

# FIGHTING CORRUPTION IN THE CARIBBEAN BASIN\*

By

Cindy A. Schipani\*\*

Corporate governance may play an important role in combating corruption and protecting the interests of investors.<sup>1</sup> Regrettably, the reverse is also true – poor corporate governance may breed corruption.<sup>2</sup> This paper examines the components of a corporate governance framework that may help combat corruption. It then explores the corporate governance framework in the context of the Cayman Islands. Concluding remarks consider recent legal changes in the Cayman Islands’ regulatory system designed to curb corruption and encourage corporations to set up stronger corporate governance frameworks.

## I. CORPORATE GOVERNANCE AND CORRUPTION

Corruption is a global problem, affecting both the developed and developing world. Indeed, the scale of global corruption is massive, with bribery alone approaching a \$1 trillion industry annually.<sup>3</sup> Although the negative effects of corruption, especially in the long-term, are well known, many firms nevertheless engage in corruption because they will typically perceive a short-term advantage.<sup>4</sup> Moreover, when one firm cheats by engaging in corruption, its competitor might believe it to be in its best interests to follow suit. Consequently, many firms rationalize corruption as a necessity to remain competitive<sup>5</sup> and it becomes a seemingly unbreakable cycle. Thus, rather than denounce corruption as immoral or harmful, firms often engage in corruption because it is a seemingly rational business decision.<sup>6</sup>

A difficulty in combating corruption lies with identifying it. As the Council of Europe noted in 1995, “no precise definition can be found which applies to all forms, types and degrees of corruption, or which would be acceptable universally as covering all acts which are considered in every jurisdiction as contributing to corruption.”<sup>7</sup> Some entities, such as the World Bank, focus especially on public sector officials as playing a central role in corruption, defining corruption as “the abuse of public office for private gain.”<sup>8</sup> Others, such as Transparency International, define corruption more broadly to include “the abuse of entrusted power for private gain.”<sup>9</sup>

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\*\* Merwin H. Waterman Collegiate Professor of Business Administration and Professor of Business Law, Stephen M. Ross School of Business, University of Michigan. The author wishes to thank Joseph Campbell, J.D. 2014, University of Michigan Law School, for valuable research assistance.

This paper focuses on the latter definition: the abuse of entrusted power for private gain. While most discussions about corruption revolve around the demand side of corruption, this definition accounts for the supply side. That is, corruption has both a demand and supply side, with demand side dealing with the corruption of public officials and the supply side dealing with how the corruption reaches those public officials.<sup>10</sup> The supply side of corruption thus implicates the private sector, which is important because the private sector is the primary driver of a state's economic growth.<sup>11</sup> Looking at corruption generally as the abuse of entrusted power for private gain takes this supply side into account.

An effective corporate governance framework impacts the supply side of the equation by affecting the private sector's role in corruption and cutting off corruptive practices before they reach public officials. The OECD defines corporate governance as "a set of relationships between a company's management, its board, its shareholders, and other stakeholders" through which policies, procedures, and objectives of the company are set.<sup>12</sup> An effective corporate governance framework, then, works to manage and control corporate decision-making. A governance framework can provide a structure by which rights and responsibilities are distributed within the corporation, implement a means for obtaining corporate objectives, and ensure that performance towards those objectives is monitored.<sup>13</sup> The Financial Reporting Council Combined Code describes the purposes of corporate governance as follows:

Good corporate governance should contribute to better company performance by helping a board discharge its duties in the best interests of shareholders; if it is ignored, the consequence may well be vulnerability or poor performance. Good governance should facilitate efficient, effective and entrepreneurial management that can deliver shareholder value over the longer term.<sup>14</sup>

In a strong corporate governance framework, transparency, accountability, and integrity are of primary importance. These tenets are also critical in combating corruption.<sup>15</sup> Transparency, a central aspect of which is full and clear corporate disclosure, aids investors in trying to understand corporate financial activity and helps a corporation recognize the risks of corruption.<sup>16</sup> Accountability is related to transparency and ensures that corporate directors and officers are held responsible for their actions. This, in turn, incentivizes directors and officers to ensure reporting mechanisms are adequately managed in favor of their shareholders.<sup>17</sup> Finally, a corporation's integrity refers to the ethical tone set by top-level directors and officers, which should incentivize employees to act ethically.<sup>18</sup> These concepts, when implemented, work to constrain opportunities and decrease the motivations for those employed by the corporation to engage in corruption.<sup>19</sup> Good corporate governance, then, has the potential to increase the overall integrity of the private sector, which helps prevent corruption and mitigate its negative effects.<sup>20</sup>

