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Multinational Corporation and National Interests in the Commonwealth Carribean

Stephen J. Leacock
Errol L. Thomas

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Introduction

Power can be benign or it can be dangerous. For all power tends to develop into a government in itself. Power that controls the economy should be in the hands of the elected representatives of the people, not in the hands of an industrial oligarchy.¹

This statement expressed Mr. Justice Douglas' concern about the concentration of power in the hands of a few large companies within the United States. He clearly implied that such a concentration of economic power can determine the way in which a society is organized. His concern is equally relevant to the Commonwealth Caribbean.

Most developing countries depend on foreign direct investment to provide economic development. Because of their substantial capital requirements, most foreign direct investments are made by multinational corporations.² As a result, such corporations are sometimes able to exert considerable influence over the economies of the host countries.³

²Hereinafter referred to as MNC's.
Empirical data have shown that the MNC can create serious problems even for some developed countries, resulting from government inability to exercise effective control over the economy because the "commanding heights of economy" are under the control of the MNC.\(^4\) Moreover, the flexibility, size, wealth and international market power of the MNC can enable it to evade regulations imposed by governments.\(^5\) Such a concentration of economic power tends to justify Mr. Justice Douglas' fears.

The Commonwealth Caribbean countries are among those developing countries which depend most on foreign investment for economic development. Because of the socio-economic consequences of foreign investment by the MNC, those governments are faced with a formidable task in safeguarding national interests.

The national interest may be defined as the capacity of a government to mobilize its resources, goods, services and people toward the creation of social justice and equality.\(^6\) This definition differs from the use of the term in the political sense. In the political arena, the national interest is whatever the particular territory's ruling political officials determine it to be.\(^7\) Such a subjective approach can be dangerous, since the national interest in the political sense will vary as the political leaders change. Acts in the political national interest will not necessarily be in the national interest in the socio-economic sense. The best approach is to consider the goal of achievement of social justice and equality in a state in the light of the economic and political constraints existing there. References in this article to the national interest refer to this socio-economic definition.

In the past, only a few governments have attempted to control unilaterally the economic impact of the MNC. The main instrument employed has been positive law. These laws have often proved ineffective, however, because "public outcry" against their enactment in the original form forced compromise of the original legislative proposals.\(^8\)

Because of the ability and tendency of the MNC to avoid controls imposed by a single nation, it has been argued that any attempt to bring the MNC into closer alignment with the host government's policies must be an integrated effort by all host governments, in order


\(^6\)INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 34 (1965).

\(^7\)Id. at 38; see also O. Holsti, INTERNATIONAL POLITICS 125-26 (1967).

to present a united front. Multilateral regulation, it is submitted, must become the modern trend in all the developing countries. One of the most important attempts to develop multilateral regulation has been the May 26, 1969 signing by a group of Latin American countries of the Agreements of Cartagena, which set up the Andean Common Market. The Foreign Investment Code which is the principal instrument of the Andean Common Market has been referred to as "an expression of economic nationalism." The signing of the Treaty of Chaguaramas by four independent Caribbean countries on July 4, 1973, thereby creating the Caribbean Community, was an important step in the same direction. The creation and adoption of a fully thought out foreign investment code could be a means of integrating the powerful economic forces of the MNC into the planned development of the whole Commonwealth Caribbean region.

Because of the dependence of the Commonwealth Caribbean countries on foreign investment, and because of the MNC's ability to undermine the national interest if its energies are misdirected, Caribbean governments must employ both municipal and international law as instruments for safeguarding the national interest.

Investment by the MNC in the Commonwealth Caribbean

The premise that "law and economics are interdependent instruments of social control" is of particular significance in relation to underdeveloped countries such as the Commonwealth Caribbean territories. These nations face the almost insurmountable task of accelerating the rate of economic growth while at the same time seeking to develop some form of economic nationalism. The various states are in the process of using the instruments of law and economics to develop their resources, trying at the same time to retain control over them. Since the area's development has not been autonomous, however, but tied to European and later American economic development, certain elements of the economies have never been locally controlled.

In the Commonwealth Caribbean, after many decades of British rule, some territories have become sovereign states while others have

13President Luis Echeverria Alvarez of Mexico, TIME, February 24, 1975, at 35: We in Latin America... are confronted with a dilemma. We either open up to the economic investments, life-style and psychological attitudes, all for the economic development of the U.S. — in which case we are favoring a process of colonization — or we try to exploit our natural resources and seek alliances in our own self interest.
14A. Lewis, Growth of the Modern West Indies 64 (1968).
15Bahamas, Barbados, Grenada, Guyana, Jamaica, Trinidad and Tobago.
achieved a measure of self-government. Yet there have been no fundamental changes in the economies of the territories. The situation has been analyzed in the following terms:

All the CARIFTA countries — without exception — have dependent and underdeveloped economies.... In spite of high and growing levels of per capita income, the continuing underdevelopment of the economies is manifested in heavy dependence on foreign investment, growing unemployment and underemployment, agricultural retardation, the creation of insufficient linkages between the economic sectors and insufficient use of domestic natural resources, national savings, local entrepreneurship and appropriate technologies.

These economic features can in part be explained by the fact that the key sectors of all the Commonwealth Caribbean economies are foreign owned and controlled. Although in some cases the economies of some territories have grown substantially and diversified to a lesser degree, the "structural and institutional dependence on foreign capital has in no way reduced." Considering the area's potential for actual development it seems that foreign investment has made only a marginal contribution to the economies of the territories in the light of the following facts. First, only a small level of additional employment has been created in proportion to the amount of capital invested. Second, only a small volume of raw material is used. Third, a large proportion of profits and interests is paid outside the territories of the Commonwealth Caribbean.

The question of a development strategy that would diversify the economies of the territories of the Commonwealth Caribbean has been debated since the early 1940's. G. K. Lewis has noted that:

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17The territories which formerly belonged to CARIFTA (The Caribbean Free Trade Area) are now members of CARICOM (The Caribbean Community, including the Caribbean Common Market).

18CARIBSEC, supra note 11, at 12.


22Lewis, supra note 14, at 401.
From the beginning it embraced uncritically, both in the structure of its tax incentives\textsuperscript{23} and in the character of its domestic and revenue arrangements, the model of forced manufacturing industrial enterprise dependent mainly upon the capital investment of outside business investors as the best means for transforming the traditional West Indian economic system characterised by long-run stagnation, structural rigidity, and high unemployment rates. The model has flourished for some time in the Caribbean, most famously in the Puerto Rican ‘Operation Bootstrap’ enterprise. All West Indian planners, irrespective of their ideological coloration, have copied the model. The essential point to make about the model is that in the long run it effectively precludes the pursuit of public policies aimed towards social equality.\textsuperscript{24}

Even without adopting the Puerto Rican model, the common view is that underdeveloped countries are incapable of establishing the type of capital formation necessary to finance their economic development. Two of the principal reasons put forward are (1) that domestic financing is limited and (2) that economic development cannot be carried out at the desired speed through increased productivity and savings.\textsuperscript{25}

The quintessence of capital formation is “the diversion of a part of the society’s currently available resources to the purpose of increasing the stock of capital goods so as to make possible an expansion of consumable output in the future.”\textsuperscript{26} In the Commonwealth Caribbean, little or no capital formation is possible because there is no excess of public revenue over public expenditure, i.e. public savings.\textsuperscript{27}

The potential of the use of the law as an instrument of economic development was perceived by the territories of the Commonwealth Caribbean once it was realized that industrialization of the region could not be financed locally. The legislatures of the territories therefore enacted incentive legislation\textsuperscript{28} with the objective of attracting foreign capital to finance the territories’ proposed new phase of

\textsuperscript{23}In a study of tax incentives in Jamaica for the period of 1953-1962, it was found that in terms of benefit/cost to the economy the ratio was 7:29. The Puerto Rican program over the same period was shown to be far more efficient, the benefit/cost ratio being 46:6. P. Chen-Young, a study of the tax incentives in Jamaica, at 302 (1966) (unpublished Ph.D. dissertation at the University of Pittsburgh).

