Chairman and CEO: Which between the U.K. Style and the U.S. Style is Better in the Philippine Setting?

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I. INTRODUCTION

Almost 12 years ago, the Committee on the Financial Aspects of Corporate Governance, chaired by the former Chairman of a chocolate empire, Sir George Adrian Hayhurst Cadbury, was formed in the United Kingdom (U.K.) not only to address the downfall of many companies in the U.K. at that time, but also to strengthen the trust in the corporate system as a whole.[1]

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Cite as 57 ATENEO L.J. 929 (2012).

1. THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE AND GEE AND CO. LTD., REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE 11 (1992) [hereinafter CADBURY REPORT]. *See also* CHRISTINE A. MALLIN, CORPORATE GOVERNANCE: DEVELOPMENT OF CODES 22-24 (2d ed. 2007).

The heart of the Committee's report, known as the Cadbury Report, is the Code of Best Practice, crafted to set a high standard of corporate behavior.[2] As a result, all listed companies in the U.K. were required by the London Stock Exchange, as a continuing obligation, to either abide by the tenets provided by the said Code or to give reasons and explain their non-compliance.[3]

The Code, together with Sir Cadbury himself, is an advocate of the principle that the role of a Chairman and a Chief Executive Officer (CEO) cannot be vested in the same person in order to avoid too much concentration of power in one person.[4]

Today, this strategy is believed by management consultants to have saved many U.K.-based companies from downfall, as the said division of power serves as an effective instrument for checks and balances.[5] In 1998, the U.K. Combined Code was implemented.[6] This Code, which also adheres to the separation of the roles of Chairman and President, embodies a trilogy of codes in the U.K. — the Cadbury Report of 1992, the Greenbury Report of 1995,[7] and the Hampel Report of 1998.[8] Of these, it is the Cadbury Report which influenced the genesis of many codes in different parts of the world.[9]

While successful in the U.K., however, most companies in the United States (U.S.) do not adhere to the splitting of said roles and would continue to follow a system of a "chairman-led hierarchy."[10] This mode can be seen from the path followed by Hewlett Packard (HP), when it initially tried out the U.K. System but eventually went back to having one and the same Chairman and CEO in the person of Mark V. Hurd, when the Board deemed that unifying the roles of the two positions would best achieve the goals of the company.[11]

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2. *Id.* at 10.
3. *Id.*
4. *Id.* at 20.
5. Shyamal Majumdar, Corporate governance: The Cadbury style, *available at* http://www.rediff.com/money/2007/mar/22guest1.htm (last accessed Nov. 15, 2012). *See also* CADBURY REPORT, *supra* note 1, at 35.
6. MALLIN, *supra* note 1, at 22 & 25.
7. STUDY GROUP ON DIRECTORS' REMUNERATION, DIRECTORS' REMUNERATION (1995). *See also* MALLIN, *supra* note 1.
8. COMMITTEE ON CORPORATE GOVERNANCE, FINAL REPORT (1998). *See also* MALLIN, *supra* note 1.
9. MALLIN, *supra* note 1.
10. Majumdar, *supra* note 5.
11. *Id.*

As a compromise, it introduced a new position, the lead independent director, who would serve as the representative of all other independent directors of the Board and who would keep track of the Chairman's discharge of power.[12]

With these conflicting approaches on corporate governance in boardrooms, it is now imperative to ask the question: which between the two is better for corporations?

It would seem that there is actually no easy answer as the model that will best fit a corporation will depend on many circumstances and factors including, but not limited to, the type of corporation involved and the culture of the people within that corporation, particularly the mentality of continued adherence to a single leader.[13] This is also the reason why the U.K. and the U.S. prefer different styles of corporate governance with regard to the roles of the Chairman and the CEO.[14]

In the Philippines, one of the statutorily required corporate officers is the position of the President who shall be a director and who is considered as the highest executive officer.[15]

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12. *Id.*

13. *Id.*

14. *Id.*

15. The Corporation Code of the Philippines [CORPORATION CODE], Batas Pambansa Bilang 68, § 25 (1980). This Section provides that —

> Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.
>
> The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.
>
> Directors or trustees cannot attend or vote by proxy at board meetings.

Id. See also CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 390 (2010 ed.).