To be effective, a corporate governance framework should include a set of rules and ethical values to help the board of directors of an organization diagnose and control business risks while advancing the private goals of the company and, to some extent, the collective interests of society. By setting high ethical standards and implementing effective compliance programs designed to deter illicit behavior, a corporation may combat fraud and corruption by undermining the opportunity to engage in fraudulent behavior. Consequently, engaging in corruption simply becomes unsustainable.

## **II. ENCOURAGING STRONG CORPORATE GOVERNANCE FRAMEWORKS**

As indicated above, effective corporate governance frameworks play an important role in combating corruption on the supply side through improved transparency, accountability, and integrity in a corporation. Although corporate governance frameworks are ultimately implemented by the corporations, governments play an important role in encouraging corporations to set up these frameworks. Indeed corporate governance can be described as a “blend of law, regulation, and private sector practice . . . .”<sup>21</sup> Through both the courts and the legislature, governments can incentivize and require corporations to engage in good corporate governance by implementing regulations and compliance procedures and by imposing high fiduciary standards on corporate executives.

Through legislation, governments can encourage good corporate governance by implementing regulations that require corporations to effectuate certain reporting and compliance procedures. Yet, legislation must not overburden or over-regulate the market, as the effect would discourage positive market forces. Indeed, because policymakers are responsible for encouraging economic growth and maintaining market confidence, they must reach “an appropriate balance of regulation and voluntary action in determining a national corporate governance framework.”<sup>22</sup> In addition, in today’s era of globalization, policymakers must be cognizant of internationally accepted standards when implementing national laws and regulations.<sup>23</sup> That is, when adopting national regulations, policymakers must consider the international impact of the measures they take.<sup>24</sup> Thus, for example, in response to the Enron collapse, the United States enacted the Sarbanes-Oxley Act in 2002<sup>25</sup> in an effort to instill confidence and integrity into the market.<sup>26</sup> In so doing, United States’ lawmakers had to account for the extraterritorial impact of the law on foreign registrants.<sup>27</sup> The U.S. Securities Exchange Commission thus met with foreign delegations and European securities regulators and hosted interactive roundtables in order to understand the needs of non-U.S. issuers and the law’s effects on them.<sup>28</sup> To aid in this endeavor, the Organization for Economic Co-operation and Development (OECD) issued the OECD Principles of Corporate Governance in 1999, revised in 2004, to provide a reference point for governments in modeling corporate governance.<sup>29</sup>

Yet, the effectiveness of corporate governance frameworks is largely dependent on the ability and willingness of the judiciary to prosecute corporate governance failings.<sup>30</sup> Legal regimes play an important role in setting up strong corporate governance frameworks by encouraging transparency, accountability, and integrity in companies. By imposing high fiduciary standards of behavior on corporate executives, including the duty to act with the utmost care and loyalty to the corporation, courts incentivize executives to implement strong corporate governance procedures. The fiduciary duties of care and loyalty play an important role in the corporate governance framework because they help corporate executives manage business risks, balance the interests of the corporation and ensure that corporate activities are monitored and reported. Executive compliance with fiduciary duties, in turn, helps to promote ethical day-to-day operations within an organization. Conversely, failure to adhere to these duties places substantial costs on the company, shareholders, and society.

