The Role of Stock Exchanges (Regulators) in establishing Corporate Governance Practices

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What is Corporate Governance

a) Corporate Governance is the system by which companies are directed and controlled.
b) The Board of Directors is responsible for the governance of their companies.
c) The shareholders' role in governance is to appoint the Directors and the auditors and to satisfy themselves that an appropriate governance structure is in place.
d) The responsibilities of the Board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.

-Report of the Committee on the Financial Aspects of the Corporate Governance, United Kingdom 1992.

IOSCO posts that "Corporate Governance is one key element in improving efficiency and growth as well as enhancing investor confidence

"Corporate Governance involves a set of relationships between a company's MANAGEMENT, its BOARD, its SHAREHOLDERS and other STAKEHOLDERS. Further, it provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance."

At a practical level, good governance embodies the following principles: (IOSCO)

a) Fostering and adhering to high ETHICAL standards in every decision and every initiative.
b) Ensuring Boards are comprised of appropriately experienced, independent, skilled, knowledgeable directors.
c) Ensuring remuneration policies are transparent, reasonable and fair.
d) Ensuring risks are clearly identified and properly managed.
e) Ensuring directors are confident of the quality and independence of the auditing process. (Satyam)

Some Overarching Benefits of Good Governance

a) Lower cost of capital.

b) Lower risk of scandals (PETROBRAS, HSBC, SATYAM-Rodrigo Rato (IMF).)

c) Higher performance of the organisation.

Goals of Corporate Governance – "Eric J. Pan – Corporate Governance: Theories, concepts and principles – USSEC March 2015"

a) "To maximise the value of the corporate enterprise to investors."

b) Who are investors?

   i. Minority shareholders and creditors as opposed to managers or controlling shareholders.

c) Pan sees the main Corporate Governance problem as:

   i. Protecting outside investors (minority shareholders and creditors) from expropriation by insiders (managers and controlling shareholders)

   ii. Why is there a risk of expropriation?

   "Because insiders have managerial control and can extract value from the company (salaries, bonuses, perks, information, corporate opportunities etc.) without knowledge or consent of outside investors."

Goals of Corporate Governance – "Eric J. Pan – Corporate Governance: Theories, concepts and principles – USSEC March 2015"

iii. **Pan made a cogent case for the legal protection against expropriation:**

He posits that legal protections prevent insiders from expropriating firms' value from outside investors. As a result, countries whose financial systems offer entrepreneurs better opportunities to raise outside capital also have higher valuation of securities and BROADER capital markets.

"Broader capital markets = more dispersed ownership"

Countries with less effective legal protections tend to have more highly concentrated ownership of shares.

The Corporate Governance Fact Book (OECD) March 2015 found that:

- The share of global market capitalisation held by countries with dispersed ownership is no longer dominant. The market share of countries with concentrated ownership structures has increased from 22% to 41% since the adoption of the OECD Principles of Corporate Governance in 1999.

Where are we as a region?

Table

Barbados Stock Exchange	Jamaica Stock Exchange	Trinidad & Tobago Stock Exchange
Prescribed Corporate Governance Recommendations for listed companies	Private Sector Organisation of Jamaica Corporate Governance Code	The Trinidad & Tobago Corporate Governance Code 2013

Trinidad & Tobago Corporate Governance Code
Key Principles and Recommendations

Principle One:
Establish a Framework for Effective Governance

Every company should be headed by an effective Board, which is collectively responsible for the long-term success of the company.

Recommendations:

I. The Board should establish and make publicly available a clear outline of its roles and responsibilities, including any formal delegations to Management.
II. The chairperson of the Board should be a non-executive Director and preferably an independent Director. Where the chairperson of the Board is not an independent non-executive Director, the Board should appoint a lead independent Director.
III. The Board should demonstrate ethical leadership, which includes commitment to high ethical standards and responsible decision-making.
IV. The Board should ensure that it is supplied with information in a timely manner, in a form and of a quality appropriate to enable it to discharge its duties effectively.
V. The Board should take into account the legitimate interests and expectations of all stakeholders. There should be active co-operation between corporations and stakeholders in creating wealth, employment, and the sustainability of financially sound enterprises.

Trinidad & Tobago Corporate Governance Code
Key Principles and Recommendations

Principle Two:
Strengthen the Composition and Performance of Board and Committees

There should be a balance of independence and diversity of skills, knowledge, experience, perspectives and gender among Directors so that the Board works effectively.