This Essay begins by examining the salient points, advantages, and disadvantages of the two Styles in corporate governance and continues by weighing which between the Cadbury Style (U.K.) and HP Style (U.S.), in relation to the splitting of the roles of Chairman and CEO, would best suit the Philippine setting, taking into consideration not only the legal requirements in the Philippines but also the culture of the people and the type of corporation involved, as reflected in the business dealings of corporations in the Philippines. Despite the advent of the U.K. Combined Code, this Essay will refer to the U.K. System as the Cadbury Style, in reverence to the Cadbury Report which emphasized the need to separate these two roles in the U.K.

II. THE CEO V. THE CHAIRMAN

The Chairman plays a vital role in corporate governance.[16] He is usually in charge of the workings of the entire Board, ensuring that relevant issues are tackled and made part of the agenda, and making sure that there is balance in the Board's membership subject to the Board and shareholders' approval.[17] In general, he is responsible for encouraging all the directors to "play their full part in [the Board's] activities."[18] This responsibility includes making certain that both the executive and non-executive directors are apprised of their responsibilities of governance.[19] In Andrew and Nada Kakabadse's book entitled *Leading the Board*, the Authors compared the role of the Chairman to what "pivotal" means in the military sense: as someone whom the troops turn to whenever they need to change their course.[20]

In contrast, we have the CEO who is often seen at the forefront of the game, usually making headlines and appearing on magazine covers.[21] A confusion thus emerges — how does a CEO's role differ from that of the Chairman? Where does the CEO's role end and the Chairman's role begin?[22]

Although it is true that the Chairman is the conscience of the company, managing the day-to-day operations is a different matter altogether.[23] Thus, it has been said that although the CEO takes charge when everything is

16. *See* CADBURY REPORT, *supra* note 1, at 20.

17. *Id.*

18. *Id.*

19. *Id.*

20. ANDREW KAKABADSE & NADA KAKABADSE, LEADING THE BOARD: THE SIX DISCIPLINES OF WORLD CLASS CHAIRMEN 1 (2008 ed.).

21. *Id.* at 2.

22. *Id.*

23. *Id.* at 3-4.

smooth-sailing, the Chairman will take over whenever shaping up is needed.[24]

Between the two, it is the former who reports to the latter.[25] And this, precisely, is a test of a good Chairman: the capacity to let the CEO-led team execute the plan for the company, but also to "hit the brakes," so to speak, whenever the circumstances call for it.[26] This is also why, oftentimes, the Chairman appears to be an invisible hand whose presence will only be felt when things do not go according to the plan.[27]

Needless to say, he or she usually takes the passenger's seat while the CEO drives to the destination. Despite this, they are the ones responsible for ensuring road worthiness, safety, sufficiency of gas in the tank, and oil in the engine.[28] Even so, it is still difficult to clearly pinpoint "who does what, when, and where" with exactness and clear precision and, up to now, there is no universal yardstick which can be used to delineate the scope of powers of the two positions.[29] Thus, it is usually a matter left to the mutual agreement of the CEO and the Chairman who are given the leeway to discuss the matter between themselves.[30]

III. THE U.K. SYSTEM

The Cadbury Report emphasizes that, given the magnitude of a Chairman's role, it would be most ideal that this role be vested in a person separate and distinct from the CEO.[31] Otherwise, an evident concentration of power in one person will necessarily result and there will be no good system of checks and balances in place.[32] The Report also recommends that in cases when these two roles are vested in one person, the Board must be backed-up with a strong and independent element that will counteract the concentration of power.[33]

This separation of powers between the Chairman and the CEO has been a success in the U.K. and in fact, by the year 2002, 88% of listed companies in the U.K. had already vested the roles of the CEO and the Chairman in

24. *Id.*

25. *Id.*

26. KAKABADSE & KAKABADSE, *supra* note 20, at 4.

27. *Id.*

28. *Id.* at 20.

29. *Id.* at 24-27.

30. *Id.*

31. CADBURY REPORT, *supra* note 1, at 20.

32. *Id.*

33. *Id.* at 57.

different individuals.[34] Many management consultants also believe that this System has saved many U.K. companies from corporate scandals that some American companies had to go through.[35] This System has also been used as a scheme to foster mentorship whereby the Chairman, often older and more experienced than the CEO, will teach the latter the workings of the corporation. Since the successor of the Cadbury Report, the U.K. Combined Code, also requires an independent Chairman, more than three-fourths of the U.K.'s largest publicly traded companies have a Chairman who has never been a former CEO of the company.[36] Through this, the mentality of having one's work checked by oneself is avoided.[37]

