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Glass Ceiling in Middle East Corporate Governance

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Governance and Corruption Constraints: The Business Ethics Glass Ceiling in Middle East Corporate Governance⁺

by

Norman D. Bishara^{*}

Abstract

This paper argues for a model of a corruption constraint on organizational growth and development in the form of a business ethics glass ceiling. Although the problem of corruption's negative impact on economic growth is well documented, this paper's contribution is to propose a cohesive model to show how corruption combines with other influences such as weak corporate governance to act as a serious constraint on the business growth of local firms. This previously unidentified barrier to business success is marked by corruption and the model particularly applies to small and medium-sized and family businesses in the Middle East and North Africa (MENA). These businesses are vital to the economic growth and political stability of that region, but corruption makes it difficult for them to grow, overcome a financing gap, and become stronger organizations. Corruption also drains firm resources and warps normal incentives like transparency and accountability that encourage expansion because firms may choose to appear unprofitable to avoid corruption. As a result, the growth of these businesses is limited when they remain poorly run and small in size as they attempt to avoid an onslaught of corruption. This short-term coping strategy fosters the glass ceiling constraint that is the subject of this paper.

The business ethics glass ceiling is formed by several factors. These influences are weak corporate governance, social and cultural aspects, and political and economic pressures. This paper focuses on the role of corporate governance and first describes the constraints and the place of these businesses in MENA, before using the regional example of Lebanon to demonstrate the stunting nature of the corruption-influenced ceiling and its role in producing a financing gap. Finally, the paper presents recommendations for breaking through the glass ceiling and provides suggestions for additional research on the intersection of corruption and ethics constraints in emerging markets.

Keywords: corporate governance; corruption; business ethics; small and medium enterprises (SMEs); family-owned enterprises; and Middle East and North Africa

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Governance and Corruption Constraints: The Business Ethics Glass Ceiling in Middle East Corporate Governance

I. Introduction

Imagine a business and legal climate in which 6%, on average, of a company's sales disappear because that income goes to fund bribes,¹ and where the political system is bloated with excessive public sector employment² and political regimes opposed to economic reform are the norm.³ If the same system lacks minority shareholder protections and corporate formation is difficult,⁴ and, as a result, the most educated in the workforce choose to work abroad,⁵ such a region is, to say the least, not ideal for building a successful business enterprise. These obstacles to business growth and development do not merely afflict some hypothetical region, but are symptomatic of a real and economically important one: the Middle East and North Africa.

With such seemingly insurmountable disincentives to growth and investment, and such uncertainty bombarding a typical company from the outside, it is no surprise that 65% of the Middle Eastern and North African countries surveyed are ranked as only having a medium-level human development in the United Nations Human Development index⁶ and, on average and despite some

¹ Rhonda Roumani, *The Hidden Costs of Business in Lebanon, Survey finds Bribery is Common: Experts say that if Local Companies Adopt International Standards, they Benefit in the Long Term and will be able to Complete Globally*, THE DAILY STAR, June 10, 2004 (citing a 2004 survey by the Lebanese Transparency Association and the InfoPro Center for Economic Information).

² The Middle East and North Africa as a region employs nearly 18% of its total workforce in the public sector, a higher rate than any other region. Robert P. Beschel, *The Challenge of Civil Service Reform*, 4 WORLD BANK MENA GOVERNANCE NEWS & NOTES 4, 6 graph 1, Jan. 2010. In some countries, such as Egypt, 20-30% of government workers may be redundant. *Id.* at 6. The potential reasons for over-employment by governments may reflect some of the cultural and corruption issues of the region, including as a means of “soaking up excess employment,” the patronage system, the public’s desire for comfortable and secure jobs, and wealth distribution. *Id.* at 6-7.

³ Ian Ayres & Jonathan R. Macey, *Institutional and Evolutionary Failure and Economic Development in the Middle East* from the Symposium: *Nation-Building in the Middle East*, 30 YALE J. INT’L L. 397, 400 (2005) (arguing that in the Middle East, “incumbent ruling elites rationally oppose economic development when such development is likely to lead to social changes that threaten their hold on power. It is this rational calculation – not culture, history, or religion – that sustains obstacles to growth in the Middle East”).

⁴ *Id.* at 411 (“Starting a new business in a Middle East or North African country is unusually difficult. These countries have some of the largest capital requirements for start-up businesses anywhere in the world.” citing a World Bank and International Finance Committee report) (citation omitted).

⁵ For some countries in the Middle East much of their human capital is outsourced to other nations in the region. See Adam Schreck & Jamal Halaby, *Dubai Downturn Sends Ripples Throughout Arab World*, ASSOCIATED PRESS, Jan 7, 2010, (http://www.denverpost.com/breakingnews/cj_14139789 (last visited Mar. 1, 2010) (“Overall, worker wages from the Gulf—including Dubai and other places like Saudi Arabia and Kuwait—account for a whopping 15 to 20 percent of the economy in countries like Jordan, Lebanon and Egypt that are considerably poorer than the oil-fueled monarchies of the [Persian] Gulf [states]”). In some non-petroleum producing Middle East countries the income for expatriate workers may amount to 25% of the economy; see Osama Habib, *Fallout from Dubai Crisis will Spare Lebanese Economy*, DAILY STAR, Nov. 30, 2009 (“The [Lebanese] central bank said recently that up to \$7 billion in remittances have entered Lebanon in the first 10 months of 2009, representing 25 percent of the country’s GDP”).

⁶ UNITED NATIONS DEVELOPMENT PROGRAMME, *Arab Human Development Report 2009: Challenges to Human Security in the Arab Countries*, 231, Table 3 (2009).

improvement, fall in the lower half of countries ranked by ease of doing business.⁷ It will also not be a surprise that with these problems the region also ranks poorly on the business ethics issue of corruption, as demonstrated by Transparency International's most recent Corruption Perceptions Index.⁸

With such a disheartening status quo what should a firm's management do within its own control to improve its chances of profitability amid widespread corruption? The answer to this question is not necessarily clear or simple. While the contours of political corruption from the demand side of bribe askers is well mapped by scholars, the implications of a business engaging in self help through better corporate governance is not often examined. As discussed below, experts have concluded that corruption inhibits economic development in developing countries at the national level. However, this paper goes deeper to discuss how the problem of corruption — defined broadly to include bribery as well intra-organization abuses like the abuse of minority shareholders — also limits the growth of small and medium-sized businesses by acting as a drain on their resources and creating disincentives to improve corporate governance by fostering a situation where these small and medium enterprises (SMEs) want to stay small and appear unprofitable to avoid facing corruption. In this way the scourge of corruption, and how it drains businesses of capital and reduces trust in government, and the problem of inadequate economic development are connected. This combined set of disincentives ultimately stunt enterprise and profit growth, and perpetuate an environment ripe for corruption, thus leading to the business ethics glass ceiling. Identifying this situation formally for the first time and explaining this barrier to growth, and the role of corporate governance in creating and later addressing the barrier, is the main contribution of this paper.

Barriers to organizational growth, stability, and profitability afflict all types of businesses — regardless of size, ownership structure, or location of the business entity. Much of the extant research concerning corruption from management scholars focuses on the organization's role in corruption control,⁹ while the extensive political science literature evaluates the role of the state and its bureaucracy in perpetuating public corruption.¹⁰ Economic analysis of corruption tends to examine the costs and the

⁷ World Bank & International Monetary Fund, *Doing Business in the Arab World 2010: Comparing Regulation in 20 Economies*, 1-3 (2009).

⁸ See Transparency International *Corruption Perceptions Index 2009*, *infra*, notes 24 and 35, and accompanying text.

⁹ See generally, Blake E. Ashforth et. al, *Corruption in Organizations, Introduction to the Special Topic Forum: Re-Viewing Organizational Corruption*, 33 ACAD. MANAGEMENT REV. 670 (2008); and Donald Lange, *A Multidimensional Conceptualization of Organizational Corruption Control*, 33 ACAD. MGMT. REV. 710 (2008).

¹⁰ See, e.g., leading scholarship such as POLITICAL CORRUPTION: CONCEPTS & CONTEXTS, 3rd ed. (Arnold J. Heidenheimer & Michael Johnston, eds.) (2009); MICHAEL JOHNSTON, WEALTH, POWER, AND DEMOCRACY (2005); and ROBERT KLITGAARD, CONTROLLING CORRUPTION (1991).

incentives behind corrupt transactions, as well as the rationale of corrupt economic actors.¹¹ Law and ethics scholars have provided intellectual leadership and extended the discussion to the role of law and contract theory,¹² and to the corporate governance of large, usually public companies in the developed world.¹³ This paper combines and extends this previous research to illuminate a specific issue affecting the significant and pervasive economic entities of small and medium-sized family businesses, particularly in the Middle East: the stifling issue of corruption and the related barriers to financing stemming from weak corporate governance.¹⁴ It argues that there is a business ethics “glass ceiling” created by a confluence of social and cultural, political and economic, and, most importantly, weak corporate governance and legal issues.¹⁵ Together these factors artificially constrain the development of many small and medium-sized family businesses in the region. This is a particularly troubling confluence of factors because SMEs in developing regions are already at a disadvantage because of the so-called financing gap.¹⁶ Through the example of Lebanon this paper discusses the corporate governance and related problems confronting businesses in the Middle East and how an ethical glass ceiling influenced by corruption and weak corporate governance restricts their development, even if it is not apparent to the individual organization. In sum, the business ethics glass ceiling makes it difficult for businesses to grow, both because of the costs imposed in terms of bribe payments and because the constraint changes the incentive structure to encourage businesses to appear unprofitable to avoid being a target of corruption and, thus, harm their prospects for entity growth and for wider economic development.

¹¹ See, e.g., JOHANN GRAF LAMBSDORFF, *THE INSTITUTIONAL ECONOMICS OF CORRUPTION AND REFORM* (2007) at 1-15 (cataloguing the development of economists’ research on corruption transactions and incentives, costs, and social implications). See also, the empirical and economic case studies in *INTERNATIONAL HANDBOOK ON THE ECONOMICS OF CORRUPTION* (Susan Rose-Ackerman, ed. 2006).

¹² See, e.g., THOMAS DONALDSON & THOMAS W. DUNFEE, *TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS* (1999) at 222-230 (applying the logic of Integrative Social Contracts Theory to bribery to demonstrate that the practice violates microsocial contractual duties, is not an authentic norm, and violates one or more hypernorms).

¹³ See, e.g., Cristie Ford & David Hess, *Can Corporate Monitorships Improve Corporate Compliance?*, 34 J. CORP. L. 679 (2009) (discussing the role of corporate monitorships at U.S. companies as a condition of a settlement with the federal government, including a delayed prosecution agreement).

¹⁴ In a study of the effects of corruption bureaucratic institutions, growth rates, and investment in human capital in MENA, Professor Imene Guetat found that the direct effects of weak institutions and the indirect effects of corruption as compared to Asia, Latin America, and Sub-Saharan Africa. Imene Guetat, *The Effects of Corruption on Growth Performance of the MENA Countries*, 30 J. ECON. & FINANCE 208, 213-218 (2006).

¹⁵ The existence of corruption, legal, and financing constraints on SME growth is discussed by World Bank economists in Thorsten Beck et. al, *Financial and Legal Constraints to Growth: Does Firm Size Matter?*, 60 J. FINANCE 137 (2005) (concluding from a global sample of SMEs that corruption, legal, and financing constraints all have a negative impact as a percentage of sales of SMEs to the amount of -5.2%, -6.3%, and -8.7%, respectively. The authors also found that institutional and financial development will positively impact SMEs the most).

¹⁶ For an overview of the extensive challenges faced by SMEs in the search for growth capital, see generally, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *THE SME FINANCING GAP, VOLUME I: THEORY AND EVIDENCE* (2006).

Ultimately, some recommendations for breaking through the ethical glass ceiling are presented, as well as a call for additional research into the impact of this constraint on businesses throughout the region and the developing world. These recommendations also contribute to the underlying logic of reform initiatives because they recognize the potential of the combined impact of improved corporate governance and a reduced acquiescence to external corruption as a conscious choice by these businesses. In other words, this approach also has normative value because it isolates and addresses reforms that are within the control of the entities, as opposed to seemingly intractable macro-level institutional failings.

This paper sets out to map the landscape of the corporate governance failings that cause the business ethics glass ceiling. To accomplish that goal it is necessary to also consider the closely related political and social/cultural issues that contribute to the creation of this barrier, which acts as a constraint on the growth and development of small and medium businesses generally, and family businesses, specifically.