## **III. CORPORATE GOVERNANCE, CORRUPTION, AND THE CAYMAN ISLANDS**

Corruption is especially prevalent in emerging markets, where corporate governance and regulation is weak. In these markets, state-owned enterprises are often privatized in an attempt

to modernize their economies.<sup>31</sup> During this privatization process, weak corporate governance facilitates the ability of officials to engage in corrupt practices, essentially looting the state to gain an advantage.<sup>32</sup> This problem is magnified in offshore banking centers, such as the Cayman Islands (also referred to as the “Caymans”), where businesses are consistently thriving and multiplying in deregulated markets.<sup>33</sup> In these economies, regulations and tax burdens are kept at a minimum in order to encourage corporations to incorporate in their jurisdiction. Indeed, in these markets, the state keeps regulations to a minimum, ensuring privacy and secrecy for the corporation.<sup>34</sup> The lack of regulation does little to incentivize corporations to implement corporate governance frameworks, affording corporations “maximum autonomy of private action” with “minimum transparency.”<sup>35</sup>

Consequently, strong corporate governance is needed in these markets for the same reasons outlined above – to improve transparency, accountability, and integrity in the system in order to combat corruption by decreasing opportunity and motivation. In these emerging markets, good corporate governance can strengthen trust in the private sector and thereby boost market confidence and efficiency.<sup>36</sup>

The Caymans emergence as an offshore banking center began in the 1960s, when corporations began establishing offshore subsidiaries in response to unfavorable changes in United States income tax laws.<sup>37</sup> Meanwhile, the Caymans passed legislation designed to create a tax haven and attract foreign deposits, such as no personal income tax, no capital gains tax, no employment tax, no withholding tax, no sales tax, no property tax, and no gift, estate, or inheritance tax.<sup>38</sup> It also ensured that corporations were subject to little reporting or capitalization requirements and afforded a high degree of confidentiality regarding their ownership.<sup>39</sup> Finally, legislation provided for the formation of exempted companies that could “issue bearer shares, forego annual shareholders meetings, hold directors meetings by proxy, and refrain from submitting financial information in the annual return filed with the government.”<sup>40</sup>

With these events, the Caymans growth as an offshore banking center was incredible. The Caymans status as a tax haven and its lax regulatory environment helped attract corporations and worked to quickly build the Caymans’ reputation as an offshore financial center.<sup>41</sup> Thus, since the 1960s, a myriad of corporations and wealthy individuals have set up companies or subsidiaries on the island.<sup>42</sup> Indeed in 1964, the Caymans had only two banks and were home to no offshore businesses.<sup>43</sup> By 1982, the Caymans were home to 360 branches of foreign banks and over 8000 registered companies.<sup>44</sup> Today, the Cayman Islands are one of the primary domiciles of choice for offshore funds. During the first quarter of 2013, 10,932 funds were registered with the Cayman Islands Monetary Authority (CIMA).<sup>45</sup> Currently, the Caymans are the sixth largest international banking center,<sup>46</sup> and are considered one of the most successful and diversified offshore financial centers in the world.<sup>47</sup> The tax and regulatory structure in the Caymans encourages corporations to set up subsidiaries in the Islands, with no direct taxation and no general requirement to report dividend payments to shareholders, even if the payments end up in U.S. taxpayers’ hands.<sup>48</sup> Additionally, it is considered to be easier to avoid detection and censure for failing to pay U.S. taxes if a corporation has an entity established in the Caymans.<sup>49</sup>

As economic growth in the Caymans continued, the lax regulatory environment remained, and it largely continues today. Some individuals and companies, such as Enron prior to its collapse, exploit Cayman-registered subsidiaries in order to keep billions of dollars off their public balance sheets.<sup>50</sup> A recent case involves a California man who kept an undeclared bank account in the Caymans, which he used as collateral for loans in Los Angeles.<sup>51</sup> He concealed

that he was in fact borrowing his own money and failed to report the interest income he was earning in the Caymans on his U.S. tax returns.<sup>52</sup> Another example involves a camera and medical scanner company, Olympus, and its buyout of Gyrus.<sup>53</sup> Olympus paid \$2 billion for Gyrus in 2008, and paid an advisory fee of \$687 million, about one-third of the acquisition cost.<sup>54</sup> The fee was the biggest takeover advisory fee ever, and has since disappeared in a Cayman Islands fund.<sup>55</sup> The Serious Fraud Office in the United Kingdom has recently taken up the case and is prepared to prosecute Olympus for falsifying their accounts in the financial years 2009 and 2010.<sup>56</sup>