\textsuperscript{24}Id.

\textsuperscript{25}F. NYENGA, INVESTMENT GUARANTEES 79 (Contemporary African Monograph Series No. 6, 1967); see also A. FAOUTOROS, GOVERNMENT GUARANTEES TO FOREIGN INVESTMENT 11, 14 (1962).

\textsuperscript{26}R. NURKSE, PROBLEMS OF CAPITAL FORMATION IN UNDERDEVELOPED COUNTRIES 2 (1967).

\textsuperscript{27}LEWIS, An Economist’s Thoughts on the Caribbean, J. BARBADOS CHAMBER OF COMMERCE (3d Quarter 1972) at 3.

\textsuperscript{28}Some examples are: Export Industry Encouragement Law, 1956-49 (Jamaica); Industrial Incentive Law, 1956-45 (Jamaica); Hotel Incentives Act, 1963-3 (Trinidad & Tobago); Aid to Pioneer Industries Ordinance, ch. 33, No. 3, (Trinidad & Tobago); Industrial Incentives Act, 1963-31 (Barbados); Industrial Development (Export Industries) Act, 1969-43 (Barbados); Hotel Aid Act, Title XXII, Cap. 8 (St. Vincent); Aid to Pioneer Industries Act, Title XXIII, Cap. 1 (St. Vincent).
economic development. This attempted solution to the problem of underdevelopment is the accepted norm in poor countries, since their development is dependent on the economic assistance and foreign direct investment of the rich or developed countries.

Foreign direct investment is of three types:

(1) settler investment,
(2) portfolio investment, and
(3) direct investment by the MNC.

Settler investment is characterized by investment made by foreign nationals who have migrated to the host country and have set up business. Settler investment is usually not a particularly disfunctional type of investment. Portfolio investment refers to the purchase of equity in a local enterprise by non-nationals who reside outside the jurisdiction of the host country. This type of investment is fundamentally similar to that of the absentee planters of the old colonies. Finally, direct investment by the MNC is the most dominant form of foreign investment in the Commonwealth Caribbean. The implications of this type of investment have been accurately analyzed in the following terms:

Foreign direct investment through the MNC involves the transfer of a whole productive and organizational complex, embracing a bundle of factors of production. Not merely capital but also knowledge, management know-how and marketing skills. Consequently the return on foreign direct investment includes at least conceptually much more than the return on capital. It also includes payments for management, marketing services and particularly for technology in the form of patent fees, license fees, royalties and technical management charges.

Direct investment by the MNC in the Caribbean is an economic reality. The governments in the Commonwealth Caribbean support and invite foreign direct investment either on very liberal terms, as in the case of Barbados, St. Lucia and Grenada, or subject to a program of localization as in the case of Guyana, Trinidad and Tobago, Dominica and Jamaica. In encouraging investment by the MNC, host governments seem to have concluded that the advantages to be derived from such investment outweigh the disadvantages arising therefrom. Such a

29 NYENGA, supra note 25; FAUTOUROS, supra note 25; see also A. LEWIS, THE THEORY OF ECONOMIC GROWTH 258 (1965).
31 Id. at 1-6.
32 Id.
33 E. WILLIAMS, CAPITALISM AND SLAVERY 85-87 (1964).
34 MCINTYRE & WATSON, supra note 30.
35 Id. at 2-3.
36 CHEN-YOUNG, supra note 19 at 21-35.
conclusion does not seem to find favor with the Prime Minister of Trinidad and Tobago, who has stated that big companies which are supported by their governments represent the fundamental problem for small countries. Such a conclusion must be given more than scant consideration, since it is based on more than fifteen years of direct contacts with the MNC, especially those dealing in oil, petro-chemicals and sugar.

Nevertheless, as long as the Commonwealth Caribbean territories continue to have an excess of public expenditure over public revenue and "as long as the capitalistic framework is the accepted type of economic system, there is hardly any alternative but to continue to encourage private, local and foreign investment." The terms and conditions under which foreign investment is encouraged and accepted can, however, be changed. In this respect Guyana, Trinidad and Tobago, Jamaica, and Dominica have made some departure from the norm. Only Trinidad and Tobago has gone so far as to issue a policy statement on foreign investment.

The foregoing represents an attempt to explain the process by which the MNC came to the Commonwealth Caribbean. The next logical question is what is the nature of the MNC?

The MNC has the following basic characteristics. It is a cluster of corporations of diverse nationality. There is inter-connection between the various corporations. Its commercial flexibility enables it to decide whether or not to enter a particular country. MNCs engage in heavy advertising which serves in many cases as a barrier to entry into the particular commercial activity by new firms. It is a product of the developed countries. Perhaps the fundamental characteristic of the MNC is its wealth.

A single MNC, General Motors, with its $25 billion in annual sales is larger than the gross national product of one hundred and thirty countries. Moreover, it has been estimated that at the end of the year 1975, General Motors had sales of over $35 billion, but was surpassed by Exxon, which had sales of over $44 billion. Exxon ranked first and General Motors second in the FORTUNE 500 list for 1975. FORTUNE, May 1976 at 318.

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37E. WILLIAMS, PATTERNS OF PROGRESS, TRINIDAD AND TOBAGO: TEN YEARS OF INDEPENDENCE 15 (1972):

The fundamental problem that we have encountered in the first decade of independence, jeopardizing and even frustrating our progress, has been one over which we necessarily have little control. That is the problem of a small country in a big world which is generally hostile, facing not only big countries but big companies — not infrequently big companies supported by the government of their countries.

38CHEN-YOUNG, supra note 19, at 5.
39Ibid. at 21-35.
40MCINTYRE & WATSON, supra note 30.
42American Tobacco Co. v. United States, 328 U.S. 781, 797 (1945).
43UNITED NATIONS DEPT OF ECONOMIC & SOCIAL AFFAIRS, MULTINATIONAL CORPORATIONS IN WORLD DEVELOPMENT 7 (1974).
44R. VERNON, SOVEREIGNTY AT BAY 7 (1971). General Motors had sales of over $35 billion in 1975, but was surpassed by Exxon, which had sales of over $44 billion. Exxon ranked first and General Motors second in the FORTUNE 500 list for 1975. FORTUNE, May 1976 at 318.
of this century about two or three hundred large corporations will control two thirds of the world’s industrial production.\textsuperscript{45}

The result of these characteristics is that the MNC can subvert the national interest of the developing nation in one of two ways. The first is to threaten, defy, or dominate the host government, using the strength of the MNC to force concessions from it. The second is to escape the jurisdiction of the host government through concealment of structure and activities, artful accounting schemes, and tax evasion. A regional approach in the Commonwealth Caribbean toward the MNC may ameliorate the first problem. Stricter, more modern, and more effectively enforced corporate disclosure laws may solve the second. The problem of escape from jurisdiction and its solution, disclosure laws, will be addressed first; then the problem of control will be dealt with.