In sum, separating the two roles in different persons espouses discussion and discourse within the company.[38] This addresses the alleged downside of having only one person to play the role of the CEO and the Chairman which limits company discussion to only one point of view.[39] This objective can be further bolstered when the Chairman is non-executive in character, an outsider who gives inputs to the company.[40] This is the practice in most British companies, where the CEO runs the business while the Chairman leads the Board and is in charge of governance.[41] In this kind of setting, a CEO would normally be in charge of pushing the corporation forward while the Chairman addresses issues on a broader perspective.[42] In other words, the former is more internally focused while the latter deals with general concerns, including risk management and networking.[43]

Due to this trend, the need to define boundaries becomes much more apparent and important to avoid conflicts between the holders of the two

34. Bruce A. Rayton & Suwina Cheng, Corporate governance in the United Kingdom: changes to the regulatory template and company practice from 1998-2002 (University of Bath School of Management Working Paper Series 2004.13) 13, *available at* http://www.bath.ac.uk/management/research/pdf/2004-13.pdf (last accessed Nov. 15, 2012).

35. Majumdar, *supra* note 5.

36. *Id.*

37. *See* Dan R. Dalton & Catherine M. Dalton, *The Joint CEO/Chairperson Leadership Issue in Sharp Relief*, *in* BOARDROOM REALITIES: BUILDING LEADERS ACROSS YOUR BOARD 73 (Jay Conger ed., 2009).

38. KAKABADSE & KAKABADSE, *supra* note 20, at 32-33.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

positions.[44] The most important goal, in this case, is this: to be able to establish a shared view of the future.[45]

This, however, does not mean that the CEO and the Chairman have to agree at all times and in all respects. Nor do they have to be the best of friends. Rather, it means that they will strive to arrive at a mutually acceptable plan by conferring with one another and setting meaningful boundaries that fit the needs of the company.[46] Otherwise, the CEO and the Chairman will end up protecting their own egos by trying to win all the time simply to nurture their pride.[47]

IV. THE U.S. SYSTEM — CASE IN POINT: HEWLETT PACKARD

Despite its success in the U.K., many companies in the U.S. refuse to adhere to the Cadbury formula, often citing the case of Enron whose CEO and Chairman, in the months leading to its demise, were played by different people in the persons of Kenneth Lay and Jeffrey Skilling.[48] Because of what happened in the said company, even those who initially tried the Cadbury formula eventually went back to unifying the two roles in one person.[49] In 2006, more than half of U.S. companies still vest the dual roles in one person.[50]

HP, an American hardware and software company, is one of the companies who followed this path. The controversy in HP started in 2005 when it replaced its Board's Chairperson for the second time in two years.[51] This controversy was compounded by the methods it used to find the source

44. KAKABADSE & KAKABADSE, *supra* note 20, at 21-24.

45. *Id.* at 34.

46. *Id.* at 34-35.

47. *Id.*

48. *See generally Time Specials: Behind the Enron Scandal*, TIME MAG., *available at* http://www.time.com/time/specials/packages/0,28757,2021097,00.html (last accessed Nov. 15, 2012).

49. Majumdar, *supra* note 5.

50. CNN Money, Companies splitting CEO, chairman roles, *available at* http://money.cnn.com/2007/01/31/news/economy/directors_chairmen/index.htm?postversion=2007013111 (last accessed Nov. 15, 2012) (citing Institutional Shareholder Services, 2006 Global Investor Survey). *See also* KAKABADSE & KAKABADSE, *supra* note 20, at 29.

51. Heritage Institute: Corporate Governance and Human Relations, HP: Hewlett Packard's Corporate Governance Woes, *available at* http://www.heritageinstitute.com/governance/hp/woes1.htm (last accessed Nov. 15, 2012).

of the leaks to Wall Street Journal and CNET regarding matters relating to the Board.[52]

This problem is said to have begun with the merger of HP with Compaq Computer Corporation in 2001 over the objections posed by Walter Hewlett, the son of co-founder William Hewlett.[53] This merger was championed by Carly Fiorina who was both the Chairwoman and the CEO of HP's Board at that time.[54] Hewlett had felt that the said move by Fiorina, among her other initiatives, was against the spirit of the HP Way, a set of values espoused by the founders of the company, William Hewlett and Dave Packard.[55] The resulting merger led to a problematic phase in HP's Board which eventually led to the firing of Fiorina and the leakage of Board discussions to press, coupled by a senate hearing and criminal charges.[56]

This turn of events were rooted in the downward spiral of HP's operations, contrary to Fiorina's forecast, as reflected by the poor performance of HP's stocks in the market.[57] Because of this, the strategic direction of HP became unclear and the members of the Board were frequently having disagreements related to Fiorina's decisions.[58] As a result of this tumultuous phase, the leadership of Fiorina was described as "a reign of terror and poor performance."[59]