The business ethics issue of corruption and questions of organizational factors influencing corrupt behavior remain a topic of much discussion among scholars.¹⁷ Evidence also suggests that both internal and external change triggers can cause and increase corruption in business organizations.¹⁸ Corruption has legal, social and cultural, and economic and political components¹⁹ and simply attacking one of the causes is inadequate, thus a portfolio approach to dealing with the issues has been proposed by scholars.²⁰ Both general management²¹ and business law and ethics scholars²² have addressed the importance of proper governance systems as a way of incorporating stakeholder salience and business ethics.

While there is a wealth of writing on the varied topics of organizational ethics, corruption, stakeholder approaches, corporate governance, and small/medium and family enterprises, less work has been available that combines these issues. This paper aims to, in part, synthesize and tailor existing

¹⁷ See, e.g., Ashforth et al., *supra* note 9.

¹⁸ Kelly D. Martin et al., *Organizational Change, Normative Control Deinstitutionalization, and Corruption*, 19 BUS. ETHICS Q. 105, 118-122 (Jan. 2009).

¹⁹ For example, the comprehensive typology of anti-corruption at the organizational level is found in Lange, *supra* note 9. Professor Lange's categorization, from the organization's perspective, includes an assumption that, "organizational leaders presume that the social pressures -- normative and coercive -- existing in the organization's broader social and regulative context will necessarily permeate the organization's borders to affect the behavior of its members. Operating under this assumption, organizational leaders presume that the social pressures or legal/regulative sanctions applied by forces external to the organization can cause members to avoid corrupt behaviors." *Id.* at 714.

²⁰ See David W. Hess & Thomas W. Dunfee, *Fighting Corruption: A Principled Approach; The C2 Principles (Combating Corruption)*, 33 CORNELL INT'L L. J. 593 (2000) (discussing the "C2 Principles" as a means of fighting international corruption).

²¹ See, e.g., ABBAS ALKHAFIJI, A STAKEHOLDER APPROACH TO CORPORATE GOVERNANCE (1989).

²² See, e.g., TIMOTHY L. FORT, ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION 119-135 (2001).

research and focus on the Middle East and North Africa (MENA, or simply Middle East).²³ This is because MENA is a region in the developing world that is often absent from business ethics and corporate governance scholarship, despite its political and financial importance and the prevalence of corruption in the region.²⁴ It is also the case that small and medium-sized family-owned and managed businesses are particularly prominent in the Middle East.²⁵ This paper concludes that corporate governance failings and cultural issues in the Middle East, as well as the insular nature of small and medium-sized family enterprises, contribute to the debilitating corruption in the region, as in other developing areas of the world.

Small and medium-sized family-owned or controlled businesses in the Middle East, including the Republic of Lebanon, have particularly poor corporate governance related to minority shareholder protections and corruption controls.²⁶ As a result there are inadequate systems in place that are intended to promote ethical behavior or defend against corruption overtures from the outside. Those problems, coupled with cultural and political influences, create an ethics glass ceiling, past which small and medium family enterprises cannot grow. This is because by succumbing to corruption they are cutting off their own access to certain key stakeholders: outside equity investors, and the related capital and expertise that come with those investors. Moreover, by succumbing to corrupt forces and engaging in bribery for short term gains, family businesses not only harm a range of internal stakeholders, but help perpetuate a corrupt system, which in turn harms societal interests and is an affront to the rule of law.²⁷

Following this introductory section, Part I provides background and context for the role of corporate governance and the issue of corruption in the Middle East. Part II presents the theoretical

²³ It would be overly simplistic to consider the idea of the Middle East or the Arab-speaking world as a monolith. Therefore, for definitional ease, the countries considered in the Middle East and North Africa for purposes of this paper are the predominantly Arab-speaking nations and contained in Transparency International's definition, where the following eighteen countries are included: Algeria, Bahrain, Egypt, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine [West Bank and Gaza], Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, and Yemen. An additional country, Israel, is ranked in the 2009 regional index. Transparency International, *Middle East and North Africa (MENA)* regional page, http://www.transparency.org/regional_pages/africa_middle_east/middle_east_and_north_africa_mena (last visited Mar. 1, 2010). Other configurations exist. For instance the World Bank's definition of MENA includes three additional countries: Djibouti, Israel, and Malta. World Bank, *Middle East and North Africa – Countries*, <http://go.worldbank.org/TUEP77ZCB0> (last visited Mar. 1, 2010).

²⁴ Of the nineteen MENA countries and territories ranked in the 2009 *Corruption Perceptions Index*, sixteen scored a five or below, indicating a serious corruption problem in the region. Transparency International, *2009 Corruption Perceptions Index, Regional Highlights: Middle East and North Africa* (2009), available as a separate file through http://www.transparency.org/policy_research/surveys_indices/cpi/2009/regional_highlights (last visited Mar. 1, 2010).

²⁵ See Nasser Saidi, *Corporate Governance & Business Ethics in Lebanon, Remarks at the launch of RDCL Code of Business Ethics, Beirut* 5, Apr. 28, 2004, <http://www.rdcl.org.lb/nassersaidi.pdf> (last visited Mar. 1, 2010).

²⁶ For example, see NADA ABDELSATER-ABUSAMRA & NORMAN D. BISHARA, *THE LEBANESE CODE OF CORPORATE GOVERNANCE* (2006) (addressing failings in the corporate governance structures covered by the Lebanese Commercial Code and promoting transparency and accountability, as well as minority shareholder rights),

²⁷ For a leading discussion of the short-term benefits and economic motivations and calculus behind corruption, see Philip M. Nichols, *Corruption as an Assurance Problem*, 19 AM. U. INT'L L. REV. 1307, 1326-1331 (2004).

model of a business ethics glass ceiling as a constraint on growth and explains the factors leading to this barrier, with a focus on the role of law and corporate governance. Part III discusses the role of family-owned or controlled small and medium enterprises and the corporate form in relation to economic growth, globally and in the Middle East, as well as the business ethics concerns of these entities.

Next, Part IV applies the observations in the previous sections to the case of family enterprises located in the Middle East and North Africa, with an emphasis on Lebanon as a regional example. This section then applies the ethics glass ceiling model to the Lebanese example and argues that inadequate corporate governance and shortcomings in the country's corporate law scheme have fostered a situation where businesses are incentivized to embrace business ethics failings with regard to conflicts of interest and corruption. As a result, these corporate governance problems – combined with political and economic, and cultural issues – discourage outside investors from providing capital and create a convergence of constraints stunting the growth of these companies. Further, the insular nature of SMEs and family enterprises also creates a separation from potential stakeholder groups, such as outside financiers looking to place Foreign Direct Investment (FDI), and contributes to a constraint on organizational growth and is a result of ethics failings, including corruption. Part V provides suggestions for improving corporate governance and business ethics in the Middle East, as well as suggestions for further research. Part VI briefly concludes the paper.

II. The Model of a Business Ethics Glass Ceiling as a Constraint on Enterprise Growth

A. The Business Ethics Glass Ceiling Metaphor and Model

What exactly is meant by a business ethics glass ceiling to growth related to corporate governance? In the context of this paper's discussion of an ethics glass ceiling, the metaphor is used as a means of illustrating an invisible barrier to family enterprise development in the MENA region. Specifically, the paper argues below that corruption and the fear of encountering corruption overtures²⁸ – as well as the insular nature of small and medium-sized family enterprises in MENA, and political and economic, and cultural issues – act as an invisible, artificial constraint on organizational growth and

²⁸ The prime example of a corporate ethical failing used throughout this paper is the well-recognized problem of corruption. Transparency International, the leading global anti-corruption non-governmental organization, states that, "Corruption is operationally defined as the misuse of entrusted power for private gain." The organization goes further and draws a distinction, "between 'according to rule' corruption and 'against the rule' corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute the former. The latter... is a bribe paid to obtain services the bribe receiver is prohibited from providing." Transparency International, *How do you define corruption?*, available at: http://www.transparency.org/news_room/faq/corruption_faq (last visited Mar. 1, 2010).

stability.²⁹ For purposes of this paper the concept of corruption is defined broadly and covers unethical rent-seeking behavior beyond traditional coarse corruption (i.e., bribery), including actions such as fraud, the abuse of majority shareholder power over other shareholders, or the misuse of business assets.³⁰ Corruption is generally seen as harmful and, accordingly, scholars agree that corruption decreases investment in emerging economies.³¹

As envisioned here, the business ethics glass ceiling is the state of affairs that materializes when internal and external factors, particularly those related to corruption, create a situation where a business chooses to remain small and to appear unprofitable to avoid being a target for corruption. In turn, businesses in this situation will appear to be poorly run with little prospect of growth and, thus, create a financial picture in which they appear to be poor investments. Such companies may fail to choose (or are unable to choose because of local laws) corporate governance mechanisms that may have an ethical spillover, such as those embracing transparency and accountability as a check on corruption.³² The glass ceiling develops as a constraint because in reacting to corruption in their surroundings these SMEs and small and medium-sized family firms remain opaque and unable to access financing outside of family

²⁹ Similarly, in discussing the neo-institutional approach to modeling the more macro-level governance mechanisms of corrupt transactions della Porta and Vannucci point out that the economics of corruption literature identifies both a sociological and a political-economic approach to understanding these transactions. Donatella della Porta & Alberto Vannucci, *The Governance Mechanisms of Corrupt Transactions*, in *THE NEW INSTITUTIONAL ECONOMICS OF CORRUPTION* 152, 152-153. (Johann Graf Lambsdorff, et al., eds., 2005). They proceed to argue that the theory should be augmented to include an understanding of the governance structures, with an emphasis in the “(bad) social capital” required for corruption networks. *Id.* at 153. In contrast, the model explicated in this paper focuses on a different aspect of the business and legal issue of corruption as an ultimate constraint on growth by examining how the failings precipitated by weak corporate governance at the firm level combined with social and cultural, and political and economic, factors to stunt a firm’s development.

³⁰ See Norman D. Bishara & Cindy A. Schipani, *Strengthening the Ties that Bind: Preventing Corruption in the Executive Suite*, 88 J. BUS. ETHICS 765, 766 (2009).

Recently Transparency International has joined the expansion of anti-corruption efforts into the area of addressing private sector corruption. For example, in a 2008 report it co-sponsored with PricewaterhouseCoopers, Transparency International reported that nearly two-thirds of the multinational companies it surveyed were faced with some form of corruption. The report presents an expanded discussion of corruption this way:

A definition of corruption: There are many ways to define corruption. Robert B. Zoellick, president of the World Bank, says it is “a cancer that steals from the poor, eats away at governance and moral fiber, and destroys trust” [citing World Bank, Press release, *New Report Shows Strong Action in World Bank’s Global Anti-Corruption Fight*, Dec. 18, 2007]. For the purposes of this report, corruption is defined as the misuse of entrusted power for private gain and encompasses a variety of issues, including bribery, conflicts of interest, extortion, embezzlement and fraud.

PricewaterhouseCoopers, *Confronting Corruption: The Business Case for an Effective Anti-Corruption Programme* 3 (2008), http://www.transparency.org/global_priorities/private_sector (last visited Mar. 1, 2010).

³¹ See Nichols, *supra* note 27, at 1317-1321, citing Paolo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681, 705 (1995) for the finding that decreases in corruption will increase investment in a country and per capita gross domestic product. See also *Id.*, at n. 42 (describing various studies concluding that there is a positive relationship between foreign investment and growth; and also discussing corruptions tendency to distort institution, prevent development, and undermine reform).

³² For a detailed discussion of the typology of corrupt organizations and organizations filled with corrupt actors, see Jonathan Pinto et. al, *Corrupt Organizations or Organizations of Corrupt Individuals? Two Types of Organization-Level Corruption*, 33 ACAD. MGMT. REV. 685 (2008).

trust networks or traditional bank loans. These sorts of barriers to investment have collectively been called an SME financing gap.³³

Furthermore, this constraint also serves to separate the businesses from key external stakeholders who can act as drivers of organizational growth, such as potential foreign equity-stake shareholders. In other words, the negative influence of the business ethics problem of corruption creates a barrier to accessing outside investors and Foreign Direct Investment because the companies remain small and without the proper governance structures to provide outside investors with sufficient confidence to trigger investment and, consequently, real growth.³⁴ In effect, a situation is created whereby companies appear to be poor investments because they lack the proper corporate governance structures to combat corruption or to protect the interests of minority shareholders. In a broad sense, this glass ceiling can also be seen as a barrier to SMEs and family enterprises in the developing world to achieving parity with their developed world SME counterparts, which are less likely to face the same levels of instability and corruption.³⁵

Traditionally, the glass ceiling metaphor refers to an invisible barrier to advancement in the workplace for minority groups. For example, women were, historically, disparately treated by a predominantly male managerial force and faced an unofficial barrier to career advancement. This so-called glass ceiling was said to be a constraint on their acquiring management positions and pay equality with their male counterparts. The glass aspect of the metaphor is important because those trapped beneath the ceiling can see the goal and path to advancement, but the transparent constraint restricts that advancement. The metaphor of a glass ceiling has been used most often in the context of employment constraints for women, but it has been expanded to apply to other groups.³⁶

³³ For an extensive global review of the SME financing gap for SMEs in developing countries, see ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *THE SME FINANCING GAP*, *supra* note 16.