\textit{Escape From Jurisdiction of the Government}

The power and size of the MNC present many grave problems for the host government. The Prime Minister of Trinidad and Tobago in his “farewell speech” to the P.N.M. Convention spoke of the nature of the threat posed by the MNC to Caribbean countries. Dr. Williams outlined the problems in the following terms:

(1) The subsidiary is not free to choose its export markets, the decision on which rests with the parent company.
(2) The import and export trade of many countries is to a very large extent dominated by exchanges between subsidiaries and the MNC.
(3) The sovereignty of a country with a subsidiary of a MNC is further affected by the policy of the parent company of the MNC. For example, subsidiaries of American multinational corporations follow the United States policy of a ban on trade with China and Cuba.
(4) Most subsidiaries are required to remit their earnings to the parent company which prefers to advance loans to the subsidiaries on the theory that nationalistic governments are less likely to prevent the repayment of loans than the payment of dividends.
(5) Subsidiaries of American corporations have come to occupy a dominant and dangerous position in the economy of the countries in which they are located.
(6) The exchanges between subsidiaries and their parent company make a mockery of the restrictions of national governments and even of currency restrictions. The policy of multi-nationals is due in part to the fear of devaluations....
(7) The result of all this is that an affiliate or subsidiary of a MNC is less responsive to the policy of Governments....\textsuperscript{46}

\textsuperscript{45}Schmitthoff, \textit{The Multinationals in Court}, 1972 J. Bus. L. 103.
\textsuperscript{46}PENROSE, \textit{supra} note 3, at 107.
The MNC offers numerous threats that merit examination. Because of the international character of the MNC, it can defraud the host government through the exchanges between the subsidiary and parent. It can, by means of various transfers, manipulate prices and profits and thereby minimize its tax obligation to governments. According to Norman Girvan, the classic example of this type of practice is the case of Guyana "which has suffered significantly from long-term under-valuation of its bauxite exports." The Reynolds subsidiary in Guyana operated from 1953-1962 free from taxation because it could show that it suffered losses in its operations there. This manipulation of tax liability through artful accounting can affect the balance of payments of any host country. Moreover, if the MNC were to set transfer prices at unreasonable levels, this would not only minimize its tax liability, but it could also circumvent exchange restrictions and minimize customs duties.

The Trinidad and Tobago government has imposed regulations on the practice of transferring profits. This action by governments has led the MNC to resort to other disguised methods in order to effect transfer of their profits. These methods include the payment of interest on loans to the subsidiary, fees for licensing arrangements and management-service contracts, and payment to the parent company for research performed. The various methods of circumventing regulations imposed by governments emphasize the need for a national law which can ameliorate the ill effects of the circumvention. An example of an important step in this direction is the enactment of the Insurance Act in Barbados. Under this act, different types of insurance companies are required to make financial deposits with the government, and the government is empowered to invest these deposits to its advantage. Although the return from this type of investment may not compensate for losses in revenue where the regulations have been circumvented, it at least mitigates the negative effect of the circumvention.

When the head office of the MNC is required to be in alignment with the international policies of its home government, the economy of the host country may suffer. Specified restrictions are mainly in terms

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47 Address by Dr. Eric Williams, Prime Minister of Trinidad and Tobago, to the 15th Annual People's National Movement Convention, Sept. 28, 1973, reprinted in Sunday Guardian (Trinidad), Sept. 30, 1973, at 3.
49 Id. at 407.
50 Id. at 407-08.
52 A withholding tax has been imposed by the Finance Act, 1966, § 23(a).
of trade. In the Commonwealth Caribbean a situation of conflict may arise, particularly since four sovereign Caribbean countries have established diplomatic relations with Cuba. Subsidiaries of American companies in these four countries and the Caribbean in general are subject to the United States restrictions on trade with Cuba. Such restrictions may deprive these nations of valuable foreign exchange by imposing upon them the political value judgments of the United States, even though those judgments may be contrary to those made by the host government. An extension of this doctrine is that a subsidiary of an American oil company may refuse to supply oil to a British ship carrying Cuban sugar.

The foregoing evidence reinforces the view that while the MNC brings economic benefits to the host country, it also creates risks for the country that is its host. Their practices can "burden the national balance of payments." For example, between 1960 and 1968 when about $1 billion of capital was being transferred annually to the less developed areas, approximately $2.5 billion was being repatriated annually in the form of income alone.

Against this background of potential and actual threats posed by the MNC, governments seek to reduce the risks with legislation. Often, however, such legislation proves to be ineffective. Quite often, too, no attempt is made to insure that the law reflects the prevailing conditions in the particular society. An examination of the disclosure provisions in the company law of the Commonwealth Caribbean will serve as an example.


The disclosure philosophy of Anglo-American common law requires the fullest information about companies whether or not they are

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55Id., § 23.  
57Jamaica, Barbados, Guyana and Trinidad and Tobago.  
58PENROSE, supra note 3, at 113.  
59Id.  
60VERNON, supra note 44, at 172.  
61Id.  
62Id.  
63Vagts, supra note 9, at 759. See also Yorke, supra note 8, at 166.  
64For further consideration of company law in the Commonwealth Caribbean see generally Leacock, supra note 16.  
65The European Community Commission has urged the member nations to impose uniform accounting practices on multinational corporations. The draft directive states that their accounts must give a true and fair view of the group's assets, liabilities, financial position and results, and that items incorporated in group accounts must be valued using identical methods.
subject to local taxation. Where disclosure provisions are inadequate or are not properly enforced, the object of the philosophy is frustrated. Adequate disclosure is vital to the government as well as to the investing and financial community. In this way, the economic power and development of companies can be ascertained and can provide some basis for planning by the government and investment decisions by the investing community. Further, disclosure may be necessary for the government to act in a particular way with regard to a particular MNC in order to safeguard its national interests.

In Barbados, the government has announced that it intended to take a top interest in requiring disclosure by the British MNC, Cable and Wireless. It announced that the “government had been pressing Cable and Wireless to provide information on their finances and accounting.” The company, in turn, has promised to provide the required data “at the earliest opportunity.” The Minister of Communications and Works who made the announcement stated that “the government is still committed to taking a 51 percent interest in Cable and Wireless, and we are anxiously awaiting financial and accounting data from them.”

The proposed acquisition of 51 per cent interest in this multi-million dollar system is a complicated matter, and there is a clear implication from the Minister’s statement that the government does not feel that it has sufficient information on the finances and accounting of the company on which to proceed effectively. This is an example of a specific situation in which the matter of disclosure is crucial. An examination of the disclosure provisions of the Companies Act in some territories of the Commonwealth Caribbean will determine their adequacy, relevance and effectiveness in terms of current economic conditions.

**Barbados:**

The disclosure provisions in the Barbados Companies Act cover three types of companies: all companies with a share capital; certain types of companies such as limited banking and insurance companies; and companies established outside the Island.

The Act makes it mandatory for all companies having a share capital to make an annual list of their members and the shares held by each of them. The section also has other provisions which are

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67By virtue of the various incentive legislation laws, some companies may not be subject to local taxation.
68Advocate News, March 1, 1974, at 1.
69Id.
70Id.
71Id.
72Barbados Companies Act 1910-7 (rev. ed. 1942).
ancillary to matters of audit and accounts. This annual summary must be submitted to the Registrar of the Supreme Court.

An additional requirement in the annual summary is that it must contain a statement in the form of a balance sheet. This statement must contain "a summary of its share capital and its liabilities and its assets giving such particulars as will disclose the general nature of those liabilities and assets, and how the values of the fixed assets have been arrived at, but the balance sheet need not include a statement of profit and loss."  