In the end, the Board decided to fire Fiorina in a meeting at an airport hotel in Chicago, a venue chosen to avoid public attention which had been hounding the company from the time of the merger.[60] This event caught her by surprise as she had not been informed of the reason behind the said meeting. After a three-hour deliberation, she was called in to join the others in the conference room and was informed of the Board's decisions.[61] In her published memoir entitled *Tough Choices*, Fiorina narrated —

> The meeting lasted less than three minutes. I asked for a few hours to think, and I left the room. ... I expected the [B]oard to look me in the eye

52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. Heritage Institute: Corporate Governance and Human Relations, *supra* note 51.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*

> and tell me why. They did not have the courage to face me. They did not thank me and they did not say goodbye.[62]

HP then decided to split the roles of the Chairman and the CEO in the persons of Patricia Dunn and Mark V. Hurd, respectively.[63] In 2007, however, HP announced that Hurd would replace Dunn and would also serve as the Chairman, aside from being the CEO of the company.[64] This move was allegedly seen by the Board as the most effective way of "aligning the [B]oard with the company."[65]

The U.S. strategy of combining two roles in one person is argued to be advantageous in terms of the following: (1) rank and status; (2) efficiency and effectiveness of decision making; and (3) cultural and moral alignment.[66]

First, with regard to rank and status, it is argued that a leader must be given enough leeway to experience actually being in charge of the company and such experience is best gained through the combining of roles into that one leader.[67] It is only through this that he or she earns the respect of other members of the company as well as officials of other companies.[68] In other words, he or she learns the ropes by actually being thrown into the lion's den. If the two roles are given to different people, there is a possibility that the voice of the CEO will be drowned out by the voice of the Chairman.

Second, vesting two roles in one person will also ensure efficiency in decision making in a sense that there will be less people with contrasting

62. *Id.* (citing CARLY FIORINA, TOUGH CHOICES: A MEMOIR (2006 ed.)).

63. *See* HP Newsroom, HP Chairman and CEO Carly Fiorina Steps Down: Robert P. Wayman named Interim CEO; Patricia C. Dunn named Non-Executive Chairman of the Board, *available at* http://www.hp.com/hpinfo/newsroom/press/2005/050209a.html (last accessed Nov. 15, 2012) & HP Newsroom, HP Names Mark Hurd to Serve as CEO and President, *available at* http://www.hp.com/hpinfo/newsroom/press/2005/050329a.html (last accessed Nov. 15, 2012).

64. HP Newsroom, Patricia Dunn to Remain HP Chairman Through January 2007 Board Meeting; Board Appoints Mark Hurd as Successor, *available at* http://www8.hp.com/us/en/hp-news/press-release.html?id=169068&jumpid=reg_r1002_usen_c-001_title_r0001#.UIBvK2_MgQ0 (last accessed Nov. 15, 2012).

65. Majumdar, *supra* note 5. *See also* Heritage Institute: Corporate Governance and Human Relations, *supra* note 51.

66. KAKABADSE & KAKABADSE, *supra* note 20, at 28-29.

67. *Id.*

68. *Id.*

views over one matter.[69] With only one person acting as both CEO and Chairman, there will be less personal views to consider in decision making.[70]

Lastly, it is also argued that holding a high position in the company carries with it the accompanying moral capacity and responsibility to lead.[71] This means that leadership is not only about having control over a company, but also about taking responsibility over its actions, not only to the members of the company, but also to the community.[72] When two roles are reposed in one person, that individual will have a heightened sense of moral consciousness; in which case, there will also be a greater pressure to do what is right.[73]

V. POINT OF VIEW: THE PHILIPPINES

A. Family Corporations

In the Philippines, more than 95% of businesses are family-owned.[74] The nature of family corporations, therefore, is a big factor in deciding what system best suits corporations in the Philippines. With the prevalence of family corporations, it becomes imperative to ask — given the advantages and disadvantages of both structures, which between the U.K. System and the U.S. System of governance, in relation to the roles of the CEO and the Chairman, will be more effective in the Philippines?

A family corporation is defined as a company where the voting majority is with a controlling family whose goal is to pass on the business to their descendants.[75] These kinds of businesses, when handled properly, are said to outperform the non-family corporations not only in terms of sales and profits but also through other measures of growth.[76]

The exceptional performance of most of these corporations is attributed to the following:

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69. *Id.* at 28-29.

