



Governance Lessons for Boards from the SSL Debacle

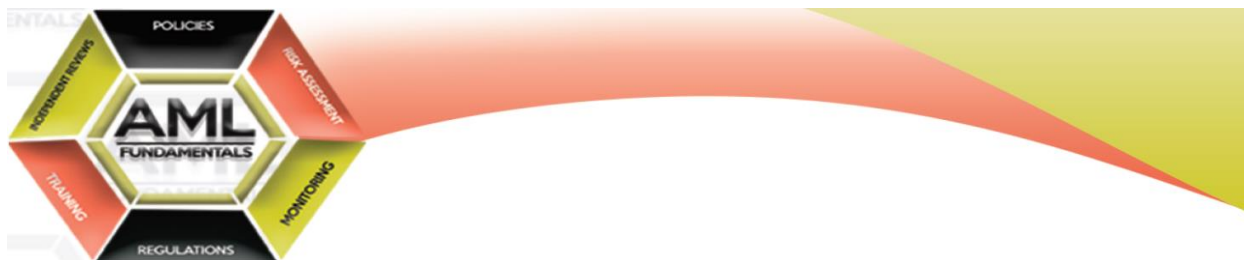
Jamaica over its 60 years of independence has grappled with issues of governance in the public sector. Often after a scandal, the conversation surrounds the responsibilities of boards appointed by ministers of government and further, how individuals are selected for these boards, whether their selection is rooted in competence and qualifications, or merely by way of political considerations. So much so that the government in 2011 (revised 2012), issued the Corporate Governance Framework for Public Bodies in Jamaica. The framework itself accounts for 20 principles, commencing with governance of boards, and roles and responsibilities of boards. In 2018, the government introduced a “Policy Guideline for the Nomination, Selection and Appointment of the Boards of Public Bodies”. Notwithstanding these initiatives, there continues to be issues of corporate governance arising in the public sector which calls into question the judicious nature of boards in the execution of their mandates.

The ongoing developments with Stocks and Securities Limited (SSL) turns the spotlight for a rare moment away from questions of board governance in the public sector, to that of the private sector. The Sunday Gleaner of February 5th in its continued probe of the SSL debacle, reported on issues the regulator, the Financial Services Commission (FSC) flagged at SSL in its 2019 review of the entity. Of note from the Gleaner’s reporting was the indication made by the FSC that ‘the full board of never held a formal board meeting’. It went on, “SSL said an executive committee and a management committee were formed. FSC reviewed meeting minutes which revealed that no committee member, having read and reviewed the minutes, endorsed the accuracy of the contents.” We could assume that SSL’s board governance as cited by the regulator, and its public unravelling, is the exception among regulated entities where oversight by the entity’s board was concerned. Alternately, SSL as a regulated entity may just have had the misfortune of the cat belling its issues at large in the public square. Nonetheless, the scenario presents an opportunity for us to explore the role and responsibilities of the Board of Directors in the governance architecture of an organization.

Board of Directors

According to Harvard Law School Forum on Corporate Governance, the Board of Directors has a vital role of overseeing the company’s management and business strategies to achieve long-term value creation. Among the responsibilities of the board is the selection of a qualified chief executive officer (CEO), and thereafter monitoring and evaluating their performance, and succession planning in relation to the role of CEO. The Board of Directors will set and approve strategic direction of the company, approve its key policies and procedures, and offers its advice and guidance to management in the daily operation of the organization. It is the expectation that the Board will set the tone at the top, in relation to compliance with the organisations policies and procedures.

Relying on the Gleaner’s reporting of the FSC’s findings, we see that SSL’s board was apparently not reliable in the execution of its fiduciary responsibilities. It is through meetings of the Board of Directors that the Directors are able to keep abreast of what is happening within the entity. The absence of meetings of the full board denies all members to be apprised of what is happening within the institution. This would be further compounded by the absence of the relevant committees having been formed and convening



meetings to carry through on their respective mandates. Since it is the Board's ultimate responsibility to see to the proper running of the organisation, it would have failed in its fiduciary responsibility to the organisation and by extension to those who invested funds with SSL.