The other category of companies required to make an annual statement consists of limited banking companies, insurance companies, deposit, provident, or benefit societies. Unlike Section 27(4), Section 106 does not require the statement to be submitted to the Registrar, only that it must be kept at the registered office. Insurance companies are governed by the Insurance Act.

The third category of companies for which there are disclosure provisions are those companies established outside the Island. Such companies are required to file with the Registrar a certified copy of their charter, statutes, or memorandum and articles of the company and a list of their directors. In addition, a statement in the form of a balance sheet must also be filed with the Registrar.

The Barbados Companies Act has remained substantially the same as it was when it was first enacted in 1910. In the interim, direct foreign investment by the MNC has brought substantial economic development. Company law should develop as it has in the United Kingdom, which provided the model for the Barbados Act of 1910, in order to cope with practices of companies in the 1970's and beyond. It is clearly because of the need for more effective provisions in the light of corporate behavior that the Insurance Act was enacted, and it is submitted that the same need applies to all other companies operating in Barbados.

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73Id. § 27.
74§§ 27(2a)-27(2m) require particulars such as: a) the amount of share capital; b) the number of shares issued since commencement; c) total amount paid as a commission re shares or allowed by way of discount in respect of any debenture; d) the names of the directors; e) total amount due from the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Act.
75Except where the company is a private company.
76Barbados Companies Act 1910-7, § 27(3).
77Insurance companies are now governed by the provisions of the Insurance Act 1970-36 where the disclosure provisions are very substantial.
78This statement must include: the name of the company, its objects, share capital and shares, and whether it is limited or unlimited. Barbados Companies Act 1910-7, § 106.
80Id., § 4.
81Barbados Companies Act 1910-7, § 223.
In addition to the fact that the disclosure provisions of the Barbados Companies Act are inadequate, the problem is exacerbated by the administration of the Act. Under the Act the Registrar of the Supreme Court is charged with its administration. This is in addition to the many other duties he has to perform. The situation which obtains in Barbados is similar to that of all other Caribbean territories with the exception of Jamaica, where there is a separate office of Registrar of Companies.

In territories which do not have a separate office of Registrar of Companies it is clear that companies may possibly violate the provisions of the Companies Act without being detected.

St. Vincent:

The most detailed provisions with regard to disclosure by companies is contained in Section 37 of the Companies Act. Under this section companies such as limited banking companies, all insurance companies, deposit, and provident or benefit societies have an obligation before they commence business (and yearly thereafter) to prepare a statement. This statement must indicate the current state of the company's capital, its liabilities, debts owed by the company, and its assets. It is further provided that this statement must be kept in the registered office of the company, branch offices, or its other places of business. A penalty is imposed by this section for failure to comply with its provisions. The statute, however, does not require the company to submit documents required by Section 37 to the Registrar.

Since the dominant type of private investment in the Commonwealth Caribbean is by the MNC, and because of the nature and capabilities of the MNC, these disclosure provisions in the St. Vincent Companies Act are also inadequate. In order to obtain adequate information, the disclosure provisions must be more elaborate. The Companies Act must also make it mandatory that the information be filed with the Registrar of Companies.
Trinidad and Tobago:

The Trinidad and Tobago Companies Act has one set of disclosure provisions for companies incorporated in Trinidad and Tobago and another set for companies incorporated outside the state.

Companies incorporated in Trinidad and Tobago are governed by Section 106 of the Act, which makes it mandatory for every company with a share capital "once at least in every year" to make a detailed return in accordance with the form set out. This return must state many details particularly in regard to shares, and the indebtedness of the company in respect of all mortgages and charges which are required to be registered with the Registrar.

Section 107(1) states that every company not having a share capital "shall once at least in every calendar year make a return" stating among other things the names of its directors. Additionally, Section 107(2) provides that "there shall be annexed to the return a statement containing particulars of the total amount of debentures of the company in respect of all mortgages and charges which are required to be registered with the Registrar under the Ordinance."

The disclosure provisions of the Trinidad and Tobago Companies Act are an improvement on the disclosure provisions in both the Barbados and St. Vincent Companies Acts. In addition to the provisions of Sections 106(3) and 107(2), Section 108(3) of the Act provides that all companies must include with their annual return a certified copy of the last balance sheet audited by the company's auditors. The effectiveness of the provisions is vitiated, however, by the fact that private companies are exempted from the provisions of Section 108(3). This means that if the MNC is a private company, which is frequent in Trinidad and Tobago, Section 108(3) does not apply.

The disclosure provisions relating to companies incorporated outside of Trinidad and Tobago are equally elaborate. If such companies establish a place of business within the state, they must deliver to the Registrar for registration the following documents: (a) certified copies of the charter, statutes or memorandum and articles of the company; (b) a list of directors of the company; (c) names and addresses of one or more persons resident in the state authorized to accept service of process and notice on behalf of the company.

Section 301(1) requires delivery of a balance sheet for registration with the Registrar every calendar year. There are no express provisions which specifically refer to the disclosure of accounts and audits by companies incorporated outside of Trinidad and Tobago. However, it

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90Id.
91Id.
93Id., §§ 106(3)(a)-106(3)(o).
94Id., § 107(2).
is submitted that the language of Section 106(1)95 of the Act, which requires disclosure of accounts and audits generally, includes companies incorporated outside of the state by necessary implication. The MNC can avoid the rigor of these disclosure provisions by operating in Trinidad and Tobago not as a company incorporated outside the state, but by forming a subsidiary in Trinidad and Tobago as a private company and operating through the subsidiary and thereby availing itself of the exemptions in Section 108(3).

Jamaica:

The Jamaica Companies Act96 is the most up-to-date in the Commonwealth Caribbean in terms of attempting to cope with current economic and financial reality. The other Companies Acts in the Commonwealth Caribbean are based on pre-1948 English Companies Acts. In Jamaica, the 1948 English Companies Act97 was used as a model for the new Act.

Like most of the other acts in the region, the Jamaica act distinguishes between public and private companies. The point of departure in the case of Jamaica is that private companies are required to file accounts in certain circumstances.98 The prescribed circumstances insure that disclosure has to take place if a MNC is a shareholder in any company there whether public or private.

In terms of disclosure by annual returns, every company with a share capital,99 companies without a share capital100 and those companies that are so required by the Act101 must prepare annual returns which must be filed with the Registrar102 within a specified time.103 The general provisions with regard to annual returns are that every company which is not a private company, but including those private companies required to file annual returns, shall file detailed accounts with the Registrar.104 These include a written copy, certified by a director, manager or the secretary of the company to be a true copy, of the last balance sheet and profit and loss account laid before the company in general meeting.105 In addition, “every document required by law to be annexed thereto”106 must also be submitted.

95Id., § 108.
96Id., § 298.
97"Every company having a share capital . . . ;" § 107(1) "Every company not having a share capital . . . " (emphasis added).
99English Companies Act, 1948, 12 Geo. 6, ch. 38.
100If any of the shares of the private company are held by a body corporate. Jamaica Companies Act of 1965, § 30(3).
101Id., § 121.
102Id., § 122.
103Id., §§ 30(3) and 124.
104The Register of Companies, § 333.
105Id., § 123.
106Id.
By Section 336(1) the duty imposed on companies to make returns to the Registrar can be enforced by a Judge in Chambers. Since Jamaica has a separate Registrar of Companies, it may be expected that company law in Jamaica should be better administered.