70. *Id.* at 29.

71. *Id.*

72. KAKABADSE & KAKABADSE, *supra* note 20, at 29.

73. *Id.*

74. *See* Wilson Lee Flores, *How can family firms last beyond 100 years?*, PHIL. STAR, July 21, 2008, *available at* http://www.philstar.com/Article.aspx?articleId=74254 (last accessed Nov. 15, 2012).

75. INTERNATIONAL FINANCE CORPORATION, IFC FAMILY BUSINESS GOVERNANCE HANDBOOK 12 (2008) [hereinafter IFC FAMILY BUSINESS GOVERNANCE HANDBOOK].

76. *Id.*

(1) The commitment of each family in making the business grow with the end goal of having it passed on to the next generations;[77]

(2) The continuity of knowledge as a result of family members being immersed in the business from a young age;[78] and

(3) The pride that pushes them to work harder not only to ensure the protection of their good name but also to build a good relationship with their customers, suppliers, and with the community as a whole.[79]

Despite this, however, many family businesses fail to sustain themselves in the long run.[80] The reasons for this, other than the factors which affect businesses in general — like poor management and failure to control costs — are attributes which are unique to family corporations such as:

(1) The complexity of dealing with family emotions;[81]

(2) The informal structure resulting to the comfort in knowing that the business is run by members of the family;[82] and

(3) The lack of discipline in organizing key strategic areas of the company.[83]

The brief background on family corporations given above is relevant in understanding why these corporations are considered as a kind of their own. Simply put, they deal with additional issues that do not affect other corporations: connections and emotions that come with family relationships.[84] Because of this, a good corporate governance structure must be in place to ensure the continuity of a family business, considering that most family corporations do not even go beyond the third generation of ownership because of the inability of the new generations to handle the

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77. *Id.* at 12-13 (citing SIR ADRIAN CADBURY, FAMILY FIRMS AND THEIR GOVERNANCE: CREATING TOMORROW'S COMPANY FROM TODAY'S (2000 ed.) & John L. Ward, The Family Business Advantage: Unconventional Strategy, *available at* http://www.campdenfb.com/article/family-business-advantage-unconventional-strategy (last accessed Nov. 15, 2012)).

78. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 12-13.

79. *Id.*

80. *Id.* at 13.

81. *Id.*

82. *Id.* at 14.

83. *Id.*

84. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 13-14.

demands not only of the business undertaking but also of the growing family.[85]

Thus, to determine which between the two Systems discussed above will work best in the Philippines, issues relating to family corporations will be a great consideration. Apart from this, it must also be noted that a family business goes through three stages of growth, namely:

(1) The *Founders' Stage*, where the business is owned and managed by the founders themselves;[86]

(2) The *Sibling Partnership Stage*, where the children of the founders now enter the picture and are given management and ownership rights;[87] and

(3) The *Cousin Confederation Stage*, where extended relatives, including but not limited to the children of the siblings, cousins, and in-laws become involved in the business, whether directly or indirectly.[88]

Knowing these stages will also be relevant in examining which between the U.K. System and the U.S. System will be more applicable in the Philippines. In the process of analyzing this, there are two questions that will be answered: *First, in cases where the roles of the Chairman and the CEO are vested in different persons, what, then, happens to the vision of the company? Who owns the vision?;*[89] *and second, does the involvement of family emotions affect which between the Systems will work best?*[90]

In an owner-managed company, it is likely that a single person will initially fulfill the roles of both Chairman and CEO.[91] A separate independent chairman, at this stage, may not be commercially justifiable.[92] Aside from that, it is evident that when a business is still at its initial stage, particularly the Founder's Stage, the business will have to be owned and managed by the founders who are the movers of the company's existence.[93] It is their vision for the company that governs. It is their will to see their

85. *Id.* at 12.

86. *Id.* at 15.

87. *Id.*

88. *Id.*

89. *See* KAKABADSE & KAKABADSE, *supra* note 20, at 33-36.

90. *Id.*

91. INSTITUTE OF DIRECTORS, CORPORATE GOVERNANCE GUIDANCE AND PRINCIPLES FOR UNLISTED COMPANIES IN UK 27 (2010).

92. *Id.*

93. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 14-15.

vision come into existence that pushed them to form the company in the first place.