Recommendations:

I. The Board should appoint sufficient number of independent Directors capable of exercising unbiased judgement, particularly in tasks where there is a potential for conflicts of interest.
II. Directors should be selected and appointed through rigorous and formal processes designed to give the Board a balance of independence and diversity of skills, knowledge, experience, perspectives and gender among Directors so that the Board works effectively.
III. A committee with a majority of independent non-executive Directors, should lead the Board's nomination process and make recommendations to the Board.
IV. All Directors should receive induction training upon joining the Board and should regularly update and refresh their skills and knowledge.
V. The Board should undertake a rigorous, transparent and formal annual evaluation of its own performance and that of its committees and of the individual Directors.
VI. The Board should ensure that the remuneration of Directors and Senior Management is transparent, fair and reasonable.

Trinidad & Tobago Corporate Governance Code
Key Principles and Recommendations

Principle Three:
Reinforce Loyalty and Independence

All Directors should act honestly and in good faith, in the best interest of the company, ahead of other interests.

Recommendations:

I. The Board should undertake an assessment of its independence on an annual basis and disclose in the annual report each non-executive Director it considers to be independent.
II. All Directors should be candidates for re-election, at intervals of no more than three years, subject to continued satisfactory performance.
III. Members of the Board and Senior Management should disclose to the Board whether they, directly or indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.
IV. Directors should demonstrate the capacity to commit the time needed to be fully effective in their roles.

Trinidad & Tobago Corporate Governance Code Key Principles and Recommendation

Principle Four:
Foster Accountability

The Board should present an accurate, timely, balanced and understandable assessment of the company's performance, position and prospects.

Recommendations:

I. The Board should promote accurate, timely and balanced disclosure of all material matters concerning the company.
II. Directors should state in the annual report their responsibility towards the integrity of the financial report. This includes a statement from Directors that these reports comply with applicable financial reporting standards and present a true and fair view of the financial affairs of the company.
III. The Board should, on an annual basis, report to the shareholders and stakeholders on the external auditor's involvement in non-audit work and fees paid to auditors. This disclosure should differentiate between fees for audit work and fees for non audit work.
IV. The Board should, on an annual basis, verify that the company has appropriate processes that identify and manage potential and relevant risks.

Trinidad & Tobago Corporate Governance Code Key Principles and Recommendation

Principle Four:
Foster Accountability

Recommendations:

V. Each company should establish an Audit Committee of the Board with responsibilities that include, but are not limited to:
  - Recommending the appointment of external auditors;
  - Assessing the suitability and independence of external auditors;
  - Following-up on recommendations made by internal and external auditors;
  - Overseeing all aspects of the company-audit firm relationship;
  - Monitoring and reviewing the effectiveness of the internal audit function;
  - Promoting integrity in financial reporting

VI. Boards should report annually to shareholders on how the company is implementing the Corporate Governance Principles and explain any significant departure from Recommendations supporting each Principle.

Trinidad & Tobago Corporate Governance Code Key Principles and Recommendation

Principle Five:
Strengthen Relationships with Shareholders

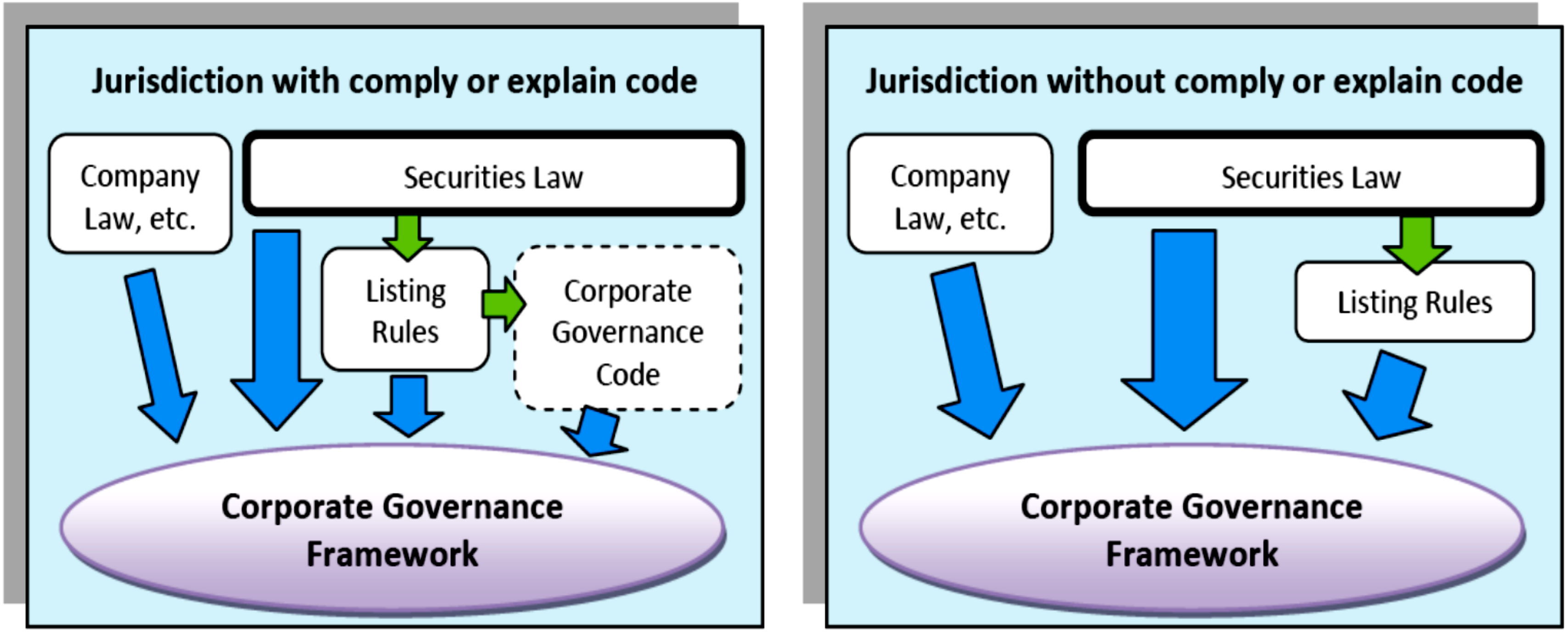
The Board should promote constructive relationships with all shareholders that facilitate the exercise of their ownership rights and encourage their engagement with the company.