This type of conduct is common and problematic for many countries around the globe. Corporations in the Caymans are often subsidiaries of larger corporations based in another country, set up in the Caymans to take advantage of its tax and regulatory structure.<sup>57</sup> Tax abuses are prevalent in this type of structure, and privacy laws in the Caymans make it difficult for countries to follow money as it travels from their own financial institution into the Caymans.<sup>58</sup> This causes a significant drain on the economies of the home country, as a large amount of income is sheltered in the Caymans. For example, the U.S. Commerce Department reported that between 1983 and 1999, the value of American corporate assets in tax havens like the Caymans grew 44 percent more than their assets in countries with tax rates like the United States.<sup>59</sup> Although Caymans' authorities have maintained that they will not facilitate tax evasion, the financial services represent a large portion of the Caymans economy, making it difficult to change the laws.<sup>60</sup>

#### **IV. RECENT MOVEMENT TOWARD CORPORATE GOVERNANCE**

Recently, however, there has been some movement in the Caymans, from both the judiciary and legislature, towards a stronger corporate governance framework designed to curb corruption. Thus, although historically the Caymans judiciary and legislature have done little to encourage corporations to set up effective corporate governance frameworks, a recent Caymans court decision and recent legislation seem to indicate that the courts and legislature are prepared to take a more active role in corporate governance.

In *Weaving Macro Fixed Income Fund Limited (In Liquidation) vs. Stefan Peterson and Hans Ekstrom*,<sup>61</sup> the Grand Court of the Cayman Islands recognized a need to establish a more sustainable, accountable corporate governance system. In *Weaving*, two directors were held personally liable for \$111 million due to losses of the Weaving Macro Fixed Income Fund.<sup>62</sup> The court found that the directors had failed in their duties to supervise the activities of the investment manager, who had entered into a swap arrangement that was significantly overvalued and led to huge losses for the fund.<sup>63</sup> The court ruled that the directors had willfully failed to discharge their duties of care and diligence to the fund, holding them personally liable for losses associated with the fund.<sup>64</sup>

The ruling sheds light on judicial requirements for best corporate governance practices for directors of Caymans funds. In *Weaving*, the directors of the fund played no active role in board meetings, signed form minutes that were prepared in advance, and delegated authority with no review or oversight.<sup>65</sup> Consequently, the court emphasized the process by which directors' must document supervision of their funds. It required all corporate actions be reflected in corporate records, board meetings be held regularly, and meeting minutes be prepared that accurately reflect discussions of the board and all business matters relevant to the activities of the fund.<sup>66</sup>

Complementing this, there have been increased calls in recent years to move toward a system based on greater accountability and transparency through government legislation. The Cayman Islands regulator, in January 2013, outlined plans to create a public database of funds domiciled in its jurisdiction, with a listing of the funds' directors.<sup>67</sup> Other proposals include registration of directors' personal and contact information, information regarding directors' experience and knowledge of the sector they will be managing, and information regarding any previous and ongoing regulatory or judicial enforcement action that has been taken against a proposed director.<sup>68</sup> Further, the CIMA has recently required individuals to register no matter where they are based, so long as the individual acts as a director of a Caymans fund on a paid basis for six or more entities.<sup>69</sup> Directors of fewer than six Cayman funds must also be registered if any of those funds are a regulated fund.<sup>70</sup> The CIMA has also published proposed corporate governance principles for hedge funds and corporate entities, which emphasize greater documentation regarding the exact roles and responsibilities of board members and call for board members to be held responsible for maintaining effective and direct oversight.<sup>71</sup> These regulations and proposed regulations not only attempt to add more transparency in the system, but also add a greater sense of accountability.<sup>72</sup> They purport to hold directors of hedge funds to a higher standard and disclose to consumers, investors, and borrowers the identity of those in charge.

The Anti-Corruption Law of 2008 is the cornerstone of the Caymans legislation addressing corruption. The law established the Cayman Islands Anti-Corruption Commission and was meant to give effect to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction and the United Nations Convention Against Corruption.<sup>73</sup> Although the law is primarily concerned with corruption of public officials, it also addresses corruption in business activity.<sup>74</sup>

An important aspect of the Caymans Anti-Corruption Law with respect to business activity and corporate governance is Section S21, which introduces the offense of "secret commissions."<sup>75</sup> This section need not involve a public official and instead provides:

any person who gives, offers or agrees to give or offer to an agent any improper payment in consideration of any act relating to:

- (a) the affairs or business of the agent's principal;
- (b) for showing favour or disfavour towards any person in relation to the affairs or business of the agent's principal; or
- (c) with the intent to deceive an agent's principal, gives the agent a receipt, account or other writing in which the principal has an interest that:
  - (i) contains any statement that is false, erroneous or defective in any material particular; and
  - (ii) is intended to mislead the principal,

commits an offence liable upon conviction for a term of imprisonment of up to five years.<sup>76</sup>

Additionally, an agent is liable if he demands, accepts, or agrees to accept, from any person, any improper payment in order to achieve one of the acts above.<sup>77</sup>

Notably, this section discusses the fiduciary duty in the principal-agent relationship, which is important in the context of corporate governance. The principal-agent problem arises in firms when there is a separation between the principals, who own the firm, and the agents, who control it.<sup>78</sup> Often, a divergence of these interests results in an agent engaging in corruption.<sup>79</sup> Thus, for example, managers, motivated by personal interests rather than the best interest of the

firm, might engage in corruption for an immediate benefit, even if it is detrimental to the firm in the long run.<sup>80</sup> This problem is especially acute in countries like the Caymans, where multinational companies establish wholly-owned subsidiaries. These structures make it difficult and costly to monitor and control lower-level management and incentivize these agents to boost their performance and pay through corruptive practices.<sup>81</sup> Section S21, then, works to resolve this problem by holding any person who participates in a corruptive act with an agent liable, while also holding the agent liable. This encourages corporations to set up corporate governance frameworks where the activities of agents are monitored in order to ensure compliance.

Section 51 of the law complements Section S21 in terms of corporate governance, by putting directors of companies at risk for liability even if they have no knowledge of a bribe, if it can be proven that their neglect led to the bribe. The provision reads that where a “body corporate” is guilty of an offense, officers of the body corporate or a person acting in this capacity are liable for the offense if the offense itself was due to neglect.<sup>82</sup> Specifically, Section 51 states:

(1) Where an offence under this Law, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his function of management as if he were a director of the body corporate.<sup>83</sup>

Thus, these sections encourage companies to set up a strong corporate governance frameworks to increase transparency and accountability within the firm and curb corruption. Section S21 encourages corporations to become aware an agent’s activity, and Section 51 works to hold a corporation liable for an agent’s improper activity. Consequently, the law incentivizes corporations to use corporate governance to monitor and control the activity of their employees to combat corruption.

The Caymans have also passed a number of other measures aimed at improving transparency in the system. In May 2000, the Caymans solidified its commitment to the OECD by introducing measures for the exchange of tax information among the international community.<sup>84</sup> Indeed, the Caymans passed the Tax Information Authority Law (TIA), agreeing to exchange tax information with twenty other jurisdictions.<sup>85</sup> The Banks and Trust Companies Law, enacted in 1966 and revised in 2009, now gives the CIMA more supervisory and investigatory powers over banking practices.<sup>86</sup> The CIMA now supervises banking and financial services, monitors compliance with money laundering laws, and cooperates with overseas regulatory authorities.<sup>87</sup> Additionally, the Financial Reporting Authority combats money laundering and ensures that financial service providers have a system to identify suspicious activity with money laundering regulations.<sup>88</sup> In May 2013, in a collective effort to further curb tax evasion, the Caymans and other Caribbean nations committed to share tax information with Britain, France, Germany, Italy, and Spain.<sup>89</sup>

## CONCLUSION

With its status as a tax **haven** and a multitude of businesses located in the country, the Cayman Islands face a unique set of problems stemming from corruptive practices. Recently, the Caymans government has recognized the prevalent corruptive practices and has introduced legislation aimed at reducing corruption by increasing transparency and accountability of corporate entities. It is important to note, however, that the Caymans have only been self-governing since the adoption of the Cayman Islands Constitution in 2009. As such, there continues to be a great deal of uncertainty regarding the direction the Caymans government will take to implement a good corporate government framework and curb corruption. Although the government has recently taken the steps outlined above in an effort to add greater degrees of integrity, accountability, and transparency into its governance system, more action is needed. Going forward, the government should work to eradicate corruptive practices by focusing on adding more transparency and accountability into corporations that domicile and incorporate within its jurisdiction.