Thus, at this stage, it is this Author's view that the role of the CEO and the Chairman should inevitably be held by only one person. When a business is still at its initial stages, the foundation of the company — the vision, the direction, and the overall path it wants to pursue — lies greatly in how the founder sees his or her own vision grow.[94] This is also the reason why, at this stage, although founders usually seek advice from outsiders about the business, they are still the ones who make the final decisions for the company.[95]

Complications, however, arise once the company moves to its next stages of growth.[96] As more members of the family join the company, issues also grow exponentially not only in terms of the business itself, but also with regard to family relationships and drama.[97] Aside from managing the affairs of the business, there is now a need to also ensure the siblings' harmony which could be done by maintaining an effective system of communication.[98] Even at this stage, however, so long as the founders are still present and active in the company, it is still their vision which will be the unifying force among all the members of the family.[99]

Thus, the positions of the CEO and the Chairman can still be vested in one person, except that here, the need to be more aware that the responsibilities of the two positions are distinct is heightened because of the growing concerns of the family.[100]

What complicates matters here is that aside from the roles of CEO and Chairman *per se*, the person in whom these positions are vested should also balance issues that should not have left the family dinner table in the first place. Thus, the owner and the manager should make a conscious effort to prevent jealousy among the members of the family who now join the business and at the same time, start providing rules for ownership of shares for members of the family who wish to pursue some other endeavor since this stage is the breeding ground for jealousy and signs of favoritism.[101]

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94. *Id.*

95. *Id.* at 14-15.

96. *Id.* at 15.

97. *Id.*

98. *Id.*

99. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 21.

100. *See* KAKABADSE & KAKABADSE, *supra* note 20, at 19-20 & IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 13-15.

101. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 23.

Hence, this Author opines that even at the Sibling Partnership Stage,[102] the roles of the CEO and the Chairman can still be vested in one person — the founder/s — whose vision shall remain as the force and the foundation behind the company, despite several other members of the family joining it.

However, as the company moves towards its next stage of growth, the Cousin Confederation Stage, where members of the family, including extended relatives, now have a stake in the business either directly or indirectly, and when the founders are usually not around anymore,[103] it would seem that it would be best for the continuity of the company to vest the roles of the CEO and the Chairman in different people or otherwise employ an independent lead director.[104]

Separating the roles in two different persons would be advisable when the founder/s are not around anymore to ensure a system of checks and balances and the separation of business from family-matters. At this stage, there is a greater tendency that the family members themselves would start to have conflicts not only by reason of their divergent views regarding the direction of the company but also because of resource allocations, succession matters, and inheritance, which in turn, breeds jealousy and would create a natural tendency to protect one's own interests.[105] For example, the branch of the family in charge of one department can actually start competing with the branch of family in charge of another, when ideally, they should be working together for the growth of the business.[106]

With a separate CEO and Chairman, a more independent structure is espoused, with no single person having a concentration of power in his or her hands.[107] It must be noted, however, that in family businesses, when the founder/s are still around and active, it would be hard to separate the roles of the CEO and the Chairman until such time that the founders are already assured that their vision will be pursued by the successors to the said positions.[108] When still around, the founders would want to hold on to the

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102. *See* IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 15.

103. *Id.*

104. *Id.* at 43.

105. *Id.* at 18. *See also* John L. Ward, *How Family Values and Vision Drive Business Strategy and Continuity*, UNIVERSASIA BUS. REV. 26, 28 (2011).

106. *See* Steven Wawra, Management of Internal Conflicts in Family Businesses — A Prescription for a Breakdown of Communication, Trust and Respect, *available at* http://newsletter.score114.org/2011/06/management-of-internal-conflicts-in.html (last accessed Nov. 15, 2012).

107. *See* CADBURY REPORT, *supra* note 1, at 20 & INSTITUTE OF DIRECTORS, *supra* note 91, at 7.

108. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 14-16.

vision that they built themselves which is the seed of the entire empire in the first place.[109]

Thus, in cases like this, this Author opines that instead of separating the roles of the CEO and the Chairman in different people, the services of an independent lead director can be availed of to ensure that objectivity in business dealings will be maintained despite the added complexity of having to deal with more family issues. In these cases, it is said that, inevitably, the said director will find himself dealing with family-related political issues which are inherent in family corporations, most especially in making decisions relating to asset acquisition and disposal affecting inheritance shares, CEO succession tied to birthrights, and Board appointments affecting allocation of resources to family members.[110] With the point of view of an independent director, the focus can be maintained on business-related matters while at the same time, managing the family-related issues on the side.[111] In this case, the independent lead director would run the executive meetings and lead the discussion of management's performance.[112]