Recommendations:

I. The Board should facilitate the exercise of the ownership rights by all shareholder groups, including minority or foreign shareholders and institutional investors.
II. The Board should ensure that all shareholders have the opportunity to engage with the company and participate effectively in annual and special meetings.
III. During the annual and special meetings, the Board should facilitate questioning of external auditors and Senior Management by shareholders, as moderated by the chairperson.

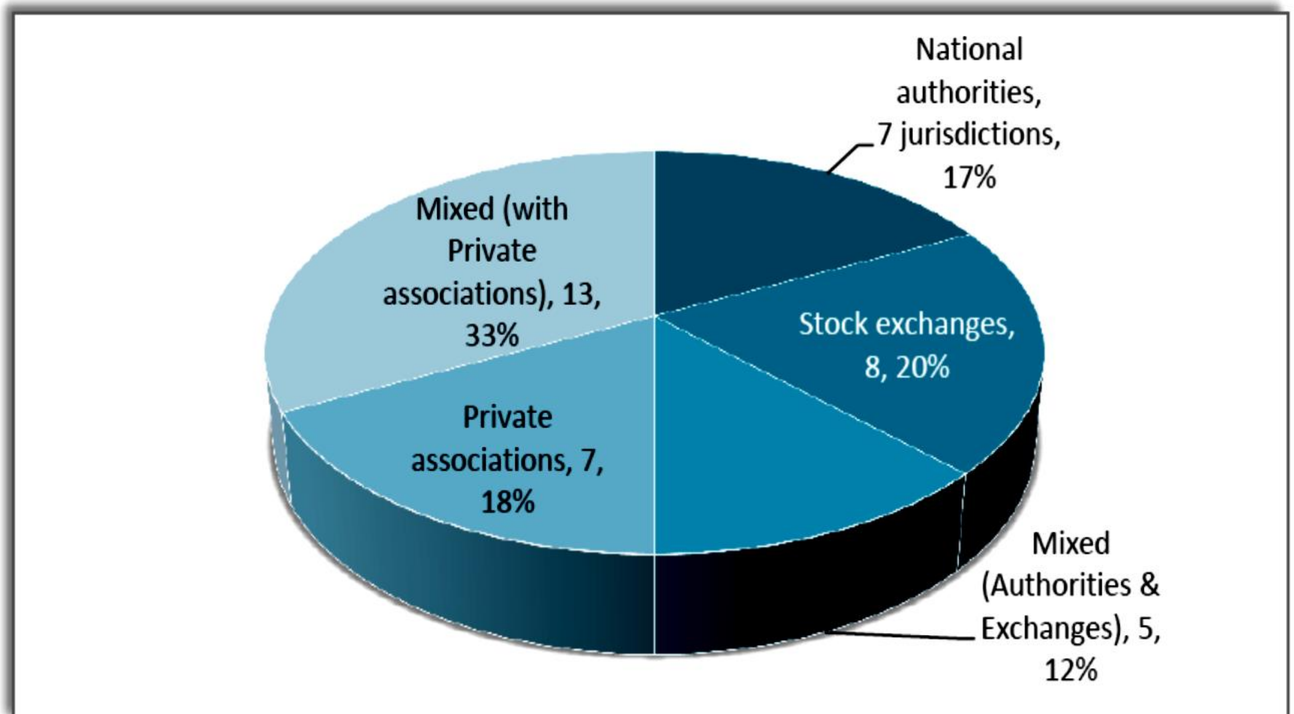
International Practices – Corporate Governance Factbook March 2015 OECD