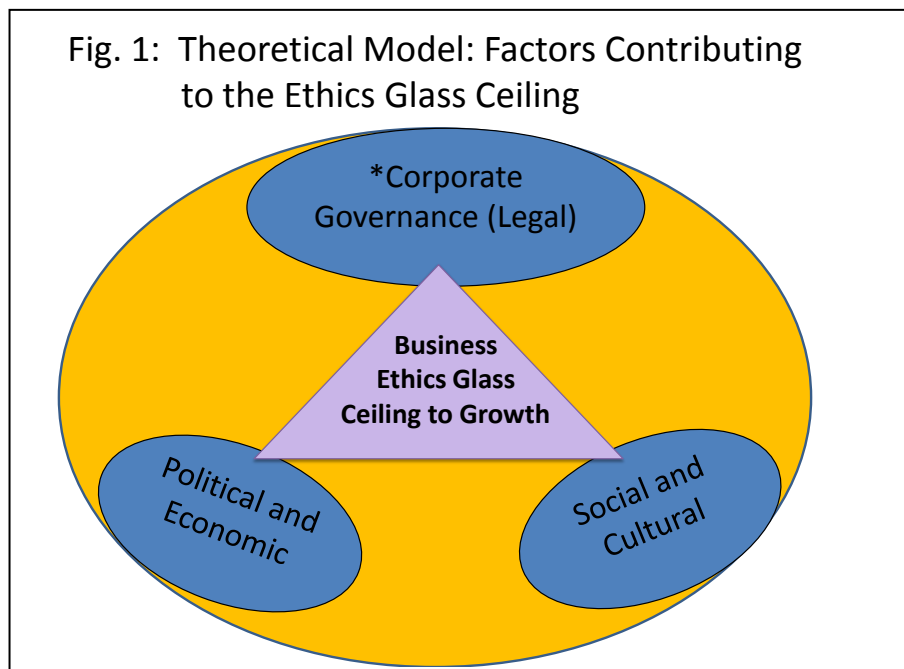
³⁴ An assumption here is that organizational growth – as in the broad sense meant here to include greater sophistication, increased revenues, employee size, and diversification of ownership – is both preferred by SMEs and FOEs and is a normative goal of these organizations. Evidence of this assumption regarding the value and desirability of growth is further discussed in Section III, B, below. Support for the conclusion that SME growth with the aid of better financing is an aspiration for these entities is found in the thrust of research and assistance of multilateral development organizations, such as the OECD (*see, Id.*) and for local government-sponsored SME support organizations such as the SME support initiatives of the Ministry of Economy and Trade of Lebanon focused on providing access to financing and streamlining SME-related legal procedures (*see SME Programme*, <http://www.economy.gov.lb/MOET/English/Panel/Projects/Pages/SME.aspx> (last visited Mar. 1, 2010)).

³⁵ For example, less developed countries tend to rank lower on the Corruption Perceptions Index. *See generally* TRANSPARENCY INTERNATIONAL, *CORRUPTION PERCEPTIONS INDEX 2009* (2009).

³⁶ *See, e.g.*, Jeff Frank, *Gay Glass Ceilings*, 73 *ECONOMICA* 485 (2006) (expanding the glass ceiling analysis to lesbians, gays, and bisexuals in UK higher education); and Brinck Kerr et. al, *An Unconventional Application of the Glass Ceiling Concept: African American and Latino Administrators in Municipal Government Bureaucracies, 1987-1997*, 32 *PUB. ADMIN. Q.* 491 (2008) (expanding the glass ceiling concept to examine the integration of ethnic minorities in government leadership positions).

While the glass ceiling metaphor in the academic literature has been confined largely to the examination of constraints on the labor market, it is a potentially powerful symbol for other similar constraints on advancement in the marketplace for organizations. This paper, thus, applies the metaphor to a new subject area: ethics failings in the business world. This is because the glass ceiling notion carries with it connotations of an invisible, yet confining, barrier to a group – or, in this case, a type of business entity – in search of rising within the ranks of its cohort. Even if it is an imperfect symbol for a constraint on SME and family business growth, the glass ceiling nonetheless is a useful way to envision an often-overlooked constraint on growth, organizational advancement, and access to financing. The metaphor is co-opted with an acknowledgment that its original context differs from the business organization and employment setting, but also with the understanding that the symbolism of the glass ceiling is a thought-provoking way to model the hidden and destructive impact of succumbing to the pressures of corruption.

A model of how this glass ceiling develops and operates is comprised of three sets of factors: 1. weak corporate governance, and related ineffectual legal rules and insufficient enforcement; 2. social and cultural factors; and, 3. underdeveloped political and economic institutions. Figure 1, below, is a pictorial representation of the interplay of these forces. This section continues with a discussion of these pillars of the proposed business ethics glass ceiling model, with a focus on the issue of corporate governance. Later, in Part IV, this model is applied to SMEs and small and medium-sized family businesses in the Middle East to illustrate how corporate governance reform is crucial to eliminating, or at least easing, this constraint.



B. Legal and Corporate Governance Factors

The corporate governance systems of more developed countries have evolved a series of relatively effective self-regulatory mechanisms to address the problem of corruption, including those related to transparency, accountability, and equity among shareholders. The significant regulations and developed judicial systems of these countries force companies to adapt and improve their corporate governance structures. By contrast, many emerging markets, including those in the Middle East, have less developed governance systems that are susceptible to exploitation by corrupt individuals inside the company, as well as from public officials seeking bribes. It is this exploitation that contributes to the formation of the ethics glass ceiling constraint. This section briefly enumerates the variety of legal and corporate governance that exist to help later explain how these elements when underdeveloped in emerging markets can contribute to the business ethics glass ceiling.

The term corporate governance in this context refers to the internal business rules as well as the related laws that establish and promote the management and ownership rights and responsibilities of managers and owners (shareholders) of businesses. In addition, “[c]orporate governance describes the structures, processes, and institutions within and around organizations that allocate power and resource control among participants,” including the necessary legal and regulatory frameworks.³⁷ Originally a narrowly construed notion of the relationship between a firm’s suppliers of capital and the firm’s top managers, the concept of corporate governance has expanded and now includes the interrelated rights and responsibilities of a range of stakeholders.³⁸

³⁷ Gerald F. Davis, *New Directions in Corporate Governance*, 31 ANNU. REV. SOCIAL. 143, 143 (2005). Certainly other, more detailed definitions exist – most in the context of large, publicly traded corporations. For example:

Investors in corporations require assurances that their contributions – financial capital, human capital, social capital – will generate a return. Corporate governance concerns the institutions that make these investments possible, from boards of directors, to legal frameworks and financial markets, to broader cultural understandings about the place of the corporation in society. Thus, corporate governance consists of “the whole set of legal, cultural, and institutional arrangements that determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated.”

Id. citing MARGARET M. BLAIR, OWNERSHIP AND CONTROL: RE-THINKING CORPORATE GOVERNANCE FOR THE TWENTY-FIRST CENTURY 3 (1995).

³⁸ The evolving scope of corporate governance means that it “is more than simply the relationship between the firm and its capital providers.” On the contrary:

Corporate governance also implicates how the various constituencies that define the business enterprise serve, and are served by, the corporation. Implicit and explicit relationships between the corporation and its employees, creditors, suppliers, customers, host communities - and relationships among these constituencies themselves - fall within the ambit of a relevant definition of corporate governance. As such, the phrase calls into scrutiny not only the definition of the corporate form, but also its purposes and its accountability to each of the relevant constituencies.

Corporate governance can be influenced and imposed both internally and externally. Internal governance concerns the self-regulation of the internal affairs of the corporation, while external governance comes from the legal and regulatory framework, as well as market forces, which impact the organization from the outside.³⁹ Before this section discusses the negative externalities of weak corporate governance, it first presents the various forms and situations in which corporate governance arises.

There are several external influences on corporate governance. These can be categorized as standards imposed at the country level and those that are found in pan-national guidelines. Within those categories, there are legal and regulatory guidelines and multi-lateral conventions, as well as the potential for market forces, which impact the formation of corporate governance policies. At the country level, indigenous corporate governance laws exist that serve the interests of that particular nation and its business organizations. For instance, in the United States, the advent of the Sarbanes-Oxley (SOX) legislation in 2002⁴⁰ was designed to greatly impact the corporate governance of public companies. The law was enacted following the accounting scandals, which came to light in 2001 and ushered in increased involvement of Congress in the traditionally state-regulated realm of corporate governance.⁴¹ Another example of corporate governance-influencing legislation is the U.S. Foreign Corrupt Practices Act (FCPA),⁴² first enacted in 1977. In contrast to SOX, the FCPA directly address a business ethics issue in that it criminalizes overseas bribery by U.S. businesses.⁴³

Michael Bradley et. al, *Challenges to Corporate Governance: the Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads*, 62 LAW & CONTEMP. PROB. 9, 10-11 (1999).

³⁹ Klaus J. Hopt, *Globalisation of Corporate Governance: The Difficult Process of Bringing about European Union Internal and External Corporate Governance Controls* in GLOBALISATION AND BUSINESS ETHICS (Karl Homan et. al, eds.) (2007).

⁴⁰ Sarbanes-Oxley, UNITED STATES PUB. L. NO. 107-204, 116 Stat. 745 (2002).

⁴¹ Dana M. Muir & Cindy A. Schipani, *New Standards of Director Loyalty and Care in the Post-Enron era: Are some Shareholders more Equal than Others?*, 28 N.Y.U. J. LEGIS. & PUB. POL'Y 279, 279-80 (2004). The SOX legislation, in addition, has a specific component addressing the ethics failings, which Congress blamed for precipitating the economic losses. An explicit piece of legislation concerning ethics-promotion is found in Section 406 of SOX, which requires that covered corporations to disclose if they have an ethics code for top management, as well as any waivers of the code provisions and, if not, to explain why such a code is not in place. Sarbanes-Oxley Act of 2002, UNITED STATES PUB. L. NO. 107-204, 116 Stat. 745 §406(a), 15 U.S.C. §7264(a). For a discussion of the business ethics content and implications of SOX, see David Hess, *A Business Ethics Perspective on Sarbanes-Oxley and the Organizational Sentencing Guidelines*, 105 MICH. L. REV. 1781 (2007).

⁴² Foreign Corrupt Practices Act, PUB. L. 95-213 (1977) (enacted).

⁴³ The FCPA was proposed following findings that many prominent U.S. multinational corporations had participated in corruption abroad. At that time a Securities and Exchange Commission report “revealed corrupt foreign payments by over 300 U.S. corporations involving hundreds of millions of dollars.” Senate Report of the Banking, Housing and Urban Affairs Committee, S. REP. 95-114 (1977) at 3. In certain situations, government regulatory schemes and self-regulatory institutions might also influence corporate governance. The obvious example of an agency that addresses corporate governance is the United States Securities and Exchange Commission (SEC). The SEC’s mandate to regulate the purchase or sale of publically-traded securities brings with it corporate governance rules with an ethical outcome aimed at benefiting stakeholders or fostering market transparency. These include requirements for public companies to disclose insider transactions under Section 16(a) of the Securities Exchange Act of 1934 (Sarbanes-Oxley Act of 2002, UNITED STATES PUB. L. NO. 107-204, 116 Stat. 788, amending Securities Exchange Act of 1934 Section 16(a)). or to produce certain audit reports

Externally imposed or influenced corporate governance may also come from self-regulatory organizations, such as industry groups or public exchanges with which a corporation is affiliated. An overtly ethics-based influence on corporate governance would be the requirement that a corporation adopt an ethics code in order for it to remain in good standing with a stock exchange. The New York Stock Exchange's requirement that its listed companies have an ethics code is an example of this external dictation of specific corporate governance structures related to business ethics.⁴⁴

In addition, there are corporate governance concepts that traditionally arise from state law. For instance, there are well established common law duties of loyalty and care, as well as good faith, for board members and officers in U.S. jurisdictions.⁴⁵ A governance-related concept such as the business judgment rule is another instance of a legal rule that sets the boundaries for corporate action by boards and influences how a board conducts a company's affairs. In U.S. business organization's law, this is, perhaps, most associated with the business-friendly rules contained in the Delaware Limited Liability Company Act and Delaware General Corporation Law and related Delaware common law.