B. Government-Owned or -Controlled Corporations

As can be seen from the discussion above, one of the main issues involving the separation of the roles of a Chairman and a President is the issue of accountability.[113] This is obvious from the fact that one of the main arguments in favor of the said separation is the creation of a system of checks and balances within the corporation, to ensure that no one person will act entirely for his or her benefit to the detriment of the shareholders of the corporation who have invested in it with the hope of having a return of investment in the future.[114] In cases of Government-Owned or -Controlled Corporations (GOCCs) in the Philippines, however, this issue on accountability is not on the same level as that of private corporations.[115]

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109. *Id.*

110. PHILLIP H. PHAN, TAKING BACK THE BOARDROOM: THRIVING AS A 21ST CENTURY DIRECTOR 208-09 (2007 ed.).

111. *Id.*

112. SCOTT GREEN, SARBANES-OXLEY AND THE BOARD OF DIRECTORS: TECHNIQUES AND BEST PRACTICES FOR CORPORATE GOVERNANCE 39 (2005 ed.).

113. *See generally* CADBURY REPORT, *supra* note 1, at 13.

114. *Id.* at 19.

115. *See* An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or -Controlled Corporations and to Strengthen the Role of the State in Its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes [GOCC Governance Act of 2011], Republic Act No. 10149, June 6, 2011.

First, the purpose of their creation is different.[116] While private corporations are generally created in order to carry out a going concern, GOCCs are instruments used to cater to some public need.[117] Thus, there is a need for these corporations to be centrally monitored by the government to ensure that "government assets and resources are used efficiently and [that] government exposure to all forms of liabilities including subsidies is warranted and incurred through prudent means."[118]

Second, in GOCCs, the CEO "refers to the highest ranking corporate executive, who could be the President or the General Manager, Chairman or the Administrator of a GOCC."[119] This CEO is elected annually by the members of the Board from among its ranks.[120]

Third, unlike family corporations where positions can be vested in a person by virtue of his or her birthright, officers of a GOCC are chosen based on the Fit and Proper Rule, where only those who are qualified and competent can hold positions in the corporation.[121]

The GOCC Governance Act of 2011[122] defines a GOCC as —

> [A]ny agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock[.][123]

This Act imposes duties and obligations on all the members of the Board of Directors or Board of Trustees and Officers of GOCCs and subsidiaries in addition to all the other responsibilities provided for in their respective charters or articles of incorporation and by-laws.[124] Apart from the limitations imposed by the said Act on the allowances, compensations, and incentives to members of the Board, it also created the Governance Commission for GOCCs (GCG), attached to the Office of the President, to serve as the central monitoring and advisory board which will not only oversee but also evaluate the operations of GOCCs in the country.[125] This

116. *Id.*

117. *Id.* § 3 (o).

118. *Id.* § 2 (b).

119. *Id.* § 3 (g).

120. *Id.* § 18.

121. GOCC Governance Act of 2011, § 19 (e).

122. GOCC Governance Act of 2011.

123. *Id.* § 3 (o).

124. *Id.* § 12.

125. *Id.* § 5.

body shall also be in charge of classifying GOCCs into the following categories: (1) Developmental or Social Corporations; (2) Proprietary Commercial Corporations; (3) Government Financial, Investment and Trust Institutions; (4) Corporations with Regulatory Functions; and (5) Others as may be classified by the GCG.[126]

Furthermore, the Act also provides for a remedy in case "a member of the Board or an Officer, by virtue of the office, acquires or by virtue of the office, acquires or receives for oneself a benefit or profit, of whatever kind or nature."[127] In these cases, the profits received shall be subject to restitution, in addition to any administrative, civil, or criminal action that may arise out of such act.[128] The CEO is also subject to the disciplining powers vested to the Board, with due regard to existing civil service laws, rules, and regulations.[129]

In the Code of Corporate Governance for GOCCs submitted by the GCG to the President for approval, a distinction was made between Board Officers and Executive Officers, whereby the former refers to "[o]fficers whose primary task is to serve the Board or to pursue the immediate functions of the Board, such as the Chairman, Vice-Chairman and the Corporate Secretary" while the latter refers to the corporate officers of the GOCC.[130] A further distinction was made when the said Code pointed out that "[a]s distinguished from Board Officers, Executive Officers primarily form part of the Management of the GOCC."[131]

From the foregoing, it could be deduced that, ideally, the positions of the CEO and the Chairman should be vested in different people. At the end of the day, however — considering all the government regulations of GOCCs in place — accountability and checks and balances within a GOCC seem not too big of an issue as compared to private corporations because in the former, the government itself, pursuant to law, steps in to ensure that the corporation is on the right path.