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<sup>1</sup> Xun Wu, *Corporate Governance and Corruption: A Cross-Country Analysis*, 18 GOVERNANCE 151, 151 (2005)

<sup>2</sup> *Id.*

<sup>3</sup> GLOBAL CORPORATE GOVERNANCE FORUM, ETHICS AND CORPORATE GOVERNANCE IN THE FIGHT AGAINST CORRUPTION 1, 2 (Ctr. for Int'l Private Enter. 2008) [hereinafter *CIPE Report*], <http://www.cipe.org/sites/default/files/publication-docs/Ethics%20and%20Corporate%20Governance%20in%20the%20Fight%20against%20Corruption.pdf>.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> See, e.g., Jamie D. Collins, Klaus Uhlenbruck & Peter Rodriguez, *Why Firms Engage in Corruption: A Top Management Perspective*, 87 J. BUS. ETHICS 89 (2009) (arguing that top executives often rationalize corruption as necessary to remain competitive).

<sup>6</sup> Anthony P. Maingot, *Offshore Secrecy Centers and the Necessary Role of States: Bucking the Trend*, 37 J. OF INTERAMERICAN STUDIES AND WORLD AFFAIRS 1, 16 (1995).

<sup>7</sup> WORLD BANK, HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK 20 (1997), available at <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf>.

<sup>8</sup> *Id.* at 8. See also UNITED NATIONS DEV. PROGRAMME SUDAN, SOUTHERN SUDAN ANTI-CORRUPTION COMMISSION LAUNCHES NEW STRATEGY (2010) (defining corruption as the “misuse of public office for private gain”), <http://mirror.undp.org/sudan/story%20anti-corruption.htm>.

<sup>9</sup> TRANSPARENCY INTERNATIONAL, FAQs ON CORRUPTION, [http://www.transparency.org/whoweare/organisation/faqs\\_on\\_corruption](http://www.transparency.org/whoweare/organisation/faqs_on_corruption) (last visited Jan. 8, 2014).

<sup>10</sup> Wu, *supra* note 1.

<sup>11</sup> *How to Promote Good Corporate Governance*, in INVESTMENT, COMPETITION & BUS. DEV. SERVICES TEAM POLICY DIV., HOW TO NOTES (2003), <http://www.sed.manchester.ac.uk/research/iarc/ediais/word-files/HowtoPromoteGoodCorporateGovernance.doc>.

<sup>12</sup> BASEL COMMITTEE ON BANKING SUPERVISION, PRINCIPLES FOR ENHANCING CORPORATE GOVERNANCE 1 (Bank for International Settlements, 2010), available at <http://www.bis.org/publ/bcbs176.pdf>.

<sup>13</sup> *Id.*, Wu, *supra* note 1 at 153.

<sup>14</sup> RICHARD ANDERSON & ASSOCIATES, RISK MANAGEMENT AND CORPORATE GOVERNANCE 5, OECD, available at <http://www.oecd.org/daf/ca/corporategovernanceprinciples/42670210.pdf> (last visited Jan. 8, 2014).

<sup>15</sup> RANGASWAMY D., K. PRABHAKAR, & C. PRABHAKARAN, IMPACT OF CORRUPTION ON CORPORATE GOVERNANCE – AN OVERVIEW UNDER THE CONTEXT OF POLICY FRAMEWORK AGAINST CORPORATE CORRUPTION 5 (2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1937733](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1937733).

<sup>16</sup> *CIPE Report*, *supra* note 3 at 5.

<sup>17</sup> See, LACERA, CORPORATE GOVERNANCE PRINCIPLES 1, 1 (2009), available at [http://www.lacera.com/investments/inv\\_pdf/CorpGovPrinciples.pdf](http://www.lacera.com/investments/inv_pdf/CorpGovPrinciples.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> Wu, *supra* note 1 at 151-52.

<sup>20</sup> *How to Promote Good Corporate Governance*, *supra* note 11; Rangaswamy D, *supra* note 15.

<sup>21</sup> *How to Promote Good Corporate Governance*, *supra* note 11.