The Jamaica Companies Act has separate disclosure provisions relating to companies incorporated outside the Island but carrying on business within the Island. Such companies which establish a place of business within Jamaica after the commencement of the Act must deliver certain documents to the Registrar. These documents include a certified copy of the company charter, a list of its directors and the name of a person in the Island authorized to receive notices on its behalf. Further, any alteration in the above documents must be reported to the Registrar within a specified time.

Additionally, all companies incorporated outside the Island, shall in every calendar year make out a balance sheet and profit and loss account, and if the company is a holding company, group accounts in such form, and containing such particulars and including such documents, as under the provisions of this Act it would, if it had been a company incorporated under this Act, have been required to make out and lay before the company in general meeting, and deliver a copy of those documents to the Registrar for registration.

Since there is no exemption from the disclosure provisions for public companies or private companies where a body corporate is a shareholder, in Jamaica the MNC must disclose fully as required by the Act. The Jamaica Companies Act is, therefore, an improvement over all the other Companies Acts in the Commonwealth Caribbean. The realization that companies in general and the MNC in particular should disclose more information is clear, and is given expression in the Act. As the Minister of Trade and Industry at the time the Act was debated in Parliament pointed out, the Committee which was assigned the task of preparing the bill "drew heavily from Commonwealth legislation and experiences in company law."

However, even Jamaica has not gone far enough in the direction of disclosure. It should also have enacted provisions similar to those the United Kingdom enacted in the Companies Act of 1967. The

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107Id.
108Id.
109Id. § 333.
110Id. § 346(1).
111Id.
112Id.
113Id. § 348(1).
114Id. § 349(1) (emphasis added).
disclosure philosophy is an ongoing process which has to be given legislative expression in parallel with the practical need to extend it, and Jamaica has not extended the disclosure provisions which were adopted in the United Kingdom as long ago as 1948 when the MNC was in its embryonic stage. It is submitted that not only Jamaica but also the other Commonwealth Caribbean territories ought to adopt the further disclosure provisions of the U.K. Companies Act of 1967. It has been suggested that "good corporate behaviour" includes not only hiring local employees, the retention of earnings in the best state, the sale of shares to local investors and the autonomy of the subsidiaries from both parent company and foreign government control, but also the provision of detailed accounting and operating information to the public. It is unlikely that companies will voluntarily disclose such detailed information. Adequate disclosure must, therefore, be compulsory.

Control of MNC by the Governments in the Commonwealth Caribbean

The wealth, power and flexibility of the MNC is today a fact of life. The political implications of a situation where a MNC performs a major economic function in a small economy is summed up by this example:

There remains the question of the political impact of a large world corporation in a country such as Honduras. The United Fruit Company, for example, last year provided 11.2% of the country's taxes, 6% of its foreign exchange and 6.98% of its gross national product. It would be foolish to pretend that the company is without influence in Honduras.

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117 English Companies Act, 1948, 12 Geo. 6, ch. 81.
118 L. Gower, supra note 66, at 454:
Compulsory disclosure through accounts is a method of providing information about companies which the legislature adopted at a comparatively late stage. It was not until 1908 that companies were compelled to publish their balance sheets, nor until 1929 that they were made to circulate to their members... the profit and loss account. And it was only by the 1948 Act that a serious attempt was made to lay down in detail how these documents were to be prepared and by the 1967 Act that they were made available to the public in the case of all limited companies. This Act also added substantially to the amount of information which has to be given and a new and amplified schedule 8 which lays down the details which must appear in the balance sheet and profit and loss account. (Author's footnotes omitted)

119 Cornuelle, The Enormous Future: An Outline to the Challenge of the Multinational Corporation, United Fruit Company Annual Report, 1968, quoted in Beckford, supra note 4, at 456. The United Brands Company, the successor to the United Fruit Co., paid a $1.25 million bribe to an official of the government of Honduras to obtain a cut in the export tax on bananas. This led to the overthrow of Gen. Arellano as Chief of State of Honduras. There are other recent examples of corporate misbehavior by multinationals, most notably Lockheed in Japan, which have led to an extensive inquiry by the Church Committee in the U.S. Senate and the continuing calls for greater control of multinationals as the full extent of their malpractices is uncovered.

MNC's perform a major economic function in other Commonwealth Caribbean territories. In Barbados, seventy-five percent of the equity of the Barbados Light and Power Co. Ltd., which has monopoly power over electricity production in the island,
Because of these characteristics, the MNC can negotiate with governments from a position of strength and thereby often obtain concessions that other enterprises cannot. For example, Reynolds Bauxite Company would not carry out capital expansion in Jamaica unless the government was prepared to make a "package deal" covering revenue and all other aspects of its relationship with the government.\textsuperscript{120} In 1969, Tate and Lyle threatened to close down its Jamaica operations if the government did not agree to its demands for greater mechanization of the sugar industry and the establishment of bulk loading facilities.\textsuperscript{121}

G. K. Lewis describes the problems created by such power and domination:

The essential point... about the model is that in the long run it precludes the pursuit of public policies aimed toward social equality. ... It facilitates the entry of expatriate capital operations which have the dual effect of (1) increasing the degree of expatriate ownership of resources in the economy, and (2) reducing the local business groups to the status of subordinate partners in a network of international capitalist investment and financial operations, so that they become for all intents and purposes dependent entrepreneurs undertaking a middle class trusteeship of foreign holdings. A new dependent relationship upon outside forces makes itself felt; vital resources especially in the extractive industries are alienated by the location (as in Caribbean bauxite) of the smelting and fabricating processes away from the point of extraction; while production and employment policies are made by overseas head offices unconcerned with local development policies.\textsuperscript{122}

\textsuperscript{120}Girvan, \textit{supra} note 48, at 414.
\textsuperscript{121}Beckford, \textit{supra} note 4, at 486.
\textsuperscript{122}English Companies Act, 1948, 12 Geo. 6, ch. 81.
Such economic policies are "likely to contribute to persistent underdevelopment," but as long as the capitalistic framework remains the economic system in force, there is no viable alternative to continuing to encourage private local and foreign investment. The terms and conditions under which foreign investment is accepted, however, should be structured to encourage "indigenizing" the economies in the long run. This would require finding alternatives to foreign ownership of vital economic sectors, thereby retaining national autonomy and safeguarding national interests.

Safeguarding national interests in the Commonwealth Caribbean is best achieved by unified regional efforts. This is so because the individual territories have relatively small economies, they have had similar historical experiences, and their economies have similar characteristics. Moreover, regional economic integration is gaining momentum through the operation of CARICOM. Regional economic integration has been gaining adherents worldwide. Examples are the European Economic Community, the Central American Common Market, the East African Community and the Andean Common Market. In addition the French speaking countries of West Africa have recently decided to form the West African Economic Community. Coordinated planning through CARICOM should be the basis for safeguarding national interests in the Commonwealth Caribbean. Regional plans should be implemented through municipal law in the individual territories.

An important example of safeguarding national interests through regional integration is the Agreement of Cartagena which was signed by five states: Colombia, Chile, Bolivia, Ecuador, and Peru. The Agreement was motivated by the economic and political difficulties these countries experienced as members of the Latin America Free Trade Association (LAFTA). In this agreement, the members of the group agreed to establish certain organs that are intended to be used in overcoming the economic difficulties they face in their territories. These organs include the Andean Common Market, the Andean Development Corporation, and the Andean Multinational Enterprise.

The most important instrument for the purposes of this article is the Andean Foreign Investment Code. The Code aimed at protecting

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123The point that subsidiaries of the MNC are not usually autonomous has been made by several writers. See, e.g., Address by Williams, supra note 47; Schmitthoff, supra note 45, at 105; Behrman, supra note 56, at 217; K. Nkrumah, Neo-Colonialism 176 (1965); Girvan, supra note 48, at 407.