VI. CONCLUSION

From the foregoing discussion, it is evident that both the U.K. System and the U.S. System with regard to the roles of the CEO and the Chairman have

126. *Id.* § 5 (b).

127. *Id.* § 19 (e).

128. GOCC Governance Act of 2011, § 19 (e).

129. *Id.* § 22.

130. Governance Commission for GOCCs, Code of Corporate Governance for GOCCs, GCG Memorandum Circular No. 2012-07 [GCG Memo. Circ. No. 2012-07], § 1 (Apr. 26, 2012).

131. *Id.*

their own advantages and disadvantages and the adoption of either will depend on a variety of factors, including the nature and the culture of a company.[132] Hence, to determine which between the two is better suited to the Philippine setting, we have to consider the nature of corporations here, where majority of the businesses are family corporations.[133]

As discussed above, in the earlier stages of a family corporation, the positions of the CEO and the Chairman would have to be inevitably vested in one person only, the founder or one of the founders, whose vision is the main driving force behind the company.[134] In the earlier stages of the said business, it is really the dreams of the founder/s which are being pursued.[135]

As the company grows and moves towards the next stages, however, and as more members of the family join the business, the issues that have to be dealt with become much more complex because, aside from the problems that hound any other corporations and business, family emotions and relationships are also thrown into the picture.[136] In these stages, then, a distinction must be made.

First, if the founders are still active in the company, it would be hard to separate the roles of CEO and Chairman to different persons unless it is with the approval of the founder/s themselves whose vision or voice is still the binding force of the company.[137] Despite the entrants of the other members of the family, the founders would still want to ensure that the company is going toward the direction they wish it to pursue, which could be ensured if they hold the positions themselves or allow someone they trust to do so. Thus, the roles of the CEO and the Chairman would still most likely be vested in the same person.[138] To ensure objectivity, a semblance of checks and balances, and separation of boardroom matters from family-related dinner table matters, an independent lead director could be had.[139] This way, although the positions of the CEO and the Chairman are vested in the same person, the rights of the shareholders would still be protected from political issues related to family relationships by the objective view of the said lead independent director.[140]

132. *See generally* Majumdar, *supra* note 5.

133. Flores, *supra* note 74.

134. *See generally* IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 14-15.

135. *Id.*

136. *Id.* at 15-16.

137. *Id.* at 21.

138. *Id.*

139. *Id.* at 23 & 43. *See also* PHAN, *supra* note 110, at 208-09.

140. *See generally* PHAN, *supra* note 110, at 208-09.

Thus, to answer the two questions posed in the previous Chapter of this Essay, this Author holds that: First, in a family corporation, it is the vision of the founders which prevails, most especially in the early stages of the corporation. In these cases, then, the positions of the CEO and the Chairman should redound to the founders themselves, whose dreams gave birth to the corporation in the first place.[141] Even if a family corporation moves towards the next stages of its growth, it is still the vision of the founders which must prevail.[142]

However, because of the added complexities that surround the very nature of a family corporation in these latter stages of the corporation's growth, the CEO and the Chairman should now be held by two different people to ensure objectivity and prevent concentration of powers.[143] Given the reality, however, that in these types of corporations, the members of the family would usually not let go of their positions until they are confident with the competence of the successors, getting an independent lead director is also a wise option.[144] Given the foregoing, the answer to the *second* is obvious — involvement of family emotions, indeed, affects the choice between which System will work best.[145]

On the other hand, the case of GOCCs cannot be compared with private corporations, simply because in the former, public interest is at stake and the government itself intervenes to ensure that the officers of the corporation will be accountable for their actions.[146] In other words, the Government has a say in the path that a GOCC will pursue.

From the discussion above, it could be seen that the adoption of the applicable structure — the U.K. System or the U.S. System — cannot be answered in black and white.[147] Even around the world, different countries adopt different systems and different companies within that country would also choose to adopt that system which they deem best suited for the kind of corporation that it runs. Hence, ultimately, the paramount consideration would still be the special needs of the company and there can be no set formula that would fit all at once.

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141. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 14-15.

142. *See generally* IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 15-16.

143. *Id.* at 18. *See also* Ward, *supra* note 105, at 28.

144. *See generally* IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 43.

145. IFC FAMILY BUSINESS GOVERNANCE HANDBOOK, *supra* note 75, at 13-14.

146. *See generally* GOCC Governance Act of 2011.

147. *See generally* Majumdar, *supra* note 5.