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- <sup>22</sup> KERRIE WARING, EFFECTIVE CORPORATE GOVERNANCE FRAMEWORKS: ENCOURAGING ENTERPRISE AND MARKET CONFIDENCE 4 (Inst. of Chartered Accountants in Eng. & Wales 2006).
- <sup>23</sup> *Id.* at 9.
- <sup>24</sup> *Id.*
- <sup>25</sup> Elizabeth Bumiller, *Corporate Conduct: The President; Bush Signs Bill Aimed at Fraud in Corporation*, N.Y. TIMES, July 31, 2002, available at <http://www.nytimes.com/2002/07/31/business/corporate-conduct-the-president-bush-signs-bill-aimed-at-fraud-in-corporations.html>.
- <sup>26</sup> Waring, *supra* note 22 at 6.
- <sup>27</sup> *Id.* at 9.
- <sup>28</sup> *Id.*
- <sup>29</sup> *Id.* at 10.
- <sup>30</sup> *Id.* at 4.
- <sup>31</sup> Wu, *supra* note 1 at 152.
- <sup>32</sup> *Id.*
- <sup>33</sup> Maingot, *supra* note 6 at 8-9.
- <sup>34</sup> *Id.*
- <sup>35</sup> *Id.* at 2-3 (1995).
- <sup>36</sup> *How to Promote Good Corporate Governance*, *supra* note 11.
- <sup>37</sup> Jeffrey I. Horowitz, *Piercing Offshore Bank Secrecy Laws Used to Launder Illegal Narcotics Profits: The Cayman Islands Example*, 20 TEXAS INT'L L. J. 133, 135 (1985).
- <sup>38</sup> *Id.* at 138.
- <sup>39</sup> *Id.*
- <sup>40</sup> *Id.*
- <sup>41</sup> Susan M. Roberts, *Small Place, Big Money: The Cayman Islands and the International Financial System*, 71 ECON. GEOGRAPHY 237, 240 (1995).
- <sup>42</sup> NATASHA LANCE ROGOFF, HAVEN OR HAVOC? (PBS Frontline 2004), <http://www.pbs.org/wgbh/pages/frontline/shows/tax/schemes/cayman.html>
- <sup>43</sup> Horowitz, *supra* note 37.
- <sup>44</sup> *Id.*
- <sup>45</sup> New Resident, Cayman: A Global Financial Centre (Acorn Publishing Co. 2013), <http://www.caymannewresident.com/cayman-a-global-financial-centre>.
- <sup>46</sup> *Id.*
- <sup>47</sup> Roberts, *supra* note 41 at 239.
- <sup>48</sup> MICHAEL BROSTEK, GOV'T ACCOUNTABILITY OFFICE, GAO-08-778, CAYMAN ISLANDS: BUSINESS AND TAX ADVANTAGES ATTRACT U.S. PERSONS AND ENFORCEMENT CHALLENGES EXIST 4, 33 (2008), available at <http://www.gao.gov/new.items/d08778.pdf>. The non-reporting rule applies to foreign corporations established in the Caymans that have no trade or business in the United States, but includes dividend payments by such corporations that go to United States' taxpayers.
- <sup>49</sup> *Id.* at 4.
- <sup>50</sup> Paul Peachy, *Corruption and the FCO: Blue skies, white sands, dark clouds*, THE INDEPENDENT, May 26, 2013, available at <http://www.independent.co.uk/news/uk/crime/corruption-and-the-fco-blue-skies-white-sands-dark-clouds-8632367.html>. Enron used hundreds of subsidiaries registered in the Cayman Islands in order to keep the money off of its balance sheets prior to its collapse.
- <sup>51</sup> Michael Cohn, *Feds Crack Down on Undeclared Israeli Bank Accounts*, ACCOUNTING TODAY, Aug. 30, 2013, available at <http://www.accountingtoday.com/news/Feds-Crack-Down-Undeclared-Israeli-Bank-Accounts-67937-1.html>.
- <sup>52</sup> *Id.* Following a guilty plea, the Assistant Attorney General for the Justice Department's Tax Division states that it was the "latest example that attempting to hide income and assets from the United States in offshore accounts is a bad gamble."
- <sup>53</sup> Jennifer Thompson, *Olympus faces SFO prosecution*, FINANCIAL TIMES, Sept. 4, 2013, available at <http://www.ft.com/intl/cms/s/0/2cdf5f62-1529-11e3-950a-00144feabdc0.html#axzz2pqMMRcbc>.
- <sup>54</sup> Jonathan Russell, *SFO looks into Olympus' \$687m 'advisory fees' during Gyrus deal*, Oct. 19, 2011, THE TELEGRAPH, available at <http://www.telegraph.co.uk/finance/newsbysector/mediatechnologyandtelecoms/electronics/8837251/SFO-looks-into-Olympus-687m-advisory-fees-during-Gyrus-deal.html>.

