

Postgraduate Seminar Series: Non-Arm's Length Transactions (NALT) & Financial Stability

Course Code: NALT-800

Level: Postgraduate / Executive Education

Duration: 15 Weeks (One Module per Week)

Institution: University of Cambridge (Modeled)

Lead Instructor: B. Cuthbert John, PMP

Course Overview

This distinction-level seminar series offers a rigorous forensic examination of Non-Arm's Length Transactions (NALTs) within the Eastern Caribbean financial sector. Anchored by the landmark collapse of CLICO International Life Insurance Limited, the curriculum bridges the gap between theoretical corporate governance frameworks and practical regulatory enforcement.

Designed for postgraduate students in law, finance, and public policy, as well as regulatory practitioners, this course dissects the systemic vulnerabilities that allow "shadow directors" and related-party transactions to erode institutional value. Students will engage with forensic case studies, comparative legal analysis (UK, Canada, Australia), and legislative drafting exercises to develop actionable reform strategies.

Learning Objectives

By the end of this seminar series, participants will be able to:

1. **Diagnose** the forensic red flags of abusive NALTs, including valuation anomalies and circular transaction structures.

2. **Critique** the deficiencies in current Eastern Caribbean corporate law regarding fiduciary duties and regulatory independence.
 3. **Construct** robust legal arguments for piercing the corporate veil in cases of complex group structures and regulatory arbitrage.
 4. **Design** legislative and policy frameworks that effectively mitigate systemic risk and protect minority stakeholders.
 5. **Evaluate** the efficacy of international best practices in corporate governance and their applicability to small island developing states.
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Curriculum Structure

Module 1: The Anatomy of Non-Arm's Length Transactions

Focus: Conceptual Foundations & Economic Theory

This foundational module defines NALTs beyond the statutory text, exploring the economic incentives that drive related-party transactions. Students will analyze the “Arm’s Length Principle” as the international gold standard and examine how deviations distort market mechanisms.

- **Key Topics:** Agency theory, conflict of interest, the economics of self-dealing, and the OECD Transfer Pricing Guidelines.
- **Case Study:** Introduction to the CL Financial Group structure.

Module 2: Fiduciary Duties in the Modern Corporation

Focus: Legal Principles & Common Law Evolution

A deep dive into the duties of loyalty and care. We examine the evolution of the “no-conflict” rule and how modern corporate structures challenge traditional fiduciary concepts.

- **Key Topics:** *Aberdeen Railway Co v Blaikie Bros*, the “proper purpose” doctrine, and the business judgment rule.
- **Seminar Question:** Does the current definition of “director” adequately capture modern corporate controllers?

Module 3: The “Shadow Director” Phenomenon

Focus: Corporate Control & Liability

This module investigates the “Shadow Director” loophole—individuals who exert controlling influence without formal appointment. We analyze the evidentiary challenges in proving shadow directorship and the implications for liability.

- **Key Topics:** *Standard Chartered Bank v Antico*, de facto vs. shadow directors, and piercing the corporate veil.
- **Workshop:** Mapping the informal power structures in the CLICO case.

Module 4: Forensic Accounting for Lawyers

Focus: Financial Statement Analysis & Red Flags

Bridging the gap between law and finance, this module equips students with the tools to detect financial irregularities. We focus on identifying valuation anomalies, circular cash flows, and off-balance-sheet vehicles.

- **Key Topics:** Ratio analysis, asset valuation methodologies, and detecting “window dressing” in financial reports.
- **Practical Exercise:** Analyzing the 2008 CLICO financial statements for NALT indicators.

Module 5: The CLICO Case Study: A Systemic Failure

Focus: Forensic Reconstruction of the Collapse

A comprehensive forensic reconstruction of the CLICO collapse. We trace the flow of funds through the Douglas Estate transaction and the sale of the Head Office building, quantifying the value extraction.

- **Key Topics:** The 31M vs. 16M valuation discrepancy, inter-company loan structures, and the “Statutory Fund” deficit.
- **Guest Lecture:** Insights from the Judicial Manager’s findings.

Module 6: Regulatory Capture & Institutional Weakness

Focus: Public Choice Theory & Regulatory Design

We analyze why regulators failed to intervene despite clear warning signs. This module

explores the concept of “regulatory capture” and the structural conflicts of interest inherent in the “dual hat” regulatory model.

- **Key Topics:** The “revolving door,” political interference in financial supervision, and the independence of the Registrar of Insurance.
- **Debate:** Is an independent financial services commission a panacea?

Module 7: Comparative Legal Frameworks: The UK Model

Focus: The Companies Act 2006 (UK)

An in-depth analysis of the UK’s approach to related-party transactions. We examine the rigorous disclosure regimes and the statutory codification of directors’ duties.

- **Key Topics:** Section 177 (Duty to declare interest), Section 190 (Substantial property transactions), and the role of the UK Listing Rules.
- **Comparative Analysis:** Contrasting the UK’s “approval” requirements with the Caribbean’s “disclosure” focus.