- **Figure 1 – Examples of National Corporate Governance Frameworks**
  (taken from the Corporate Governance Factbook 2015 OECD)



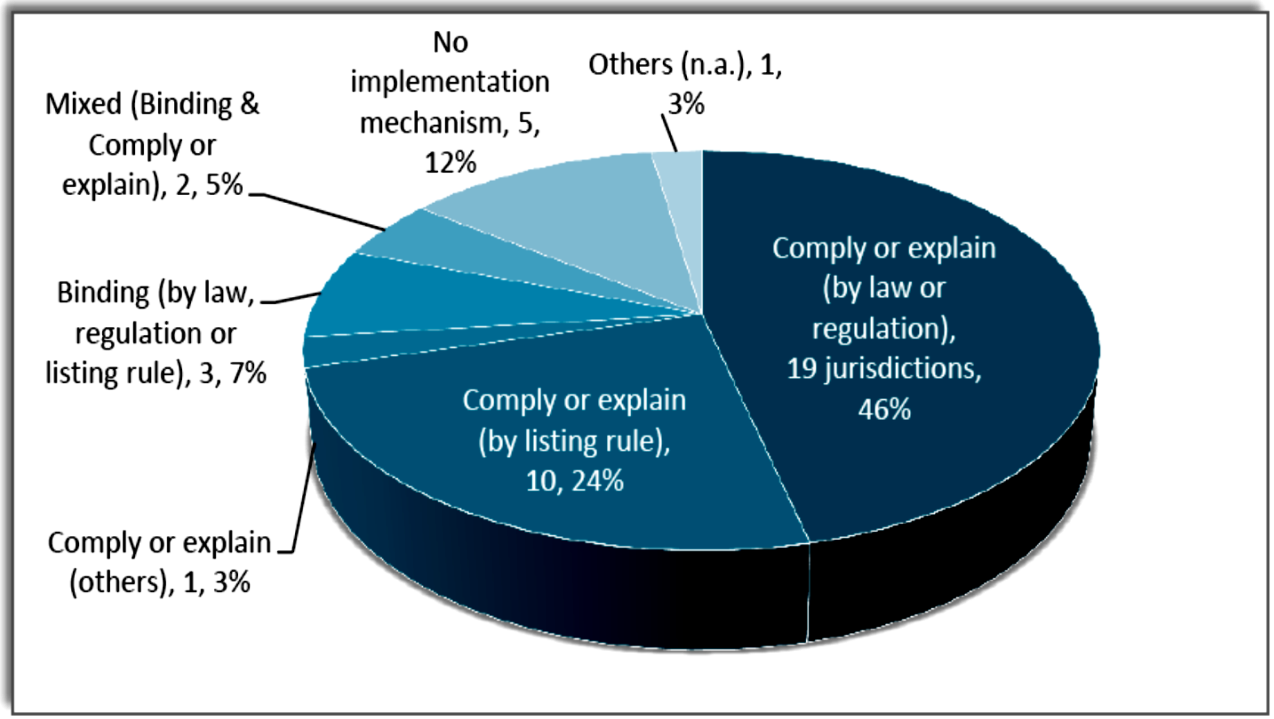
International Practices – Corporate Governance Factbook March 2015 OECD

- **Figure 2 – Custodians of Corporate Governance Codes**
  (taken from the Corporate Governance Factbook 2015 OECD)



International Practices – Corporate Governance Factbook March 2015 OECD

- **Figure 3 – Implementation Mechanisms of Corporate Governance Codes** (taken from the Corporate Governance Factbook 2015 OECD)



International Practices – Corporate Governance Factbook March 2015 OECD

- Tables from Factbook

1. The main elements of the regulatory framework: National codes and principles
2. Custodians of codes and principles
3. Board Level Committee
4. Disclosure and shareholder approval on board and key executive remuneration

(taken from Corporate Governance Factbook 2015 OECD)

Conclusion

"Good Governance cannot be legislated … though good laws do well, good men do better" – William Penn

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