Potential Conflict

A question that arises in SSL's case is the probability of potential undue influence by those Directors who were majority share holders in SSL, on the proper functioning of the board. Without being speculative, a scenario in which the full board had never held a formal board meeting, according to the FSC, raises serious concerns as to why this was the case. No doubt, a case such as this raises a red flag. Assuming there were informal meetings of the board, which would likely not have been minuted, it sends the wrong signal. In keeping with information that continues to come forward concerning SSL's operations, it would not be unreasonable to conclude that the absence of a formal board meeting could have been a strategy to suppress information concerning the true state of the entity, known to the directors, since formal minutes would be the subject of internal, external and regulatory audit request and reviews. Such an inference seems more plausible given the instances of SSL not having filed audited financial statements with the FSC as required, to the point where the entity was instructed by the regulator to have its books audited to validate the position of its balance sheet – the matching of its assets and liabilities.

The potential conflict also plays itself out in the majority acting in their own interest, which betrays the fiduciary responsibility vested in each member of the board. If we consider the appointment of a Trustee by SSL's board, and court documents which sets out the responsibilities of the trustee which in effect speaks to the winding-up of SSL, in the midst of a probe into fraud at the entity, we could ask, who stands to benefit from such a move, the directors/majority shareholders and/or the investors who have been allegedly defrauded, or both? If the balance sheet which accompanied the documents filed with the Companies Office of Jamaica indicating "members Voluntary Winding-Up" as published by Finance Minister @NigelClarkeJa, which indicates assets of J\$1.383 billion and liabilities of J\$1.318 billion is to be believed, the investors may not be the beneficiaries of such an act, since at least one client is claiming over J\$2 billion as having been pilfered from his account at SSL.

Investor Scrutiny

An investor with an account at SSL would be at a disadvantage as it concerns scrutiny of the operations of the entity. Unlike other stock brokerages that are listed on the Jamaica Stock Exchange (JSE), SSL would not have been subject to disclosures that must be made to the public by a listed entity. It being privately owned, the typical SSL client would not be privy to disclosures such as the trading in shares by board members and management, quarterly publication of financial statements, and disclosures on significant transactions the company undertakes which must be made to the JSE and the investing public. It is for this reason that it is critical for directors to act prudently and in the best interest of company and all stakeholders.

The Bank of Jamaica which will soon take on the prudential regulation of entities in the insurance, securities and pensions sectors, in its Standard of Best Practice for Effective Corporate Governance in Deposit Taking Institutions (July 2008) offers at paragraph 17 that among the hallmarks of effective corporate governance



by the board is an ability to strike a balance between business objective, risk and controls, as well as responsiveness to issues identified by regulators or independent oversight functions, management and self-evaluations. Given what continues to unfold at SSL, there appears little question as to whether or not the directors of SSL were true to these considerations in their actions/inactions.

Lessons

1. In the final analysis, boards of directors have a fiduciary responsibility to oversee the running of the entity for which they have been entrusted, towards achieving long term value for all shareholders and stakeholders. Directors should possess the capacity to act in the best interest of all shareholders and in the case of SSL, stakeholders such as clients.
2. Directors must in the interest of the organization's solvency and longevity, seek to address in a timely manner issues that arise from regulatory audits, and more importantly adopt a self-evaluating stance that seeks to identify issues prior to them showing up in audits. In other words, take a proactive approach to the discharging of its fiduciary responsibilities.
3. Directors should see to the holding of Board meetings, with properly recorded minutes in relation to key discussions, deliberations and decisions taken. Similarly, sub-committees of the board should meet and likewise keep proper minutes of their discussions, deliberations, and decisions, which should be tabled at the meeting of the full board for ratification.
4. Directors must ensure that they are not acting as mere rubberstamps of approval for policies, procedures, etc which are presented for board approval, but take the time to review, understand and probe with a view to ensure that they are fit for purpose and adequately address areas of risk and controls relative to the organisation.
5. Directors should identify competent executive resource to lead the daily operational functions of the organisation.

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