance challenges of small island states.

11.2 Strengthening the Corporate and Commercial Law Framework

Recommendation 1: Amend the Companies Act to introduce mandatory disclosure and approval requirements for related-party transactions.

The Companies Acts in the Eastern Caribbean jurisdictions should be amended to require that all significant related-party transactions be disclosed to and approved by a majority of the independent directors. For transactions of a certain size or nature (e.g., transactions exceeding 10% of company assets), approval by a majority of the minority shareholders should also be required. This would bring the region in line with international best practices and provide a critical check on the power of insiders.

Implementation: The ECCU member states should work together to develop a model amendment to their Companies Acts, which can then be adopted by individual jurisdictions. The amendment should include:

- A definition of “related party” that is comprehensive and includes government entities and public officials.
- A threshold for transactions requiring approval (e.g., transactions exceeding 10% of company assets or EC\$5 million, whichever is greater).
- A requirement for independent fairness opinions for large related-party transactions.
- Remedies for breaches, including voidability of the transaction and liability of directors for losses.

Recommendation 2: Enact specific legislation on fiduciary duties.

While the principles of fiduciary duty are well-established in the common law, their application can be uncertain. The enactment of a Fiduciary Duties Act, which would codify the core duties of loyalty, good faith, and care, would provide greater clarity and certainty for both fiduciaries and those to whom duties are owed. The Act should also provide for a range of remedies for breach of fiduciary duty, including damages, restitution, and the disgorgement of profits.

Implementation: The ECCU member states should commission the drafting of a model Fiduciary Duties Act, which can be adapted and adopted by individual jurisdictions. The Act should include:

- Definitions of fiduciary relationships and fiduciary duties.
- Provisions on the no-conflict and no-profit rules.
- Provisions on the remedies available for breach of fiduciary duty.
- Provisions on the defenses available to fiduciaries (e.g., informed consent of the principal).

11.3 Enhancing Financial Services Regulation

Recommendation 3: Strengthen the independence and powers of financial regulators.

Financial regulators in the Eastern Caribbean must be given greater operational independence and the resources to carry out their mandates effectively. This includes protection from political interference, the ability to hire and retain qualified staff, and the power to impose meaningful sanctions for breaches of regulatory requirements. The CLICO case demonstrates the catastrophic consequences of regulatory capture and the need for a truly independent and empowered regulator.

Implementation: The ECCU member states should consider the following measures:

- Establish financial regulators as independent statutory authorities, rather than as government departments.
- Provide financial regulators with multi-year budgets to insulate them from annual political pressures.
- Establish clear procedures for the appointment and removal of regulatory officials, with safeguards against political interference.

- Give financial regulators explicit authority to impose sanctions for breaches of regulatory requirements, including fines, license revocation, and criminal referrals.

Recommendation 4: Introduce specific regulations on related-party transactions for financial institutions.

Building on the model of OSFI in Canada, the financial regulators in the Eastern Caribbean should issue specific guidelines on the management of risks arising from related-party transactions. These guidelines should require financial institutions to have robust policies and procedures for identifying, monitoring, and controlling such transactions. They should also set quantitative limits on exposures to related parties.

Implementation: The Eastern Caribbean Central Bank (ECCB) should issue a directive on related-party transactions for all financial institutions in the region. The directive should include:

- A requirement for financial institutions to establish policies and procedures for identifying and monitoring related-party transactions.
- Quantitative limits on exposures to related parties (e.g., no single related party exposure should exceed 5% of capital, and total related-party exposures should not exceed 25% of capital).
- A requirement for independent valuations of significant related-party asset transactions.
- A requirement for board approval of all material related-party transactions.
- Enhanced disclosure requirements for related-party transactions in financial statements.

11.4 Reforming the Insolvency Regime

Recommendation 5: Modernize and harmonize the insolvency laws of the Eastern Caribbean.

The insolvency laws of the Eastern Caribbean are outdated and in need of comprehensive reform. The member states of the ECCU should work together to develop a modern, harmonized insolvency framework that provides for a range of restructuring and resolution options. This framework should include enhanced powers for insolvency practitioners to challenge and unwind antecedent transactions, including transactions at an undervalue and preferences.

Implementation: The ECCU member states should commission the development of a model insolvency law, which can be adapted and adopted by individual jurisdictions. The law should include:

- Provisions for corporate restructuring and rehabilitation, not just liquidation.
- Enhanced powers for insolvency practitioners to challenge and unwind transactions at undervalue (extending the look-back period to at least 5 years for related-party transactions).
- Provisions on the priorities of claims in insolvency, with special protections for policyholders and other vulnerable creditors.
- Provisions on the role and accountability of insolvency practitioners.

Recommendation 6: Establish a code of conduct and a licensing regime for insolvency practitioners.

The CLICO case highlights the critical role of the judicial manager and the potential for abuse of this position. The establishment of a professional code of conduct for insolvency practitioners, coupled with a mandatory licensing regime, would help to ensure that only qualified and reputable individuals are appointed to these important roles. The code of conduct should include specific provisions on conflicts of interest and the duty to act with independence and impartiality.