Market forces are another influence on corporate governance mandates originating outside of a corporation. One example is the changes to corporate governance enacted by corporations, albeit internally, in reaction to a renewed rise in hostile takeovers in the 1980s.⁴⁶ In those instances corporate boards of directors initiated changes to corporate governance rules, such as establishing takeover defenses, in response to market trends.⁴⁷ Other market forces may influence corporate governance changes such as decisions to take a public company private, modify the composition of the board of directors, or even address executive compensation through changes related to the authorization to grant stock options. There is, as might be expected, considerable debate in academic circles about the propriety of specific governance approaches and theories.⁴⁸

or quarterly and annual reports (Section 13 and 15(d) of the SECURITIES EXCHANGE ACT OF 1934). In effect, the trade off for being a publically traded company includes having to adopt some heightened governance mechanisms related to transparency and accountability that private companies might not otherwise voluntarily assume.

⁴⁴ NYSE Euronext, *Corporate Governance Standards: Code of Business Conduct and Ethics*, NYSE EURONEXT LISTED COMPANY MANUAL, §303A.10 (2009).

⁴⁵ See Muir & Schipani, *supra* note 41, at 290-91 ("The concept of fiduciary duty, as applied to corporate officers and directors, is a significant part of corporate law jurisprudence. It is well established that corporate officers and directors owe fiduciary duties to the corporation and its shareholders. The most salient duties are the duties of care and loyalty, set against the obligation to act in good faith"). *Id.*

⁴⁶ For a review of hostile takeovers as an influence on corporate governance, see Larry E. Ribstein, *Imagining Wall Street*, 1 VA. L. & BUS. REV. 165, 168-78 (2006). See also Timothy J. Vogus & Gerald F. Davis, *Elite Mobilizations for Antitakeover Legislation, 1982-1990*, in SOCIAL MOVEMENTS AND ORGANIZATION THEORY (Gerald F. Davis et. al, eds.) (2005) (finding that, among other factors, the collaboration of networked corporate elites accounts for the proliferation of corporate antitakeover legislation across the US in the 1980s).

⁴⁷ See, e.g., Ribstein, *supra* note 46.

⁴⁸ For a discussion of some of the current debates underpinning corporate governance theory, see Martin Gelter, *The Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance*, 50 HARV. INT'L L.J. 129 (2009).

Corporate governance guidance has also increasingly come from multilateral organizations. In the last few decades, numerous model international corporate governance codes⁴⁹ have been devised and promoted by multilateral organizations like the United Nations and the Organisation for Economic Co-operation and Development (OECD).⁵⁰ These corporate governance codes are paralleled by numerous model business ethics codes and principles, such as the Caux Roundtable *Principles for Business* (1994; 2009)⁵¹, the *Sullivan Principles* (1997),⁵² and the Social Accountability 8000 international standard (2001).⁵³ Among those documents are also included programs that specifically address the prominent business ethics concern of corruption, such as the guidelines and business behavior accepted by signatories to the UN Global Compact and its Principle 10, Anti-corruption (2000),⁵⁴ based on the UN's *Convention Against Corruption*⁵⁵ and the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1997).⁵⁶

By design, these documents are intended to provide guidance to large organizations, in most cases publically-held or multinational entities. While the generalized principles in these documents are applicable to entities of all sizes and ownership composition, they do not necessarily apply without caveat to small and medium-sized family businesses which conduct the bulk of the world's business activity,⁵⁷ including those businesses in the developing world that are often the target of corrupt officials seeking bribes.⁵⁸

⁴⁹ For example, it is estimated that approximately forty national or international corporate governance codes relevant to the European Union have been adopted since the 1990s. European Bank for Reconstruction and Development, *Corporate Governance Sector Assessment Project*, REPORT ON 2003 ASSESSMENT RESULTS 5 (2004).

⁵⁰ The most influential set of corporate guidelines is perhaps the OECD PRINCIPLES OF CORPORATION GOVERNANCE (2004), which is endorsed by Transparency International as a tool for addressing corruption.

⁵¹ Caux Roundtable's *Principles for Business* are available at: <http://www.cauxroundtable.org/index.cfm?&menuid=8> (last visited Mar. 1, 2010).

⁵² Global *Sullivan Principles of Social Responsibility*, , <http://www.thesullivanfoundation.org/gsp/principles/gsp/default.asp> (last visited Mar. 1, 2010).

⁵³ The 2008 version is available at: http://www.sa-intl.org/data/n_0001/resources/live/2008StdEnglishFinal.pdf (last visited Mar. 1, 2010).

⁵⁴ United Nations, *Global Compact Against Corruption*, http://www.unglobalcompact.org/Issues/transparency_anticorruption/ (last visited Mar. 1, 2010).

⁵⁵ United Nations, *Convention Against Corruption*, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf (last visited Mar. 1, 2010).

⁵⁶ OECD, *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and Related Documents*, <http://www.oecd.org/dataoecd/4/18/38028044.pdf> (last visited Mar. 1, 2010).

⁵⁷ See Laura J. Spence & Robert Rutherford, *Small Business and Empirical Perspectives*, 47 J. BUS. ETHICS 1, 1 (2003).

⁵⁸ There are two broad observations about these guidelines: they are not tailored to small, medium and family businesses, and they are not scalable to fit those organizations. In other words, the model codes do not address issues of business size and simplicity. First, these guidelines are crafted for larger, multinational enterprises with a diverse ownership base and are of limited value for small and medium-sized family businesses. They are also most applicable to multinational corporations and not small localized businesses, which dominate developing economies. While this critique that certain governance propositions are not well-suited for SMEs and most family businesses may be levied on model codes of corporate governance, the same critique is true for other forms of external governance influences. Essentially, much of the purpose of corporate governance reforms is to promote transparency and accountability, yet those values are not always appropriate for

The recent proliferation of model corporate governance and ethics codes in developed countries has also been seen in developing countries.⁵⁹ In the Middle East there have been at least two completed country-specific attempts to produce a corporate governance code, in Lebanon⁶⁰ and in Egypt,⁶¹ with similar documents prepared for other jurisdictions.⁶² In addition, codes of ethics have also been somewhat popular in the Middle East, as elsewhere in the world. MENA stock exchanges or trade associations, such as with the Lebanese Businessmen Association's *Code of Business Ethics* (2004), sometimes develop these codes,⁶³ much like the better-known guidelines introduced by American stock exchanges.⁶⁴

Another potential source of pressure to develop, maintain, and improve corporate governance and ethics comes from outside financiers. For instance, sources of capital such as banks will insist on an appropriate level of transparency that allows them to adequately evaluate the risk of a loan and the value of collateral. Other such investors, who are more closely associated with developed markets, are equity investors, including venture capital investment firms.⁶⁵ However, simple equity investors who may wish to invest in a business by purchasing a fractional ownership stake, but remain in a passive role, are also examples of outside financiers.

The impetus to modify or strengthen corporate governance can also come from within the business organization. This internal influence on corporate governance comes from stakeholders, including shareholders, and (perhaps less likely) employees, made in response to other external changes. Notably, these are examples of voluntarily adopted, internally-driven corporate governance choices. However, the most influential factor consistently driving internal governance is the interests of

SMEs and particularly family businesses where, with these closely-held companies, the audience for information tends to be owners, who are simultaneously insiders.

Moreover, such top down, global north-originating attacks on corruption in developing economies risk seeming didactic and imperialistic. For a discussion of the cross-cultural moral implications of corruption control approaches in the law and ethics literature, see generally, Elizabeth Spahn, *International Bribery: The Moral Imperialism Critiques*, 18 MINN. J. INT'L L. 155 (2009).

⁵⁹ See European Bank for Reconstruction and Development, *supra* note 49.

⁶⁰ ABDELSATER-ABUSAMRA & BISHARA, *supra* note 26.

⁶¹ EGYPT CODE OF CORPORATE GOVERNANCE GUIDELINES AND STANDARDS (October 2005) (English Translation), http://www.hawkamah.org/publications/codes/files/egyptiancodeofcorporategovernance_eng.pdf (last visited Mar. 1, 2010).

⁶² See Hawkamah and International Finance Corporation, *A Corporate Governance, A Corporate Governance Survey of Listed Companies and Banks Across the Middle East & North Africa*, 13 n. 8 (2008).

⁶³ See, e.g., LEBANESE BUSINESSMEN ASSOCIATION (RDCL), CODE OF BUSINESS ETHICS (2004) (English translation) <http://www.rdcl.org.lb/CodeofEthicsText.pdf> (last visited Mar. 1, 2010).

⁶⁴ See, e.g., NYSE Euronext, *supra* note 44.

⁶⁵ See Hawkamah and International Finance Corporation, *supra* note 62, at 12 (arguing for the importance of corporate governance controls and improvements in the Middle East by citing evidence from various regions, as well as Egypt and Morocco from MENA, that well-governed companies are preferred by investors, who are willing to pay up to a 30% premium for shares of those companies).

shareholders.⁶⁶ For small and medium-sized enterprises and family businesses internally-derived governance decisions are a particularly important management tool. Unlike large public companies where a baseline of corporate governance may be somewhat standardized or as dictated by legal requirements, SMEs and family businesses have more freedom to develop a personalized model that fits their needs.

Similarly, the protection of minority shareholders' rights is especially an issue for SMEs and family businesses because functions of ownership and corporate control are so closely linked. For example, because the distance between ownership and control is relatively short and there are only a few shareholders within these organizations, an incoming minority shareholder is able to negotiate governance protections, such as buy-out provisions or a guaranteed spot on the company's Board of Directors. Even shareholders in large, publically-traded firms can positively influence the corporate governance and socially responsible choices of the companies they own. One example of this influence is recent efforts from members of the Rockefeller family to push for an emphasis on environmental responsibility through corporate governance changes at oil giant ExxonMobil.⁶⁷ Another emergent phenomenon related to shareholder salience, which is now entering the mainstream,⁶⁸ is the idea of corporate social reporting.⁶⁹

Even with all of the best practices in place, legal and corporate governance safeguards will not ensure ethical behavior on the part of every corporation or its internal stakeholders.⁷⁰ Nonetheless, the pro-ethics aspects of these various influences – both external and internal – will encourage ethical

⁶⁶ See Barry D. Baysinger & Henry N. Butler, *Corporate Governance and the Board of Directors: Performance Effects of Changes in Board Composition*, 1 J.L. ECON. & ORG. 1, 105 (1985) (“the separation of strategic and operational decisionmaking authority, which occurs in the multidivisionalized firm, serves to motivate senior managers toward the pursuit of shareholder interests as they are removed from operating responsibilities”).

⁶⁷ *Rockefellers Demand Exxon Corporate Governance Reform*, FINANCIAL TIMES, Apr. 29, 2008. Media reports detailed how representatives of “ExxonMobil's longest-continuous shareholder,” the Rockefeller family, “called a news conference in New York to question the company's past environmental policies and to press for corporate governance reforms, including an independent chairman and a stronger board.” The family was quoted as saying:

After years of working behind the scenes to encourage Exxon's management to approach its industry challenges in new ways, members of the Rockefeller family will publicly explain the concerns held by multiple generations of their family. A majority of the family is now so concerned about the direction of Exxon...that it is urging a major change in corporate governance.

Id.

⁶⁸ David Hess, *The Three Pillars of Corporate Social Reporting as New Governance Regulation: Disclosure, Dialogue and Development*, 18 BUS. ETHICS Q. 447, 447 (2008).

⁶⁹ See *Id.* at 453-456 (discussing the history and current state of corporate social reporting).