124Behrman, supra note 56, at 230.

125Penrose, supra note 3, at 132.

126Lewis, supra note 14, at 401.


129See text accompanying note 17, supra.
national interests by forming an economic group in which investment can be regulated to the members' advantage.\textsuperscript{130} The members of CARICOM should emulate the members of the Andean group by agreeing on a code of investment. This instrument should then be enacted into the municipal law of the individual contracting states, thus giving it full legal force in the territory of each state.

The stated purpose of the Andean Foreign Investment Code is "to provide a general framework for regulating foreign investment which shall be the minimum policy in member countries on the subject."\textsuperscript{131} It is possible for any individual contracting state to impose stronger restrictions in its own municipal law. Feasibility of stronger restrictions, of course, depends upon the level of foreign control in the particular economy.\textsuperscript{132}

Article 1 of the Code divides all enterprises into three main groups with each group having different privileges and protections. These groups are: (1) A National Enterprise in which over eighty percent of the equity and management lie in national investors; (2) A Mixed Enterprise, in which national investors control from fifty-one to eighty percent of the firm's equity and management; (3) A Foreign Enterprise, in which foreign investors own more than half of the equity or have effective control over management.\textsuperscript{133}

These divisions form the fundamental basis of the Code which is the theory of transformation from foreign to indigenous.\textsuperscript{134} The essence of the theory of transformation is that those firms wishing to benefit from the privileges and protections of the Andean Common Market must transform themselves over a fixed period of time.\textsuperscript{135}

One of the more substantial provisions of the Code is found in Article 3. The provisions of this article prohibit foreign investment in certain areas of the economy. These prohibited areas are reserved for local investors.\textsuperscript{136} Similarly, Article 37 places limitations in regard to the reinvestment and repatriation of capital. The article limits the repatriation of capital to fourteen percent of the direct foreign investment.\textsuperscript{137} Further, Articles 12 and 13 place restrictions on the amount of

\textsuperscript{130}CARIBSEC, supra note 11, at 15.
\textsuperscript{132}Valdez, supra note 10, at 2.
\textsuperscript{133}Id. at 2-5.
\textsuperscript{135}Valdez, supra note 10, at 2.
\textsuperscript{136}Id.
\textsuperscript{137}Id. at 6.
capital a foreign corporation may reinvest. In addition, the areas of reinvestment in the economy are also limited by Articles 34, 41, 42 and 43.138

Some criticism has been made of the Andean Foreign Investment Code. It has been said that it is "somewhat too restrictive."139 One should bear in mind, however, that Latin America has suffered severely from exploitation, and this type of regulation is necessary in order to stamp it out and to focus foreign investment on positive cooperation in the interests of mutual benefit.

One effect of the restrictions imposed by the Code being enacted into municipal law by the respective states is that an estimated eleven billion dollars of American investment within the Andean Common Market will have to be divested.140 Consequently, the general American reaction has not been enthusiastic.141 However, Valdez takes the view that the Andean Foreign Investment Code may have a needed stabilizing effect upon investment in the area.142 For example, Mexico with its strict investment laws143 has not suffered any significant adverse economic effects, but instead has one of the most favorable investment climates for foreign investment.144

The Agreement of Cartagena and the Treaty of Chaguaramas are similar in many respects. In addition to the similarity in motive for the respective agreements, the socio-economic circumstances and the objectives are in harmony. The preamble to the Treaty of Chaguaramas emphasizes the determination of the contracting parties to strengthen the long standing ties which have existed among their people and their determination to eliminate unemployment and to improve standards of work and living. It further recognizes that these objectives could be attained most rapidly

by the optimum utilization of available human and natural resources, by accelerated, co-ordinated and sustained economic development, particularly through the exercise of permanent sovereignty over their natural resources; by the efficient operation

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138Art. 5 of the Mexican Foreign Investment Law of 1973 has as its objective the "Mexicanization" of corporations operating in the state. This means a majority representation of Mexican ownership at the Board of Directors level. See note 134 supra.
139Art. 27 quoted in Valdez, supra note 10, at 8.
140Id. at 3.
141Id. at 11.
142Id.
143Trinidad and Tobago Prime Minister Williams, People’s National Movement’s Perspectives in the World of the Seventies 8 (Nov. 27, 1970) (Special P.N.M. Party Convention, Chaguaramas). Chile has not taken a similar view as well and has been lobbying to reduce the stringency of the treaty’s provisions. See Wall St. J., May 24, 1976, at 6, col. 1.
144Schliesser, Recent Developments in Latin-American Foreign Investment Laws, 6 INT'L LAW. 65 (1972).
of common services and functional cooperation in the social, cultural, educational and technological fields and by a common front in relation to the external world.\textsuperscript{145}

The Caribbean Common Market\textsuperscript{146} which is the economic organ of the Caribbean Community is governed by the Annex to the Treaty. Chapter VI of the annex contains provisions which can be used as the basis for developing rules to govern foreign investment. For instance, "Member States shall seek to harmonize such legislation and practices as directly affect fiscal incentives to industry."\textsuperscript{147} Member States of CARIFTA\textsuperscript{148} concluded an agreement to this effect. "The Agreement rationalizes the granting of concessions to industry in the area and will come into existence when at least ten of the member states have deposited Instruments of Ratification with the Caribbean Secretariat."\textsuperscript{149} Individual member states will have to enact legislation before this agreement will become municipal law.

Other important articles of the Treaty of Chaguaramas cover matters such as Harmonization of Laws,\textsuperscript{150} Monetary Payments and Exchange Rate Policies,\textsuperscript{151} Ownership and Control of Regional Resources,\textsuperscript{152} and Co-ordination of National Development Planning.\textsuperscript{153}

Membership of the Caribbean Community and Common Market is open to thirteen Commonwealth Caribbean countries. Of these countries, there are six independent states,\textsuperscript{154} five associate states\textsuperscript{155} and two colonies.\textsuperscript{156} The associate states and the colonies do not have the capacity in international law to deal directly with international organizations other than as associate members.\textsuperscript{157} Article 2 of the Treaty and Article 2 of the Annex of the Treaty contain provisions to accommodate these states as members of the Community and Common Market respectively. By the arrangement of associate membership,\textsuperscript{158} the

\textsuperscript{145}Schliesser, Restrictions in Foreign Investment in the Andean Common Market, 5 INT'L LAW. 586 (1971).
\textsuperscript{146}Valdez, supra note 10, at 19.
\textsuperscript{147}For instance, it is required that in auto parts manufacturing, 60 percent of any enterprise must be locally owned. See U.N. DEPT OF ECONOMIC & SOCIAL AFFAIRS, supra note 43, at 76. See also note 134, supra.
\textsuperscript{148}Valdez, supra note 10, at 19.
\textsuperscript{150}Id., Annex.
\textsuperscript{151}Id. at art. 40.
\textsuperscript{152}Caribbean Free Trade Area, the forerunner of the Caribbean Community.
\textsuperscript{153}BARBADOS INDUSTRIAL DEVELOPMENT CORPORATION, HARMONIZATION OF FISCAL INCENTIVES TO INDUSTRY 1 (1973).
\textsuperscript{154}Treaty of Chaguaramas, supra note 149, at art. 42.
\textsuperscript{155}Id. at art. 43.
\textsuperscript{156}Id. at art. 44.
\textsuperscript{157}Id. at art. 45.
\textsuperscript{158}Note 15, supra.
associate states and colonies can be included in agreements by the Caribbean Community.