Module 8: Comparative Legal Frameworks: Canada & Australia

Focus: Oppression Remedies & Superannuation Regulation

We explore Canada’s robust “oppression remedy” as a tool for minority shareholder protection and Australia’s strict regulation of related-party transactions in pension funds.

- **Key Topics:** The *Canada Business Corporations Act* (CBCA), the “fairness opinion” requirement, and Australia’s “sole purpose test” for superannuation funds.
- **Application:** Adapting the “oppression remedy” for Eastern Caribbean policyholders.

Module 9: Insolvency Law & Asset Recovery

Focus: The “Look-Back” Period & Voidable Transactions

This module examines the legal mechanisms available to liquidators to recover assets transferred via NALTs. We critique the adequacy of current “look-back” periods in Caribbean insolvency legislation.

- **Key Topics:** Preferences, transactions at an undervalue, fraudulent trading, and cross-border insolvency protocols.
- **Simulation:** Drafting a “voidable transaction” claim for the Douglas Estate sale.

Module 10: Public Sector Integrity & State-Owned Enterprises

Focus: NALTs in the Public Sphere

We extend the NALT analysis to the public sector, examining how related-party transactions corrupt public procurement and the management of state-owned enterprises.

- **Key Topics:** The “Public Life” legislation, asset declaration regimes, and the governance of sovereign wealth funds.
- **Case Study:** The sale of the Commercial Office Building to the Government of St. Kitts & Nevis.

Module 11: The Six-Point Reform Plan: Legislative Drafting

Focus: Policy Formulation & Statutory Interpretation

Students will critically evaluate the “Six-Point Reform Plan” proposed in the thesis. The focus shifts to the practicalities of drafting legislation that is both effective and constitutionally sound.

- **Key Topics:** Drafting “fiduciary duties” legislation, defining “connected persons,” and designing penalty regimes.
- **Workshop:** Drafting a statutory clause to define “Shadow Director” for the Eastern Caribbean.

Module 12: Corporate Governance in Small Island Economies

Focus: Contextual Challenges & Cultural Factors

We analyze the unique challenges of implementing rigorous corporate governance in small, closely-knit societies where “everyone knows everyone.”

- **Key Topics:** The “small state” paradox, the role of family-owned conglomerates, and overcoming cultural resistance to transparency.
- **Discussion:** Balancing “arm’s length” rigor with the realities of small-market liquidity.

Module 13: The Role of the Judiciary in Commercial Disputes

Focus: Judicial Capacity & Case Management

An examination of the judiciary's role in enforcing corporate law. We discuss the need for specialized commercial courts and the capacity of judges to adjudicate complex financial crimes.

- **Key Topics:** The Caribbean Court of Justice (CCJ) jurisprudence, judicial training in forensic finance, and case management efficiency.
- **Mock Trial:** Arguing a breach of fiduciary duty case before a panel.

Module 14: Technology & The Future of Financial Regulation

Focus: RegTech, Blockchain & AI

Looking forward, we explore how technology can enhance regulatory oversight. We assess the potential of blockchain for immutable transaction records and AI for detecting NALT patterns.

- **Key Topics:** Automated transaction monitoring, beneficial ownership registries on blockchain, and the “Smart Contract” as a governance tool.
- **Presentation:** Proposing a “RegTech” solution for the Eastern Caribbean Central Bank.

Module 15: Capstone Project: The Reform Implementation Strategy

Focus: Strategic Planning & Advocacy

In the final module, students synthesize their learning to develop a comprehensive implementation strategy for the Six-Point Reform Plan.

- **Deliverable:** A “Policy Brief” addressed to the CARICOM Legal Affairs Committee, outlining a roadmap for harmonizing NALT legislation across the region.
- **Review:** Peer critique and defense of reform strategies.

Assessment Methods

- **Forensic Case Analysis (20%):** A detailed written analysis of a specific NALT within the CLICO case, identifying red flags and quantifying the financial impact.

- **Legislative Drafting Exercise (30%):** Drafting a specific amendment to the Companies Act to address a identified gap in NALT regulation.
- **Seminar Participation (10%):** Active engagement in weekly discussions and case study workshops.
- **Final Capstone Project (40%):** A comprehensive policy paper proposing a legislative reform framework for a specific Eastern Caribbean jurisdiction.

Recommended Reading

- **Core Text:** *Non-Arm's Length Transactions in the Eastern Caribbean: Corporate Governance, Financial Regulation, and the CLICO Case* (PhD Thesis).
 - **Statutes:** The Companies Act (St. Kitts & Nevis), The Insurance Act, The UK Companies Act 2006.
 - **Reports:** The Report of the Judicial Manager for CLICO International Life Insurance Limited.
 - **Guidelines:** OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
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“Nano Banana” Design Note: This curriculum is designed to be visually striking and intellectually rigorous. The materials will utilize a high-contrast “Deep Caribbean Ink” and “Banana Yellow” color scheme to emphasize key concepts and ensure accessibility.