⁷⁰ Ethics scholars have noted that infamous ethical lapses like those at Enron were cultivated among the company's management despite Enron's comprehensive ethics code. Linda Klebe Trevino, *Symposium: Corporate Misbehavior By Elite Decision-Makers Symposium: Perspectives From Law And Social Psychology: Out Of Touch: The CEO's Role In Corporate Misbehavior*, 70 BROOK. L. REV. 1195, 1201 (2005) (“We have now seen that senior executives influence the characteristics of formal ethics management. Yet creating a formal ethics or legal compliance program, by itself, does not guarantee effectiveness. Recall that Enron had an ethics code and other aspects of a formal program”).

decision making among board members, managers, and other employees. Weak governance structures related to recordkeeping and accounting practices also create a situation ripe for corruption and other ethical violations. If a firm's finances are not transparent to its shareholders, then there is more room for unethical payments to be made to corrupt officials. This situation of weak governance also allows for other instances of fraud or unethical actions taken within the company's finances that favor certain insiders. An example of this would be preferential loans to officers, as in the case of Tyco, or outright hiding of losses, as was the case with Enron's off-book partnerships.⁷¹

Finally, the role of weak corporate governance in any of these aforementioned aspects will have a negative spillover on the ethical decision making of the firm, thus aiding in setting up an ethics constraint on the growth of the business. More crucial to the creation of the business ethics glass ceiling is the instance where the positive spillovers of these influences are absent. In other words, *weak* corporate governance can have important implications for ethical lapses. For example, prior to the enactment of the Foreign Corrupt Practices Act (FCPA) to address bribery of foreign officials by U.S. firms, the United States Department of Justice conducted an infamous survey, which found that over 300 U.S. firms admitted to paying bribes in the 1970s.⁷² This situation can be traced to a corporate governance and ethics failure in that, prior to the FCPA, U.S. companies did not keep accurate records of unethical payments, nor was there an ethical decision by managers and directors to refrain from making these bribes.⁷³

C. Social and Cultural Factors

The business ethics glass ceiling constraint can also, in part, come from social and cultural factors, both from within the firm and from outside. Corruption, for instance, may be more tolerated by the owners and managers of a family business because of their focus on profit making, assumptions about the pervasiveness of graft, or perhaps a failure of an ethics-based leadership at the firm.⁷⁴ Multinational companies (MNCs), which are most often the focus of corruption and governance research, may succumb to corruption because individuals in the organization want to maximize short-

⁷¹ A brief recount of these and other high-profile corporate frauds is found in Howard Rockness & Joanne Rockness, *Legislated Ethics: From Enron to Sarbanes-Oxley, the Impact on Corporate America*, 57 J. BUS. ETHICS 31 (2005).

⁷² SENATE REPORT OF THE BANKING, HOUSING AND URBAN AFFAIRS COMMITTEE, S. Rep. 95-114, 3 (1977). Specifically, a Securities and Exchange Commission (SEC) report "revealed corrupt foreign payments by over 300 U.S. corporations involving hundreds of millions of dollars." Following numerous hearings on the scandal, a Senate report concluded that a "strong antibribery law is urgently needed to bring these corrupt practices to a halt and to restore public confidence in the integrity of the American business system." *Id.* at 4.

⁷³ See, e.g., FCPA and related discussion, *supra* note 43.

⁷⁴ For a discussion of the role of a company's leadership in setting the proper ethical example, see generally, Mark S. Schwartz et. al, *Tone at the Top: An Ethics Code for Directors?*, 58 J. BUS. ETHICS 79 (2005).

term gains and fear they will not be able to compete without engaging in bribery. In other words, MNCs may conclude that, while they prefer not to pay a bribe, they feel compelled to do so in order to avoid losing business opportunities. The same reasoning applies to SMEs because those entities also do not want to take a stand and risk losing opportunities or becoming an example of an outlying organization targeted by corrupt officials to serve as a warning for other companies.

There may be a prevailing sense in the international business community that corruption is endemic in many cultures and paying bribes is an essential and inevitable cost of doing business in certain parts of the world.⁷⁵ The most significant cost associated with international bribery may be the impact on the government and deprived citizens,⁷⁶ however there is also an immense impact on corporations, particularly multinationals operating in developing countries.⁷⁷ This may also be fueled by sentiments that some firms are eager to pay bribes to secure an advantage over rivals and that firms that are unwilling to pay a bribe may lose business opportunities.⁷⁸ Accordingly, ethics and family enterprise scholars have worked to develop universal ethics guidelines and tools for corporations that work in multiple cultural settings in an attempt to transcend local customs and expectations.⁷⁹

From the perspective of SMEs and FOEs in developing countries, pervasive corruption can also be an accepted fact of life and an assumed, albeit lamentable, business reality. This leads to feelings of hopelessness in the face of corruption and provokes a reaction whereby the businesses in developing countries do not want to risk taking a stand against corruption. Essentially, this is evidence of a collective action problem because, in the aggregate, small businesses could unite in a powerful common

⁷⁵ Evidence of this sort of public sentiment is found in Transparency International's annual Corruption Perceptions Index, *supra* note 35, which surveys various decision makers, including international investors, about the level of perceived corruption in individual countries. *See also* Spahn, *supra* note 58 (discussing cultural imperialism concerns when developed world businesses and government impose anti-corruption rules on developing countries).

⁷⁶ Hess & Dunfee *supra* note 20, at 596.

⁷⁷ *See, e.g.*, Control Risks Group, Ltd. & Simmons & Simmons, *International Business Attitudes to Corruption – Survey 2006* (2006) at 5 (a recent consulting report on global corruption attitudes of multinationals revealed that 43% of the firms surveyed believed that they lost business to a competitor because the competitor paid a bribe). *See also* PricewaterhouseCoopers, *supra* note 30 at 3-4 (finding, in part, that almost two-thirds of the surveyed multinational companies surveyed encountered some form of corruption in a given year and that 80% of the respondents' companies have some corruption and prevention mechanisms, but only 22% have confidence in the ability those mechanisms to identify and mitigate corruption risk).

⁷⁸ For instance, a recent consulting report on global corruption attitudes of multinationals revealed that 43% of the firms surveyed believed that they lost business to a competitor because the competitor paid a bribe. Control Risks Group Ltd. & Simmons & Simmons, *supra* note 77, at 5.

⁷⁹ *See, e.g.*, Kenneth E. Goodpastor, *The Caux Round Table Principles: Corporate Moral reflection in a Global Environment*, in *GLOBAL CODES OF CONDUCT: AN IDEA WHOSE TIME HAS COME* (Oliver F. Williams, ed.), 183-195 (2000) ("The aspiration of the Caux Principles, and the Minnesota Principles before them, was to articulate a comprehensive set of ethical norms that could be embraced by businesses operating internationally and in multiple cultural environments"). at 184. Another example of a business ethics theoretical system which addresses cross-cultural decision making is the Integrative Social Contracts Theory developed by Professors Donaldson & Dunfee. *See generally*, DONALDSON & DUNFEE, *supra* note 12, at 213-233.

opposition to corruption, but coordinating that effort and overcoming the fear of risking individual corporate opportunities is difficult.

There are also social and cultural expectations in some regions where nepotism, and personal and family connections, are integral and accepted ways of business advancement. Examples of this phenomenon include the cultural concepts of *guanxi*⁸⁰ in China and *wasta*⁸¹ in the Middle East (which is discussed in Part IV).⁸² In addition other cultural influences may encourage ethical business practices. For instance, in the MENA region some banks and business may be required by law or religious conviction to adhere to Islamic lending practices which must adhere to a prohibition on charging interest, known as *riba*.⁸³ Rooted in religious doctrine, this prohibition may make it difficult to access capital in ways expected by Western firms, but *riba* can also be viewed as an ethical practice, which protects businesses from onerous loan schemes.⁸⁴

D. Political and Economic Factors

The business ethics glass ceiling is also influenced by the political and economic situation surrounding businesses. This is because a lack of political will to curb corruption or, worse, a political culture that facilitates corruption and a poor economy can contribute to business ethics failings as a constraint on business growth.⁸⁵

In terms of the economic situation of a region, there are indications that corruption increases during economic downturns, such as during the current global recession.⁸⁶ Countries that have suffered recent society-wide violence such as a civil war are also susceptible to corruption,⁸⁷ including within industries such as construction during a post-war rebuilding.⁸⁸ A brief look at the Transparency

⁸⁰ See Danielle E. Warren et. al, *Social Exchange in China: The Double-Edged Sword of Guanxi*, 55 J. BUS. ETHICS 355 (2004).

⁸¹ See CUNNINGHAM & SARAYRAH, *infra*, note 151.

⁸² For a comparison of the two concepts, see Hutchings & Weir, *infra* note 135 and accompanying text.

⁸³ See Mohammad H. Fadel, *Riba, Efficiency, and Prudential regulation: Preliminary Thoughts*, 25 WIS. INT'L L.J. 655 (2008) (for a detailed background discussion of *riba*). See also Haider Ala Hamoudi, *You Say You Want a Revolution: Interpretive Communities and the Origins of Islamic Finance*, 48 VA. J. INT'L L. 249, 262-63 (2008) (discussing the origins and rigid nature of the *riba* prohibition).

⁸⁴ See Ala Hamoudi, *supra* note 83, at 262-263 (discussing the negative Qur'anic connotations of *riba*, including equating the interest to theft and illicit and excessive profit taking).

⁸⁵ For a discussion of the interaction of legal and illegal relationships and corruption, see LAMBSDORFF, *supra* note 11, at 209-224.

⁸⁶ THE ECONOMIC TIMES, *Corruption Likely as Crisis Bites: Transparency International*, Jan. 14, 2009 (citing a January 2009 Transparency International study on leading exporters and the incidence of corruption).

⁸⁷ See, e.g., Daniel Large, *Introductory Survey: Corruption and Reconstruction After War* in from CORRUPTION IN POST WAR RECONSTRUCTION: CONFRONTING THE VICIOUS CYCLE, 32-55 (2005). See also, Vera Devine, *Corruption in Post-War Reconstruction: The Experience of Bosnia and Herzegovina*, *Id.* at 81-96; and Charles Adwan *Corruption in Reconstruction: the Cost of 'National Consensus' in Post-war Lebanon* *Id.* at 56-80 (discussing the rise of rampant corruption during the postwar reconstruction of Lebanon following the 1975-1990 conflict).

⁸⁸ See Devine; and Adwan, *Corruption in Reconstruction*, *supra* note 87.

International annual Corruption Perceptions Index (CPI) shows that poor countries in the developing world tend to have higher levels of perceived corruption.⁸⁹ Moreover, corruption has been cited as both a cause of poverty, as well as a byproduct.⁹⁰ High levels of perceived corruption cataloged in the CPI have even been correlated to violence within a society.⁹¹ In addition, the annual World Bank *Doing Business*⁹² reports contain aggregate country rankings on a country's business environment, which capture rule of law and business regulation indicators. These reports demonstrate that, again, poor countries in the developing world tend to fare poorly in the rankings as compared to developed nations.

Another political and economic influence on the business ethics glass ceiling and corruption is the public sector demand side for bribes. In this instance, a lack of effective enforcement and weak political will to fight corruption creates an environment ripe for bribe-asking, particularly in developing regions like the Middle East where entrenched political interests support corruption and associated ills such as nepotism.⁹³ Ironically, during political and economic shocks that are experienced by many developing nations SMEs and family businesses are integral to stabilizing society and business.⁹⁴ However, it is at those times that these businesses are least insulated from corruption and other challenges to organizational-level business ethics. This situation, in turn, increases the likelihood of a glass ceiling to growth for SMEs and family businesses facing corruption because businesses wish to stay below the corruption radar and are more concerned with self-preservation and family interests than growth.

⁸⁹ See Rajib N. Sanyal & Subarna K. Samanta, *Determinants of Bribery in International Business*, 46 THUNDERBIRD INT'L BUS. R. 133 (2004).

⁹⁰ See, e.g., Transparency International, *Working Paper No. 2/2008: Poverty and Corruption 2* (2008).

("A stocktaking of both past and current efforts to reduce poverty suggests that corruption has been a constant obstacle for countries trying to bring about the political, economic and social changes desired for their development. Across different country contexts, corruption has been a cause and consequence of poverty").

⁹¹ See TIMOTHY L. FORT & CINDY A. SCHIPANI, *THE ROLE OF BUSINESS IN FOSTERING PEACEFUL SOCIETIES* 13-19 (2004).

⁹² WORLD BANK & INTERNATIONAL MONETARY FUND, *DOING BUSINESS* (2009).

⁹³ See, e.g., *Corruption Denies Job Opportunities*, THE DAILY STAR, Feb. 3, 2010, editorial ("assigning blame... to [the] entire [Lebanese] political class" for creating and failing to fight corruption and for the problem of rampant political nepotism).

⁹⁴ For a comment on the destabilizing impact of corruption in the Middle East, see *Id.*, stating:

It's easy to moralize about the daily corruption that we see or hear about, but it's much more difficult to tackle the practical need for fighting corruption and enlarging the economic pie for everyone. This is particularly true in a region where so many people are under the age of 25, and steadily and rapidly entering the job market. Providing jobs is simply critical for domestic stability, and stemming corruption is way to boost this stability. People need jobs and they should be provided before they're demanded; desperate people are more prone to do desperate things to secure a decent living.