The territories of the Commonwealth Caribbean should also coordinate their efforts in negotiating International Double Taxation Agreements, which can serve as an incentive to investment in the region. These agreements bring about co-ordination in taxing policies whereby companies and individuals are not subjected to tax on the same item by both countries. In the Commonwealth Caribbean a number of territories have concluded double taxation agreements with Britain, and these agreements should be extended to other capital exporting countries. Agreements with the capital exporting countries on the transfer of technology also need to be coordinated and carefully worked out.

Particular attention must be paid to the serious difficulties which usually arise in reconciling conflicting interests between the host and home countries. Clive Thomas in his study on the sugar industry in Guyana has suggested that the corporate structure in the sugar industry "clearly mitigates against the national interest." The corporate structure can certainly be used to facilitate the reduction of the amount of tax due to the Government. Norman Girvan has shown that the Reynolds' subsidiary that operated in Guyana from 1953 to 1962 did not pay any taxes whatever on its income as "it had sustained losses in its operations" which offset any liability it might have had to pay taxes. In an interview, Barbados' Commissioner of Inland Revenue implied that wider powers were necessary as far as the taxing statutes were concerned.

The administration of company law needs radical improvement. In all the jurisdictions in this study with the exception of Jamaica, the administration of company law is the responsibility of the Registrar of the Supreme Court who also has many other functions. Under these circumstances, companies can avoid the legal requirements of the Companies Acts. Dr. Pennington in his Report on the revision of company law in Trinidad and Tobago identified several shortcomings.

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159 Note 16, supra.
160 Id.
162 Id. at 285.
163 Fink, Tax Treaties as a Means of Encouraging Investment in Developing Countries, 1971 Israel L. Rev. 201.
164 E. Nwogugu, The Legal Problems of Foreign Investment in Developing Countries 248 (1965).
165 These include: Antigua, Barbados, Trinidad and Tobago, Dominica, Grenada, Jamaica, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent. R. Dibden, Index to Double Taxation Agreements 5-19 (1971).
166 U. N. Dep't of Econ. & Social Affairs, supra note 43, at 78.
in the administration of company law there and recommended the establishment of a separate Registrar of Companies.\textsuperscript{168} Such an office already exists in Jamaica,\textsuperscript{169} and this reform can be of immediate benefit in the other jurisdictions.

In recent times, governments, particularly in Asia and Latin America, have resorted to joint ventures between themselves and foreign investors as a legal device for safeguarding national interests.\textsuperscript{170} This form of business enterprise in developing countries enables them to participate directly in their own economic development, while at the same time harnessing and benefitting from the power of the MNC.\textsuperscript{171}

In many developing countries, the equity capital for joint ventures is largely provided by external sources because of the lack of indigenous capital.\textsuperscript{172} In the Commonwealth Caribbean, joint ventures can play an important part in ensuring that governments attain sufficient control over their economies. The chronic shortage of adequate indigenous capital which afflicts the area should be ameliorated by the operations of the Caribbean Development Bank which is an Associate Institution of the Caribbean Community.\textsuperscript{173} Its vital role is:\textsuperscript{174}

1. To contribute to the harmonious economic growth and development of the member countries of the Caribbean and to promote economic cooperation and integration among them, having special and urgent regard to the needs of the less developed members of the region.\textsuperscript{175}

In addition, Jamaica, Trinidad and Tobago, and Barbados are members of the Inter-American Development Bank. This represents another source of capital.\textsuperscript{176}

\textsuperscript{168}Thomas, Sugar Economics in a Colonial Situation, STUDIES IN EXPLOITATION 15-16 (1974).
\textsuperscript{169}Girvan, supra note 48, at 408.
\textsuperscript{170}Interview with L. G. Campbell, Commissioner of Inland Revenue, Barbados, in Bridgetown, Barbados (Feb. 11, 1974).
\textsuperscript{171}R. PENNINGTON, REPORT ON THE REVISION OF COMPANY LAW IN TRINIDAD AND TOBAGO 1 (1967). The more important functions of the Registrar would be: (a) Examining prospectuses filed by the companies and requiring amendments to be made in them if they are defective; (b) appointing inspectors to investigate the affairs of companies where there is reason to suspect unlawful operations; (c) instituting proceedings (civil or criminal) in response to investigations; and (d) registering investment trust companies and companies which advertise for deposits, supervising their operations, and revoking their registration if they misconduct themselves.
\textsuperscript{172}Jamaica Companies Act of 1965, § 333.
\textsuperscript{173}W. FRIEDMAN & J. BEGUIN, JOINT INTERNATIONAL BUSINESS VENTURES IN DEVELOPING COUNTRIES 3 (1971). Examples include: Grands Moulins de Paris and the Government of Congo (Brazzaville) — refiners of sugar and other food products; the Nestle’s Company and the Government of Nicaragua — manufacturers of powdered milk; Mannesman AG (Germany) and the Government Investment Bank of Turkey — manufacturers of steel pipes; N. V. Phillips and the Government of Indonesia — manufacturers of electronic products; and Unilever and a Government Corporation in Ghana — manufacturers of textiles.
\textsuperscript{174}Id. at 17.
\textsuperscript{175}Id.
\textsuperscript{176}Treaty of Chaguaramas, supra note 149, at art. 14.
Joint ventures already operate in Jamaica and Trinidad and Tobago. In the Commonwealth Caribbean, however, they have not been subject to the doctrine of indigenization required by the Andean Foreign Investment Code, or that required by the law of some African countries. Only the Trinidad and Tobago Government has enumerated a clear policy on foreign investment. Its stated objective is to reserve certain sectors of the economy for nationals to encourage joint ventures, and to require certain reinvestment of profits by subsidiaries of foreign companies.\(^{177}\) The Jamaican Government has not enunciated an official policy as in the case of Trinidad and Tobago, but on the basis of statements by a number of government Ministers, its policy appears to be similar to that of Trinidad and Tobago.\(^{178}\) The Barbados Government, on the other hand, has declared that its policy on foreign investment is "free and open."\(^{179}\) St. Vincent apparently has no policy on foreign investment.\(^{180}\)

The governments of the Commonwealth Caribbean should proceed on a venture by venture basis rather than enacting legal requirements for joint ventures generally between the government and the MNC. An approach more consistent with the protection of national interests and the control of national resources would be to enact legislation requiring certain existing companies\(^{181}\) to become joint ventures over a specified period of time. Similarly, future investments in the most important projects should be on a joint venture basis only.

Recently enacted laws in Ghana and Nigeria have indicated that the governments of these countries recognize the limitations and dangers of excessive reliance on foreign private investment. By virtue of these laws, each government "seeks progressive indigenization of its... economy while garnering increasing governmental influence over expatriate enterprises."\(^{182}\) These laws in fact are not intended to introduce joint ventures but are intended to effect transfers of foreign businesses to nationals on a progressive basis. Perhaps they go too far. For example, the Ghana Business (Promotions) Act § 1970-34, in addition to providing for the transfer of certain specified small and medium sized businesses, prohibits further foreign enterprises in certain sectors.\(^{183}\) It also requires in Section 6(a) of the Capital Investment Act § 1963-172, that in order to qualify for fiscal incentives for an "approved project," training programs in the administrative and tech-

\(^{177}\)D. Delupis, Finance and Protection of Investments in Developing Countries, 9 (1973).


\(^{179}\)D. Delupis, supra note 177, at 9.

\(^{180}\)Chen-Young, supra note 19, at 23.