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- <sup>55</sup> Jim Armitage, *SFO will take Japanese camera giant Olympus to court over 'false accounts,'* THE INDEPENDENT, Sept. 4, 2013, <http://www.independent.co.uk/news/business/news/sfo-will-take-japanese-camera-giant-olympus-to-court-over-false-accounts-8798072.html>.
- <sup>56</sup> *Id.*
- <sup>57</sup> Rogoff, *supra* note 42.
- <sup>58</sup> *Id.*
- <sup>59</sup> *Id.*
- <sup>60</sup> *Id.*
- <sup>61</sup> Simon Gray, *Weaving case concentrates minds on fund governance*, HEDGEWEEK, Jan. 17, 2012, *available at* <http://www.hedgeweek.com/2012/01/17/160742/weaving-case-concentrates-minds-fund-governance>.
- <sup>62</sup> *Id.*
- <sup>63</sup> *Id.*
- <sup>64</sup> *Id.*
- <sup>65</sup> *Id.*; CITCO TRUSTEES (CAYMAN) LIMITED, CAYMAN ISLANDS: THE WEAVERING CASE (2011), <http://www.citco.com/news/2011/cayman-islands-weaving-case>.
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- <sup>67</sup> Simon Firth, *Offshore fund governance: What's on the horizon?* M&A and Corporate Governance Newsletter 16 (2013), *available at* [http://www.kayescholar.com/news/newsletters/MA-and-Corporate-Governance-Newsletter-Winter2013/\\_res/id=sa\\_File1/MACGN-Winter2013.pdf](http://www.kayescholar.com/news/newsletters/MA-and-Corporate-Governance-Newsletter-Winter2013/_res/id=sa_File1/MACGN-Winter2013.pdf).
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- <sup>69</sup> *Id.* at 18.
- <sup>70</sup> *Id.*
- <sup>71</sup> *Id.* at 19.
- <sup>72</sup> *Id.* at 17.
- <sup>73</sup> FRED SHAHEEN & KARA BOMBACH, CAYMAN ISLANDS ANTI-CORRUPTION LEGISLATION (Greenberg Traurig 2008), *available at* <http://www.gtlaw.com/News-Events/Publications/Alerts/106792/Cayman-Islands-Anti-Corruption-Legislation>.
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- <sup>76</sup> Martin Livingston & Brett Basdeo, *Cayman Islands*, in BRIBERY AND CORRUPTION 52, 54 (Jonathan Pickworth & Deborah Williams eds., 1st ed. Global Legal Group, Ltd.), [http://www.maplesandcalder.com/fileadmin/uploads/maples/Documents/PDFs/Article%20-%20Cayman%20-%20GLG%20-%20Global%20Legal%20Insights%20-%20Bribery%20%26%20Corruption%201st%20Ed.%20-%20Oct2013%20\(MDL\\_BWB\).pdf](http://www.maplesandcalder.com/fileadmin/uploads/maples/Documents/PDFs/Article%20-%20Cayman%20-%20GLG%20-%20Global%20Legal%20Insights%20-%20Bribery%20%26%20Corruption%201st%20Ed.%20-%20Oct2013%20(MDL_BWB).pdf) (last visited Jan. 8, 2014).
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- <sup>78</sup> Wu, *supra* note 1 at 155.
- <sup>79</sup> *Id.*
- <sup>80</sup> *Id.*
- <sup>81</sup> *Id.* at 155-56.
- <sup>82</sup> Dickson, *supra* note 74.
- <sup>83</sup> CAYMAN ISLANDS, THE ANTI-CORRUPTION LAW, SUPPLEMENT 2 WITH GAZETTE NO. 17, 38-39 (2008).
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- <sup>86</sup> *Id.*
- <sup>87</sup> *Id.* at 4-5.
- <sup>88</sup> *Id.* at 5.
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