III. Corporate Governance, Business Ethics, and Stakeholders in Family SMEs

To fully understand the importance of the business ethics glass ceiling in the Middle East, it is first necessary to explain the role and significance of the dominant business model in the region: small and medium family businesses. The definitional parameters, importance, and the place of these businesses in the Middle East are discussed in this section.

A. Defining SMEs and Small and Medium-Sized Family Businesses

Family-owned enterprises (FOEs) are businesses that are owned primarily by individuals who are related, and thus have family ties that may influence the decision-making of the owners beyond the usual wealth-maximizing concerns of the typical shareholder.⁹⁵ There is general agreement in the academic literature with the intuitive conclusion that family involvement in the business is the defining characteristic of a “family business.”⁹⁶ Literally, a family enterprise is owned and controlled by members of the same nuclear or extended family.⁹⁷ Many were started by one generation and have been passed down to the next, and perhaps onto successive generations.

Family businesses may be large publically traded companies that are controlled by a family, although most are small and privately held. In the aggregate, these entities have an enormous impact on a country’s economy. In the U.S., for example, some FOEs have grown far beyond being medium-sized, such that a large percentage of *Fortune 500* companies are individually or family-controlled.⁹⁸ This paper, however, is concerned with family enterprises that are also SMEs. While there are numerous definitions for what entities qualify, small and medium enterprises are usually defined with reference to the number of people they employ, although some measures include the company’s finances as another indication of overall size relative to other enterprises.⁹⁹

⁹⁵ Jess H. Chua et. al, *Defining the Family Business by Behavior*, 23 ENTREP. THEORY & PRAC. 4 (1999) (providing an extensive review of existing definitions of “family business”).

⁹⁶ *Id.*

⁹⁷ For greater detail on a definition of family businesses, see Peter Davis, *Realizing the Potential of the Family Business*, 12 ORGANIZATIONAL DYNAMICS 47 (1983). In explaining what sorts of entities qualify as a family business Davis writes:

Family businesses are those whose policy and direction are subject to significant influence by one or more family units. This influence is exercised through ownership and sometimes through the participation of family members in management. It is the interaction between two sets of organization, family and business, that establishes the basic character of the family business and defines its uniqueness. Family and business combine to produce a joint system operating according to rules derived from the needs of separate parts but adapted to the needs of the whole.

Id. at 47-48.

⁹⁸ Manfred F.R. Kets de Vries, *The Dynamics of Family Controlled Firms: The Good and the Bad News*, 21 ORGANIZATIONAL DYNAMICS 59, 61 (1993).

⁹⁹ In the United States for instance, it is generally accepted that small businesses have between 0 (i.e., a sole proprietorship) and 19 employees, and medium-sized firms have between 20-499 employees, with large businesses having 500 or more

A typical SME (family owned or otherwise) might, particularly in the developed world, be organized as a corporation. However, a family profit-generating enterprise could also be set up, if formally incorporated at all, as other entities such as a registered partnership, limited liability company, or joint-stock company. In this analysis, the specific legal format is of little significance as long as there is a corporate governance structure consistent with the size of the entity. Because of their small size SMEs are almost certainly not a “listed” company, with its shares being made available to the public through a stock exchange.¹⁰⁰

These entities can also be understood by pointing out what they are not. They are not large firms and, therefore, do not have the concerns associated with managing large numbers of diversely-employed workers, and they may not have to face certain regulations reserved for larger firms. There is also the likelihood that they have a core business mission, rather than producing dozens of diverse products or providing services that cross cut industries. Most importantly the “distance” between owners, managers, and employees is less, or even nonexistent if those stakeholders consist of the same individuals.¹⁰¹

B. The Importance of Small and Medium Family Firms

SMEs (whether or not they are family-owned) are crucial to a nation’s economy. First and foremost is the fact that, in both developed and developing nations, SMEs make important contributions to employment and to the economy as a whole. As scholars arguing for a greater focus on the business ethics of small businesses have observed:

employees. W. Mark Crain, SBA Office of Advocacy, *Small Business Research Summary: The Impact of Regulatory Costs on Small Firms* (2005). The European Union’s SME definition, established in 2003, provides that medium enterprises have fewer than 250 employees, small enterprises have fewer than 50 employees, and micro enterprises have fewer than 10 employees, in addition to flexible financial ceilings. European Union, *Definition of Small and Medium Enterprises* (2003), http://ec.europa.eu/enterprise/enterprise_policy/sme_definition/index_en.htm (last visited Mar. 1, 2010). The European Union defines an “enterprise” simply as “any entity engaged in an economic activity, irrespective of its legal form.” *Id.* at 12.

¹⁰⁰ For an understanding of the corporate governance issues related to family SMEs the absolute preciseness of the definition of a small and medium enterprise or a family-owned enterprise is not crucial. This is not, however, an argument for an amorphous, “I know it when I see it,” case-by-case approach. Rather, this paper is looking at the role and impact – and governance and ethical implications – of archetypal SMEs and family businesses that are also small or medium-sized. There is, however, obvious overlap between SMEs and most family enterprises. Many entities are both an SME and family-owned, and a given entity can also fit one definition, but not the other. Most family-owned and controlled enterprises are not large enterprises, in part because large businesses usually have grown by selling proportional ownership rights, thus creating a large shareholder base beyond the family and trust networks with which to spread risk.

¹⁰¹ Finally, it should be noted that the above distinctions between types of firms are based on generalizations about the majority of firms. The permutations of possible governance structures (and the attendant implications for business ethics) are numerous, as are the options with regard to size in terms of revenue or market power, number of employees, or ownership format. A small family-owned company might technically be a multinational corporation because it operates in its home country as well as internationally with a small foreign office or staff. Similarly, a large multinational corporation could still be owned, or at least controlled, by a single family. Prominent large family businesses include Cargill and Wal-Mart. *See, e.g.,* DANNY MILLER & ISABELLE LE BRETON-MILLER, *MANAGING FOR THE LONG RUN: LESSONS IN COMPETITIVE ADVANTAGE FROM GREAT FAMILY BUSINESSES* (2005). In reality, these are exceptions to the rule of how large or cross-national companies evolve and grow in size to be competitive and benefit from economies of scale, as well as from the separation of ownership and control.

Even the most casual glance at the industrial statistics of developed countries clearly demonstrates that small business contribute around 50 per cent of private sector employment and account for between 96 and 99 per cent of business in OECD countries. This sector is seen as the primary contributor to productivity growth, innovation and job creation.¹⁰²

These small firms are an important source of economic growth in developing nations because SMEs, particularly as they grow, can also attract crucial capital inflows of Foreign Direct Investment.¹⁰³ Small businesses also have important societal impacts. By some measurements, small and medium businesses contribute more to the public good than do larger businesses. In the U.S., for instance, small (defined by having fewer than 20 employees), and particularly medium-sized (with 20-499 employees), businesses bear a disproportionately higher per employee federal regulatory burden than large businesses (500 or more employees).¹⁰⁴

In recent years, corporate social responsibility and business law scholars have also argued that business activity and economic growth are essential to peace, political stability, and human development.¹⁰⁵ In general, these commentators maintain that multinational corporations have a significant role to play in this endeavor.¹⁰⁶ However, if business is indeed a mediating institution that can provide moral knowledge (typically provided by family, neighborhoods, religious groups, or volunteer organizations),¹⁰⁷ it follows that SMEs (and certainly small and medium family enterprises) and their potentially tight-knit work communities are also vehicles for such ethical knowledge transfer.

From a purely practical standpoint, family businesses can serve as repositories of wealth for individuals desiring to place their capital somewhere relatively safe in hard assets. This function may be particularly salient for indigenous investors in developing countries who want to take an active role in managing a business, but who otherwise might find it unsafe to keep their assets in local banks or in other local investments controlled by non-relatives outside of their trust networks. Additionally, the Organisation for Co-operation and Development (OECD) has found a wealth of evidence of the so-called SME financing gap, as compared to larger entities' abilities to raise capital. As this report put it:

Access to finance is regularly cited as the most serious obstacle, with little variation among regions of the developing world. An additional fact corroborating the positive correlation between firm size and the severity of the credit constraint is the ease of access to bank credit reported by

¹⁰² Spence & Rutherford, *supra* note 57, at 1 (citing 2001 and 2002 OECD reports on small business and firm creation and entrepreneurship) (citations omitted).

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 4.

¹⁰⁵ See, e.g., FORT & SCHIPANI, *supra* note 91.

¹⁰⁶ See, e.g., Donald O. Mayer, *Corporate Governance in the Cause of Peace: An Environmental Perspective from the Symposium: Corporate Governance, Stakeholder Accountability, and Sustainable Peace*, 35 VAND. J. TRANSNAT'L L. 585 (2002) (arguing that multinational corporations have a role and a duty as co-creators of peace, including creating the proper incentives and laws for environmental sustainability).

¹⁰⁷ See FORT, ETHICS AND GOVERNANCE, *supra* note 22 at 8.

larger firms. According to [the World Bank's *World Business Environment Survey*] data, the share of bank credit as a percentage of total financing is systematically lower for SMEs [citation omitted]. Small firms rely proportionally more on non-bank sources of financing such as internal funds (savings, retained earnings, family networks) and the informal sector (money lenders).¹⁰⁸

It is in the context of these existing obstacles the corruption constraint on growth adds yet another layer of barriers to accessing financing, although the role of corruption as an overlay to and cause of this situation is not usually discussed as such.

C. Organizational Size and its Relationship to Business Ethics and Corporate Governance

As a threshold issue, small and medium-sized business growth is adversely impacted by corruption, legal, and financing constraints. In a leading study of these constraints on small and medium-sized firms, a group of World Bank economists found that each of these factors had a negative impact on the sales growth of SMEs around the world and the impact was greater in SMEs than larger entities.¹⁰⁹ The study also concluded that improvement to local institutions and greater access to financing would have the greatest impact on SMEs.¹¹⁰

An important difference between large and small businesses is the fact that small firms are likely to be owner-managed.¹¹¹ In other words, one of the crucial features of large, public companies is the ability to tap into loaned capital by separating ownership (shareholders) and control (management). A perceived lack of focus on small business ethics issues has been called a “fundamental flaw” in existing ethics research.¹¹² In terms of ethics implications, the fact that small firms are most likely owner-managed “provides greater scope for individual beliefs and moral decision making to affect the practices as a whole. In addition, the social relationships and networks in which these owner managers are entwined cannot be separated from the business.”¹¹³ Some research also suggests a relationship between increased firm size and the incidence of corporate crime.¹¹⁴

Large organizations tend to be more bureaucratic, and their success may even be tied, in part, to their ability to act impersonally as compared to a smaller, local company with a personal connection to a community. For example, a large company might be more likely to make a decision to close a facility based only on a principle of profit-maximization, while a small, locally connected one would consider

¹⁰⁸ ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 16, at 23.

¹⁰⁹ Beck et. al, *supra* note 15.

¹¹⁰ *Id.*

¹¹¹ Spence & Rutherford, *supra* note 57, at 1.

¹¹² *Id.* at 4.

¹¹³ *Id.* at 1-2.

¹¹⁴ See Dan R. Dalton & Idalene F. Kesner, *On the Dynamics of Corporate Size and Illegal Activity: An Empirical Assessment*, 7 J. BUS. ETHICS 861 (1988).

the community as a stakeholder.¹¹⁵ A large enterprise may also subvert an individual's impulse to act in a socially responsible manner because those acts are inconsistent with the thrust of the organization's control systems.¹¹⁶ The difference in market power between large and small firms also creates an ironic situation where larger firms may have the resources to be socially responsible and the freedom to make ethical decision making a priority, but are constrained from doing so by shareholders' financial concerns and internal controls. In contrast, small firms may lack the power to have a significant impact, even if they are more likely to want to act responsibly.¹¹⁷

In a family business, the core internal stakeholders are closely connected to one another and to the entity.¹¹⁸ Thus, from a corporate governance perspective, these organizations need internal management rules that serve their unique needs and address common stumbling blocks. Because small and medium-sized organizations are compact in their management and ownership structure, there is often overlap between stakeholders such that the ethical treatment aspect inherent in stakeholder theory becomes strained. For example, in a small family company, a single individual is likely to be, simultaneously, a shareholder, a manager, and an employee. Moreover, in a family business, that person might be related by blood or married to another similarly situated stakeholder, thus complicating business relationships with existing familial loyalties or, perhaps, tensions.