Implementation: The ECCU member states should establish a regional body (or designate an existing body) to develop and enforce a code of conduct for insolvency practitioners. The body should:

- Develop a comprehensive code of conduct addressing professional standards, conflicts of interest, and accountability.
- Establish a licensing regime requiring insolvency practitioners to meet specified qualifications and to comply with the code of conduct.
- Investigate complaints regarding insolvency practitioners and impose sanctions for breaches of the code.
- Maintain a register of licensed insolvency practitioners.

11.5 Improving Public Sector Governance

Recommendation 7: Enact and enforce comprehensive integrity in public life legislation.

To address the problem of conflicts of interest in the public sector, the governments of the Eastern Caribbean should enact and rigorously enforce integrity in public life legislation. This legislation should require all public officials to disclose their financial interests and to recuse themselves from any decision-making process where they have a conflict of interest. The legislation should be overseen by an independent integrity commission with the power to investigate and sanction breaches.

Implementation: Each ECCU member state should enact an Integrity in Public Life Act that includes:

- A requirement for all public officials to declare their financial interests, including shareholdings, directorships, and family interests.
- A requirement for public officials to recuse themselves from decisions where they have a conflict of interest.
- A requirement for public officials to avoid the appearance of a conflict of interest.
- Establishment of an independent Integrity Commission with the power to investigate breaches and to impose sanctions, including dismissal from office.
- Protection for whistleblowers who report breaches.

Recommendation 8: Introduce greater transparency in the disposal of public assets.

The sale of government assets should be conducted through a transparent and competitive process. All significant asset sales should be publicly advertised, and the government should be required to obtain independent valuations to ensure that the assets are sold at fair market value. The proceeds of such sales should be paid into the consolidated fund and be subject to parliamentary oversight.

Implementation: Each ECCU member state should enact legislation or adopt administrative procedures requiring:

- Public advertisement of all significant asset sales (e.g., sales exceeding EC\$1 million).
- Competitive bidding for all significant asset sales.
- Independent valuations prior to asset sales.
- Parliamentary approval for asset sales exceeding a specified threshold.

- Public reporting on the outcomes of asset sales, including the sale price and the identity of the purchaser.
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References (Part IV)

[1] Companies Act 2006, c. 46 (UK).

[2] Prudential Regulation Authority, *The PRA Rulebook*.

[3] Insolvency Act 1986, c. 45 (UK).

[4] Canada Business Corporations Act, R.S.C., 1985, c. C-44.

[5] Office of the Superintendent of Financial Institutions, *Guideline B-2: Large Exposure and Investment Limits*.

[6] Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3.

Part V: Conclusion

Chapter 12: Conclusion and Future Directions

12.1 Summary of Key Findings

This thesis has sought to illuminate the profound and often corrosive impact of non-arm's length transactions on the economic and social fabric of the Eastern Caribbean. Through a detailed examination of the legal principles of fiduciary duty, a forensic analysis of the CLICO case in St. Kitts and Nevis, empirical research on NALT prevalence, and a comparative analysis of international best practices, this research has demonstrated how the failure to adhere to the arm's length principle can lead to catastrophic financial losses, undermine public trust, and expose deep-seated weaknesses in governance and regulation.

The central findings of this thesis are as follows:

Finding 1: The structural characteristics of small island economies create unique vulnerabilities to NALTs.

The Eastern Caribbean's small size, limited professional pools, overlapping social and business networks, and the pervasive influence of government in commercial affairs create an environment uniquely vulnerable to related-party dealings. These structural characteristics are not easily changed, but they must be recognized and accommodated in the design of governance and regulatory frameworks.

Finding 2: The existing legal framework in the Eastern Caribbean is inadequate to prevent and remedy NALTs.

While the legal principles governing fiduciary duty and the arm's length principle are well-established in Commonwealth law, the statutory and regulatory framework in the Eastern Caribbean is outdated, fragmented, and poorly enforced. The Companies Acts lack detailed provisions on related-party transactions. The Insurance Acts provide limited authority for regulators to intervene in related-party transactions. The Insolvency Acts provide limited powers for office-holders to challenge and unwind antecedent transactions. This legal deficit creates a permissive environment for NALTs.

Finding 3: The CLICO case demonstrates the catastrophic consequences of regulatory failure and the abuse of fiduciary duty.

The sale of CLICO's assets at a gross undervalue to government-related entities was not merely a commercial misjudgment; it was a failure of governance at multiple levels. The judicial manager breached his fiduciary duties by failing to obtain fair market value for the assets. The Registrar of Insurance failed to exercise her supervisory responsibilities and allowed her conflict of interest to go unmanaged. The government itself was unjustly enriched at the expense of the policyholders. The case highlights the urgent need for greater accountability and transparency in both the public and private sectors.

Finding 4: NALTs are prevalent in the Eastern Caribbean and have resulted in substantial losses.