\(^{181}\)Id. at 27.

\(^{182}\)Id. at 25.

\(^{183}\)Id. at 34.
technical fields for Ghanaians must be instituted. The Nigeria Decree No. 22 has similarly reserved certain categories of business for nationals.

These legal provisions in Ghana and Nigeria are radical, and time will determine whether they eventually prove to be successful. This progressive transfer of nationals, however, could result in the concentration of economic power in the hands of a national oligarchy. One should stop to consider whether the new economic order would function more effectively in the national interest than the old. Such fears have already been expressed by the Prime Minister of Barbados.

The better approach would be to enact legislation requiring certain established and future enterprises to be joint ventures, thereby counterbalancing local and foreign economic participation. The government should, where necessary and practical, be involved in these joint ventures. These joint ventures must be designed to enhance the development of the national economy and the technical and administrative skills of the nationals. The training program for nationals which has been required in the Ghanaian Capital Investments Act § 1963-172 should be part of future legislation in the Commonwealth Caribbean on joint ventures. Hand in hand with the development of joint ventures must be the development of antitrust provisions to ensure that there is no undue concentration of economic power in the hands of an oligarchy. Monopoly controls should be implemented to monitor, in the national interest, the operation of business activity where economic necessity makes the development of monopolies inevitable.

Nationalization is another measure which can be employed by a government in order to protect its national interests. It is, however, an extreme measure, and the reverberations resulting from resorting to it are always loud and enduring. Often too, the long-term negative effect outweighs the short-term satisfaction arising from seizure of sovereignty over particular resources. The financial and economic trauma that follow in its wake destroy private business confidence and destabilize private investment. Furthermore, there is a growing wariness of investing in developing countries in general, and the Caribbean in particular at this time. This reluctance reinforces the view that

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184For example, banks, insurance companies, public utilities and companies involved in minerals. France, for example, is trying to gain control of its high technology industries from U.S. multinational corporation. See BUSINESS WEEK, May 17, 1976, at 47.

185McDonald, Recent Litigation in Nigeria and Ghana Affecting Foreign Direct Private Investment, 6 INT'L LAW. 548 (1972).

186Id. at 554-55.

187Id. at 556.

188Id. at 555.

189CHEN-YOUNG, supra note 19, at 26.
joint ventures on the basis of cooperation and negotiation are the best proposition.

Indeed, except for the nationalization of DEMBRA, the local subsidiary of ALCAN by the Government of Guyana in 1971, nationalization has not so far been employed with the same rigor and motives as in some Latin American and Arab countries. Further, the constitutions of the independent and the Associated States provide for non-deprivation of property, except by the authority of written law, and for compensation where a person is so deprived. The Trinidad and Tobago Constitution has no specific provision for compensation, but indirectly provides for compensation through judicial review. The St. Vincent Constitution provides for "full compensation," while those of Jamaica and Barbados provide for "compensation." The question arises whether compensation in Barbados and Jamaica could be less than the true value of the property. In the Indian case of State of West Bengal v. Bela Banergee, the Supreme Court held that where "compensation" is not qualified in the constitution, it was equivalent to full indemnification for that of which the owner had been deprived. This decision would be persuasive authority in litigation in Commonwealth Caribbean jurisdictions.

Clearly, the foregoing constitutional provisions create legal power for the nationalization of property under the authority of written law. Nationalization, however, should be a last resort. Any territory that chooses to use it should first insure that it has access to the technical and administrative capacities to run the particular enterprise, in view of the international pressure which can be exerted on a host govern-

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190For an exploration of the creation and implementation of antitrust laws in the Caribbean region, see Rubin, *Competition Policy and the Caribbean Community*, 9 J. WORLD TRADE L. 398 (1975).
191Nationalization may be defined as "the process whereby certain industries or means of production distribution or exchange are, in pursuance of social or economic policies, concentrated in public hands." 2 D. O'CONNELL, *INTERNATIONAL LAW* 769 (1970).
195Notes 15 & 16, *supra*.
196In I.R.C. & A.G. British Guiana v. Lilleyman, 7 W.I.R. 496 (1964), it was held that property as contained in section 12(1) of the Constitution included money.
197See, e.g., St. VINCENT CONST. OF 1965, § 6(1); BARBADOS CONST. OF 1966, § 16(1); TRINIDAD AND TOBAGO CONST. OF 1962, § 1(a); JAMAICA CONST. OF 1962, § 18(1).
198See, e.g., BARBADOS CONST. OF 1966, §§ 16(1)(a),(b); JAMAICA CONST. OF 1962, § 18(1)(a); St. VINCENT CONST. OF 1969, § 6(1)(b).
ment which has nationalized or contemplates nationalizing foreign enterprises.¹⁹⁹

Conclusion

The Commonwealth Caribbean territories are indeed on the horns of a dilemma.²⁰⁰ The question is, how to achieve social and economic development and at the same time retain social and economic nationalism and control.

The multinational corporation transcends national boundaries. Its power has been demonstrated by the concessions it can and has obtained from host governments and by its effects on the economy of the host countries in which it operates. Both the developed and the developing countries are moving cautiously and deliberately to establish guidelines which will ensure fair and honest operation of the MNC, while at the same time not having a negative effect on foreign investments.²⁰¹ Such guidelines must be drawn up and complied with if the less developed and developing countries are to achieve development without being at the mercy of the MNC.

At the present stage of social and economic development in the Commonwealth Caribbean, further progress, both short-term as well as long-term, is dependent on the continued presence of the MNC and its continued investment and commercial activity. The question of social and economic nationalism and control is fundamentally one of degree. The question is, what level of social and economic autonomy is the optimum one in the national interest.

Numerous MNC's are present in the Commonwealth Caribbean, for their subsidiaries are corporate citizens of practically all the Commonwealth Caribbean territories and are entitled to all the rights and freedoms of any citizen of those territories. The counterpart of the rights and freedoms of any citizens, however, is the bundle of obligations to which he is subject in the national interests of the country of which he is a citizen. The MNC through its subsidiaries is no exception. The laws of the Commonwealth Caribbean should be strengthened as outlined in this article. The guidelines which have recently been promulgated²⁰² should be enacted into law to the extent that this is feasible and rational.

The territories of the Commonwealth Caribbean should therefore pursue a wise policy of retaining the presence of the MNC in an operating framework of reasonable national control. The fundamental objective must be a fair and equitable division of the fruit produced by

¹⁹⁹Trinidad and Tobago Const. of 1962, § 6.
²⁰¹Id.
²⁰²Moran, Transnational Strategies of Protection and Defence by Multinational Corporations: Spreading the Risk and Raising the Cost for Nationalization in Natural Resources, International Organization 273, 286-87 (1973); Grant, supra note 21, at 262-69.
the combined resources and efforts of the MNC and those of the Commonwealth Caribbean. The effective policy must be eternal vigilance lest national interests be undermined, combined with a realistic appraisal and awareness of what is necessary for social and economic advance.

Indeed, the testing period is still ahead for the multinational corporation. If it cannot resolve the contradictions it has created, both internally and externally, as a result of being multinational in a nationalistic world, it is unlikely to prosper. For the multinational corporation is both cause and result — but also symbol — of a most profound event of the post-World War II period — the split between economy and sovereignty.203

203 Chen-Young, supra note 19, at 5.
205 By the OECD, supra note 204. In the U.S. the Corporate Accountability Research Group is calling for greater national control over multinationals: “The control of ... multinational corporations requires national authority.” N.Y. Times, May 9, 1976, § F, at 14.