This closeness can be both an advantage and disadvantage to an organization. For small FOFs these include benefits (compared to non-family-controlled businesses) such as the organization having greater independence of action because of less outside pressure, less bureaucratic (and thus more flexible and immediate) decision making, institutional knowledge and knowledge sharing, resilience, a long-term orientation, and the potential for great financial rewards.¹¹⁹

However, the injection of family priorities and personalities into family businesses has potential disadvantages as compared to non-family firms. These include financial issues such as difficulty in accessing capital, (which limits growth) and the potential for family members taking out disproportionately more resources from the company than they contribute.¹²⁰ Other issues that impact family businesses include outside family disputes and rivalries spilling over into the organization's management, nepotism that may lead to poor management, succession uncertainty, and secretive and

¹¹⁵ Marc T. Jones, *The Institutional Determinants of Social Responsibility*, 20 J. BUS. ETHICS 163, 169 (1999).

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 170.

¹¹⁸ See Chua et al., *supra* note 95.

¹¹⁹ See Kets de Vries, *supra* note 98, at 61.

¹²⁰ *Id.*

change-resistant, paternalistic management.¹²¹ Moreover, the family business norm of nepotism runs counter to notions of fairness and equal treatment of stakeholders.

It has been argued that in large organizations, such as large multinational corporations, decentralization of decision making is important for fostering ethical outcomes.¹²² This is, in part, because better ethical decisions may be made when there is trust among individuals and the decision maker in the organization is as close to the problem as possible.¹²³ Moreover, other research suggests that interactions at work can fill the role of satisfying an individual's associational needs.¹²⁴

In the case of small and medium family businesses, because, by definition, there are fewer possible decision makers than within large firms there is a reduced concern of top-heavy, disinterested, and morally-devoid decision making by disconnected managers. Small businesses that are also family enterprises have the added benefit of not only having a short distance between problems and decision makers, but also the built-in community factor by being organized around individuals who are bound by familial ties. Finally, as discussed below, many of the high-level governance best practices for large, publically traded corporations with a pronounced separation of ownership and management, and where financial transparency and accountability is paramount for shareholders and regulators, are inapplicable to small and medium family business.

D. Small and Medium-sized Family Enterprises in the Middle East

The majority of business and corporate entities in the Middle East and North Africa are family enterprises and SMEs.¹²⁵ Accordingly, the scope and importance of the small and medium-sized family business sector in the Middle East is comparable to the role of those entities discussed above in other parts of the world. Also of note is that in many MENA countries, including Lebanon, the utilities (such as electricity and most telecommunications companies) are still state-owned enterprises. Therefore, those potentially large private sector companies are exempted from market forces and exist outside of private sector corporate governance best practices. While the Lebanese Ministry of Economy and Trade does not publish exact SME numbers on an ongoing basis, a Ministry-sponsored review reports that “Lebanon’s private sector is highly dominated by small and medium enterprises, where enterprises employing less than five individuals make up as high as 88% of the total number of enterprises” and “[i]f enterprises of less than 200 employees are considered, then over 99% of Lebanese enterprises are

¹²¹ *Id.*

¹²² FORT, ETHICS AND GOVERNANCE, *supra* note 22, at 34.

¹²³ *Id.*

¹²⁴ *Id.* at 34-35.

¹²⁵ See Nasser Saidi, *Corporate Governance in MENA Countries: Improving Transparency and Disclosure* 27 (2004).

SMEs” and provide about half of the country’s total employment.¹²⁶ Other regional governance experts have estimated that 90% of the SMEs in Lebanon are individual or family-owned, and 85% of industrial companies have less than 10 employees.¹²⁷ Compared to other regions MENA “has some of the largest family-owned businesses in the world and a disproportionate number of privately held businesses.”¹²⁸

In the Middle East governance experts believe that improved governance “should be viewed as a tool and investment for the MENA countries as they seek to raise economic growth rates, improve the wealth and prosperity of their citizens and improve the social and economic prospects of future generations.”¹²⁹ In Lebanon, for instance, there has been much focus in recent years on surveying SMEs and family businesses and creating initiatives addressing their needs.¹³⁰

Similarly, when it comes to business financing there are findings that inadequate access to capital is a significant problem for MENA businesses, as is a lack of entrepreneurial capacity, poor credit history, and a minimal track record of entities actually seeking financing.¹³¹ MENA SMEs also tend to have a record of poor regulatory reporting, “confusion between the SME’s assets and the assets of the entrepreneur,” and “SME’s business plans are not strategic but rather based on the specific goals or personal preferences of the entrepreneur (ie [sic] projects with low expected returns).”¹³² As in other developing regions, there is evidence that an SME financing gap in the Middle East due to, among other factors, the failure to have corporate governance structures consistent with international norms.¹³³ Also symptomatic of the region is a failure of private equity to fund SME growth or takeovers.¹³⁴

¹²⁶ Consultation & Research Institute, *SMEs Business and Market Review, Final Report* 12 (2006) (in addition, “[b]ased on this essential role played by SMEs in developing countries like Lebanon, creating an environment that fosters competition, innovation and growth for SMEs is crucial for the economic well-being of the country”). *Id.*

¹²⁷ Saidi, *Corporate Governance & Business Ethics in Lebanon*, *supra* note 25.

¹²⁸ World Bank & International Finance Corporation, *Doing Business in the Arab World 2010*, *supra* note 7, at 40.

¹²⁹ See Saidi, *Corporate Governance in MENA Countries*, *supra* note 125.

¹³⁰ *Id.*

¹³¹ Commission of the European Communities, *Access to Finance for SMEs of the Middle East-North Africa Region*, EXPERTS GROUP REPORT 10 (2006).

¹³² *Id.*

¹³³ As the authors of an OECD report indentifying an SME financing gap put it:

In many emerging markets, such as Asia, Latin America and the Middle East, there are large numbers of companies that are family-owned and controlled with limited transparency and that generally do not operate under international norms of corporate governance and investor protection. While some companies may be profitable, they are often ill-equipped to address issues such as expansion of capital, strategic repositioning or succession. Additionally, the owners of such companies may find it difficult to realise value from their investments.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 16 at 94.

¹³⁴ *Private Equity: Maghreb, Opportune Shores*, 113 EXECUTIVE (REGIONAL BUSINESS YEARBOOK) 114, 118 (2008) (“Small-and-medium-sized enterprises, which North Africa has in abundance, are often undervalued and need some private equity”).

Although it is not addressed as a discrete topic in this paper, the issue of religion and how religious ethics have implications for business activity external governance is also important in MENA business culture.¹³⁵ The obvious example is the pervasive influence of Islamic thought and practice on business financing, to varying degrees, in the region. For instance, Islamic financing constraints are relatively rare and would be voluntary in Lebanon, a country with a large Christian and significant secular Muslim population, but are mandated by law in religiously observant countries such as Saudi Arabia. Even where Islam has an important influence on business ethics and practice, as in Egypt, there can be a split between ethical ideals and business practice based on the realities of economic life and individual hardship.¹³⁶ Some religiously rooted obstacles to traditional Western-style financing, such as the well-known Islamic prohibition on charging interests on loans (known as *riba*),¹³⁷ may also be problematic for family businesses because they cannot access capital markets to take on equity investors due to their modest size and lack of governance infrastructure.

The business atmosphere and “ease of doing business” in a given country is directly related to that country’s legal framework and enforcement mechanisms – these include the ability to predictably enforce contracts, the number of procedures necessary to start a business, the ease of hiring and firing workers, and investor protections.¹³⁸ With these rule of law barometers as a starting point Ian Ayres and Jonathan Macey have sharply critiqued the structural problems leading to economic stagnation in the Middle East.¹³⁹ They argue that there are deep-rooted historical reasons and current political obstacles in the Middle East that serve to oppose the democratizing business forces that have taken hold in the West. Specifically, they argue that despotic and entrenched Arab leaders have promoted bureaucratic and legal obstacles – including long incorporation processes, corrupt officials, and high initial capital requirements – that have stymied the rise of modern corporations in the Middle East.¹⁴⁰ They also perceive a strong aversion in the Arab world to taking business risks because of the serious reputation injury in Arab culture that comes with failure. Therefore, they argue, the all-important risk-taking spirit of the developed world, which is unleashed by widespread use of the corporate form, is largely absent from the MENA region.¹⁴¹

¹³⁵ See generally Kate Hutchings & David Weir, *Guanxi and Wasta: A Comparison*, 48 THUNDERBIRD INT’L BUS. REV. 141 (2006).

¹³⁶ See generally Gillian Rice, *Islamic Ethics and the Implications for Business*, 18 J. BUS. ETHICS 345 (1999).

¹³⁷ See Fadel and Ala Hamoudi, *supra* note 83 (discussing the *riba* concept and application).

¹³⁸ See THE WORLD BANK’S DOING BUSINESS REPORT, *Doing Business in 2005*, 1-25, 49 (2005). See also WORLD BANK & INTERNATIONAL FINANCE CORPORATION, *Lebanon Country Table*, DOING BUSINESS 2009: COMPARING REGULATION IN 181 ECONOMIES 116 (2008).

¹³⁹ See Ayres & Macey, *supra* note 3.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 397-99 and 403-04.

IV. The Ethical Glass Ceiling for Family Business in the Middle East, with a focus on Lebanon

This section builds on the theoretical framework of the business ethics glass ceiling and applies it to the corporate governance and ethics situation of businesses in the Middle East. Following this initial discussion, several suggestions for changes to corporate governance in the region are presented, as well as a call for additional research into the area of corporate governance and ethics to address the problem of a business ethics glass ceiling constraining growth.

A. Corporate Governance and Business Ethics Shortcomings in the MENA Region

The available legal frameworks in MENA related to reforms for good corporate governance have multiplied in recent years,¹⁴² but still do not guarantee the level of governance required for well-managed and ethical organizations, including family businesses. The international best practices contained in the model governance codes mentioned above are an important first step.¹⁴³ However, the MENA economic historian Timur Kuran argues that “transplanting a legal code or institution is not the same thing as appropriating the entire social system that produced it...[t]he performance of a legal code depends on the norms, other complementary institutions, and capabilities of the community putting it to use.”¹⁴⁴

Other researchers have drawn the conclusion that, despite some gains due to governance reforms, the Middle East lags behind the developing world in terms of economic growth because of macroeconomic weaknesses.¹⁴⁵ Corporate law scholars have also recently argued that institutional and systematic failings related to the discouraging of risk-taking through the use of the corporate form and limited liability has stifled economic growth and democratization in MENA.¹⁴⁶ In explaining these problems they point to political opposition in the Middle East to the formation of small businesses because a successful middle class would jeopardize entrenched, autocratic political leaders who fear seeing their control diminished.¹⁴⁷

¹⁴² Hawkamah and International Finance Corporation, *supra* note 62, at 13 n. 8.

¹⁴³ See, e.g., ABDELSATER-ABUSAMRA & BISHARA, *supra* note 26 (a Lebanon-specific MENA country code of corporate governance utilizing the OECD *Principles of Corporate Governance*).

¹⁴⁴ Timur Kuran, *Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation*, 18 ECON. PERSP. 71, 86 (2004) (also arguing that the French Civil Code imported to the Middle East in the 1850s failed to take root for the same reasons).

¹⁴⁵ See Mustapha Kamel Nabli & Marie-Ange Veganzones-Varoudakis, *Reforms and Growth in MENA Countries: New Empirical Evidence*, WORLD BANK REPORTS (May 2004).

¹⁴⁶ See Ayres & Macey, *supra* note 3.

¹⁴⁷ See *Id.* at 399, arguing that, despite the ease with which limited liability corporate forms could be allowed, “[m]any Middle Eastern countries...have steadfastly resisted efforts at substantive reform and still place substantial roadblocks in the path of small-business creation.” In addition they argue that:

Consistent with that view, one study found that Jordan, Morocco, and Egypt are generally compliant *in theory* with OECD principles of good corporate governance, but deviate *in practice*.¹⁴⁸ As one would expect, rule of law and property rights are important for family business growth and financing, and there is “evidence that poor corporate governance (and underdeveloped financial and legal systems and higher corruption) means (a) the growth rate of the smallest firms is the most adversely affected and (b) less new, and particularly small firms, start up.”¹⁴⁹

However, in other MENA countries, for instance Lebanon, the corporate governance legal framework is not even on its face up to international best practices with regard to two crucial areas: 1. minority shareholder rights, and 2. fiduciary duties, including the duty of loyalty that can ameliorate conflicts of interests. The details of this deficit in existing Lebanese corporate governance law and practice – and the impact it has on an ethics cap on business growth – are discussed in the next subsection.