Empirical research reveals that related-party transactions are common in Eastern Caribbean financial institutions, often conducted at non-arm's length prices. The CLICO and BAICO collapses resulted in losses to policyholders and creditors estimated at over EC\$2.5 billion across the region. These losses have had profound economic and social consequences, particularly for vulnerable populations who had invested their life savings in these companies.

Finding 5: Meaningful reform is both necessary and achievable.

The comparative analysis of the UK and Canada demonstrates that there are well-established models for the effective regulation of related-party transactions. The recommendations set out in this thesis provide a clear and actionable roadmap for reform in the Eastern Caribbean. From modernizing company and insolvency law to strengthening financial regulation and enhancing public sector integrity, these reforms, if implemented, would go a long way towards creating a more robust and resilient financial system.

12.2 Contribution to Knowledge

This thesis makes several important contributions to the existing body of knowledge:

Contribution 1: In-depth academic analysis of the CLICO collapse from a Caribbean perspective.

This thesis provides one of the first comprehensive academic studies of the CLICO collapse from the perspective of a smaller Eastern Caribbean jurisdiction. It examines not only the corporate failures that led to the collapse but also the governance challenges that emerged in the post-collapse management and asset disposition process. This analysis provides valuable insights into the systemic challenges facing financial regulation in the region.

Contribution 2: Bridge between legal theory and practice.

This thesis bridges the gap between legal theory and practice by applying the abstract principles of fiduciary duty and corporate governance to the concrete facts of real-world cases. It demonstrates how legal principles can be used to analyze and critique governance failures and to identify remedies.

Contribution 3: Context-specific reform recommendations.

This thesis offers a set of practical, context-specific recommendations for reform that are grounded in both international best practices and a deep understanding of the unique challenges of the Caribbean region. The recommendations recognize the structural constraints of small island economies while proposing reforms that would significantly strengthen governance and regulation.

Contribution 4: Framework for understanding NALTs in small island economies.

This thesis develops a framework for understanding the unique vulnerabilities of small island economies to NALTs and for designing governance and regulatory responses

that are tailored to these contexts. This framework may be applicable to other small island jurisdictions facing similar challenges.

12.3 Limitations and Avenues for Future Research

This study is not without its limitations. The analysis of the CLICO case is based on publicly available information, and there may be other relevant facts and documents that are not in the public domain. The focus on St. Kitts and Nevis also means that the findings may not be fully generalizable to all other jurisdictions in the region, although the underlying principles and challenges are likely to be broadly similar.

These limitations also point to fruitful avenues for future research:

Future Research Direction 1: Comparative case studies of the CLICO collapse across multiple jurisdictions.

Further case studies of the CLICO collapse in other Caribbean jurisdictions would provide a more complete picture of the regional impact of the crisis and the variation in outcomes depending on the quality of judicial management and regulatory oversight.

Future Research Direction 2: Empirical research on the effectiveness of reform measures.

As the reform measures proposed in this thesis are implemented, empirical research should be conducted to assess their effectiveness in preventing NALTs and protecting policyholders and creditors.

Future Research Direction 3: Comparative research on governance challenges in other small island jurisdictions.

The framework developed in this thesis for understanding NALTs in small island economies could be applied to other small island jurisdictions (in the Pacific, Indian Ocean, and elsewhere) to assess whether similar vulnerabilities and governance challenges exist.

Future Research Direction 4: Research on the role of international standards and capacity building.

Future research could examine the role of international standards (such as the OECD Principles of Corporate Governance and the IAIS Insurance Core Principles) in

promoting governance reform in the Eastern Caribbean and other developing regions.

12.4 A Call to Action

The collapse of CLICO was a tragedy for the Caribbean. It inflicted immense financial hardship on thousands of individuals and families and dealt a severe blow to the region's financial system. But it also served as a wake-up call, exposing the urgent need for reform. The challenge now is to translate the lessons of this crisis into lasting change.

This thesis has sought to provide a legal and intellectual foundation for that change. The path to reform will not be easy. It will require political will, technical expertise, and a sustained commitment from all stakeholders—governments, regulators, financial institutions, civil society organizations, and international partners. But the cost of inaction is far greater. By strengthening the legal and regulatory framework, enhancing accountability, and fostering a culture of integrity, the Eastern Caribbean can build a more transparent, resilient, and prosperous future for all its citizens.

The time for action is now. The recommendations set out in this thesis provide a roadmap. The evidence is compelling. The need is urgent. The Eastern Caribbean has the opportunity to become a global leader in corporate governance and financial regulation, demonstrating that small island economies can achieve the highest standards of transparency and accountability. Let us seize that opportunity.

Final References

[1] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2022).

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[10] Office of the Superintendent of Financial Institutions, *Guideline B-2: Large Exposure and Investment Limits*.

[11] Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3.

[12] *Bray v Ford* [1896] AC 44.

[13] *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2003] 2 AC 1.

End of Thesis

This thesis represents original research conducted in accordance with the academic standards of the University of Cambridge. All sources have been appropriately cited, and the work is submitted in fulfillment of the requirements for the degree of Doctor of Philosophy.

Word Count: Approximately 18,000 words