Concepts of corporate governance, and for that matter good governance in general, are somewhat new to the Arab world.¹⁵⁰ Also crucial to understanding the ethics and stakeholder interaction in the region is an Arab cultural phenomenon inherent in the close-knit family and sectarian culture of the Middle East called *wasta*.¹⁵¹ *Wasta* is a concept that defies easy translation, but is at its essence a notion of family obligation and nepotism or social power and influence.¹⁵² It is a form of socially obligatory nepotism bordering on family-centered corruption that becomes more clearly an issue when family members or others with close social ties are able to exercise their influence with public officials to achieve private gain. One example of *wasta* rising to a level of corruption would include a government official exerting influence to ensure the hiring of a relative, despite stated guidelines for a system of merit-based hiring. Another example of against the rule corruption is a scenario in which a public official grants special benefits (or looks the other way to avoid enforcement with an issue like tax

under certain conditions prevalent in Middle Eastern politics, it would be irrational for the ruling coalitions to encourage small-business entrepreneurship [because] increasing the number of small businesses would lead to a rise in the middle class, which in turn would create destabilizing pressures for democratic reforms. In addition, new business would bring increased competition to the existing firms that, by definition, provide political support to the incumbent ruling class.

Id.

¹⁴⁸ Najib Harabi, *State of Corporate Governance in Arab Countries: An Overview*, UNIVERSITY OF APPLIED SCIENCES, NORTHWESTERN SWITZERLAND PRELIMINARY PAPERS 18 (February 2007), http://mpra.ub.uni-muenchen.de/4566/1/MPRA_paper_4566.pdf (last visited Mar. 1, 2010).

¹⁴⁹ *Id.* at 18.

¹⁵⁰ Even the mere notion of “governance” in the usual Western legal sense has been difficult to literally translate into the Arabic language and local dialects. See Charles D. Adwan, *Translating ‘Governance’ into Arabic*, 1 WORLD BANK MENA GOVERNANCE NEWS AND NOTES 9, Nov. 2007.

¹⁵¹ See generally ROBERT B. CUNNINGHAM & YASIN K. SARAYRAH, *WASTA: THE HIDDEN FORCE IN MIDDLE EASTERN SOCIETY* (1993).

¹⁵² See Hutchings & Weir, *supra* note 135.

collection) to close associates, to the detriment of other businesses or even specific business competitors. Because of *wasta*'s general acceptance in Arab culture, it is an important issue for SMEs, and particularly family businesses.

B. Case Study: The Lebanese Corporate Governance Deficit

1. A Brief Cultural, Historical, and Business Background

Located on the eastern-most edge of the Mediterranean Sea, Lebanon has historically existed at the intersection of Western and Eastern cultures, religions, and business practices. It is a geographically tiny, Arabic-speaking Middle Eastern country with a population of approximately 4 million.¹⁵³ As one author put it, "Lebanon is cursed by its size. Its population of disparate identities, each harboring conflicting aspirations and fears, is trapped within the country's scant four thousand square miles."¹⁵⁴ The Lebanese Civil War (1975-1990) has been followed by relative calm and massive infrastructure reconstruction,¹⁵⁵ although the summer 2006 conflict with Israel and perennial political instability, which reached a crescendo in 2007-08, have been setbacks to that rebuilding effort.

Unlike the Gulf Cooperation Countries (GCC) around the Persian Gulf with their oil-dependent economies, Lebanon's topography of sea and mountains is much like the coast of other Mediterranean nations. It has traditionally been a nation of merchants, in part because of the central location and because the country is without natural resources like oil, although Lebanon is noteworthy among MENA nations for its significant amount of freshwater and sea access. The Lebanese economy has become dependent on "market services" such as banking, trade, manufacturing, and "non-market services" such as tourism, and to a lesser extent, construction related to the post-war rebuilding of the country's infrastructure.¹⁵⁶

The flood of international investment and aid that poured in at the conclusion of the Lebanese Civil War created a massive amount of infrastructure reconstruction projects, particularly in the Beirut Central Business District.¹⁵⁷ Unfortunately, the influx of capital created an immense target for corruption with the innumerable transactions and government interactions related to construction

¹⁵³ See CIA World Factbook, *Republic of Lebanon* (2010), <https://www.cia.gov/library/publications/the-world-factbook/geos/le.html> (last visited Mar. 1, 2010).

¹⁵⁴ See SANDRA MACKEY, *LEBANON: DEATH OF A NATION* 17-27 (1991) ("Lebanon is literally the bridge between east and west") (discussing the historical roots of modern-day Lebanon). *Id.* at 18. See generally, CAROLYN L. GATES, *THE MERCHANT REPUBLIC OF LEBANON: RISE OF AN OPEN ECONOMY* (1998) (an expansive study of the development of the Lebanese economy through the 1950s).

¹⁵⁵ For a detailed account of the Lebanese Civil War, see generally, ROBERT FISK, *PITY THE NATION: THE ABDUCTION OF LEBANON* (2002).

¹⁵⁶ See Ministry of Economy and Trade statistics, 1997-2003, <http://www.economy.gov.lb> (last visited Mar. 1, 2010).

¹⁵⁷ For a critique of the handling of the exigencies of post-war reconstruction including the ownership and financing of the two Solidere reconstruction companies, see Adwan, *supra* note 87.

contracts and other allocations.¹⁵⁸ Lebanon has also made efforts to comply with requirements to join the international trade regimes, including entering the Euro-Med trade agreement with the European Union.¹⁵⁹

In Lebanon, as in other parts of the developing world, corruption poses a significant threat to economic growth. Transparency International, the leading global anti-corruption NGO, ranks Lebanon as 130 of 180 countries in its most recent Corruption Perceptions Index, making it only ahead of Libya, Yemen, and Iraq within the overall low-ranking MENA region.¹⁶⁰ In furtherance of the business needs and expediency, businesses end up greasing the wheels of government to obtain licenses or avoid taxes or fines. As a result, these companies are trapped in a cycle of paying bribes for public services and bureaucratic actions which they are already entitled to under the law. Although the financial cost of corruption is difficult to quantify because of its illicit nature, one NGO study found that, on average, 6% of the annual sales of Lebanese companies are spent on paying bribes.¹⁶¹ The suffocating impact of rampant corruption on the Lebanese economy is well-recognized by various institutions, such as the press.¹⁶²

Compared to many of its regional neighbors, pre-war Lebanon had relatively sophisticated commercial laws and enforcement based mainly on the French civil law system. However after the conflict Lebanon was left with a set of business laws that were up to date for the 1960s, but not modernized to deal with globalization best practices related to transparency and corruption. Since the 1990s and the end of the Lebanese Civil War, corporate governance reforms have taken place, particularly as applied to the banking sector and the “on the books” regulation of the re-opened Beirut Stock Exchange.¹⁶³ There are few Lebanese public companies; therefore there are a limited number of firms which would necessarily feel market pressure to be transparent and accountable. There are only eleven companies listed on the Beirut Stock Exchange (BSE): Solidere S.A.L. (I and II), the

¹⁵⁸ *Id.*

¹⁵⁹ For a discussion of the uncertain benefits of the agreement, see *The Impact of the Euro-Med Agreement on Lebanese Companies*, INFOPRO CENTER FOR ECONOMIC INFORMATION (2003).

¹⁶⁰ TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2009, *supra* note 35. Despite some progress in the last few years, Lebanon’s ranking fell 28 places from the previous year, indicating an increase in at least the perceived level of corruption.

¹⁶¹ Roumani, *supra* note 1.

¹⁶² See, e.g., *Corruption Denies Job Opportunities*, THE DAILY STAR, *supra* note 93, commenting that:

While corruption might be a national disease in the Arab world, the traditional picture – petty bureaucrats on the take – isn’t where we should focus. We’ve reached the point where we need to create, with United Nations endorsement and backed by sufficient studies, an initiative to generate millions of jobs for our region. This is where corruption has its impact. It shrinks the economy and doesn’t create jobs, unless they’re in the parallel economy, of no benefit to the state and the rest of society.

¹⁶³ The Beirut Stock Exchange governing by-laws are available at: <http://www.bse.com.lb/bse.htm> (last visited on Mar. 1, 2010).

reconstruction and development entity for the Beirut Central Business District, six banks, one trading company, and three industrial manufacturers, as well as two bond and investment funds.¹⁶⁴ In total, there are 26 listed stocks and, as of November 2007, the entire BSE market capitalization was a modest \$8.7 billion (USD).¹⁶⁵

The governing commercial law in Lebanon is the Lebanese Code of Commerce (LCC).¹⁶⁶ Regarding corporate governance, of note is the LCC's provision, from the French roots, for joint-stock companies with a unified Board of Directors headed by a Managing Director. Company shares are, in theory, freely transferable, but there is personal liability for owners unlike in a registered corporation. In this governance system there are no officers; rather, the board actively manages all the affairs of the corporation and is headed by a Managing Director who usually takes a primary management role and supervises employees.

2. Factors Creating a Business Ethics Glass Ceiling to Growth: Weak Governance and the Family Business

Consistent with the intent of this paper, the focus of this section is the role of corporate governance in improving business ethics and addressing corruption concerns. While corporate governance is the unifying thread, the other factors of social and cultural influences and political and economic influences are integrated into the following discussion.

There are several structural weaknesses and rigidities in the Lebanese corporate governance system that create disincentives for a family enterprise to adopt international best practices. As argued later in this section, these weaknesses lead to a "business ethics glass ceiling" that serves to stunt the growth of Lebanese companies. Notably, the Lebanese Commercial Code does not contemplate the familiar developed world corporate governance feature of independent directors. The LCC or Lebanese common law do not, on their own, implement the standard officers and directors duties present in international best practices (and assumed in the U.S. legal system). Specifically, the one-tiered management structure of Lebanese companies places an emphasis on the management expertise of the Managing Director and the active directors. Also of note, the LCC provides for several legal business entity formats, such as joint-stock companies (without limited liability for directors), limited liability

¹⁶⁴ See *Listed Companies of the Beirut Stock Exchange*, <http://www.bse.com.lb/ListedSecurities/ListedSecurities/tabid/86/Default.aspx> (last visited on Mar. 1, 2010).

¹⁶⁵ *Regional Business Yearbook*, 113 EXECUTIVE MAGAZINE 226 (Dec. 2008).

¹⁶⁶ English-language translations of major Lebanese Laws, including the Lebanese Code of Commerce, are available at: <http://www.lebaneselaws.com/> (last visited Mar. 1, 2010).

companies, and general partnerships,¹⁶⁷ but does not as yet provide for western-style corporations, marked by limited liability for managers and directors, tiered governance, separate ownership and control, and widely dispersed equity ownership. Minority shareholder protections are lacking, even to the extent that the LCC provides for double voting power for shareholders of joint-stock companies who have held shares for at least two years.¹⁶⁸

However, in the Lebanese corporate governance system there are no ingrained fiduciary duties – including the duties of loyalty and fair dealing – and there are no corporate governance checks and balances on directors who choose to engage in detrimental insider transactions or disloyal dealing with competing enterprises. The result, again, is that minority shareholders, including potential foreign investors interested in an equity stake in the enterprise, are potentially harmed. Or, perhaps worse, these investors choose not to take a risk in investing in what would otherwise be attractive companies.

Due in part to the inefficiencies of the corporate governance rules, Lebanon does poorly when it comes to attracting Foreign Direct Investment, even within a region that already struggles to attract FDI.¹⁶⁹ Accordingly, a greater level of transparency, even with small and medium-sized family enterprises, is important for at least two reasons. The first is that currently investors – both domestic and foreign – are hesitant to invest in Lebanese businesses because those companies often appear to be unprofitable and poorly run (whether that is true or not). Because of the corrupt government officials, many Lebanese companies of all sizes prefer to appear as if they are losing money because it reduces the chance they will become a target for bribe-askers in the bureaucracy. Showing a loss also allows for tax avoidance. However, outside investors are unable to perceive any value in these companies and, thus, capital is withheld, and the companies' growth and development is artificially stunted below a corruption glass ceiling set by the bribe-takers.

The second reason is that the long-term integrity of the entire system and investor confidence will benefit by shareholders and potential investors being able to view an accurate picture of Lebanese companies, for better or worse in the short term. In other words, outside of the family inner circle, there

¹⁶⁷ For an account of the LCC and available corporate forms and partnerships, see MOHAMED Y. ALEM, *BUSINESS LAWS OF THE MIDDLE EAST: LEBANON* (Nady Tyan, ed.) 23-33 (2001).

¹⁶⁸ *Id.* at 26.

¹⁶⁹ See Farrukh Iqbal & Mustapha Kamel Nabli, *Trade, Foreign Direct Investment and Development in the Middle East and North Africa*, WORLD BANK WORKING PAPER, 9-11 (2004) (showing how MENA performs worse than expected in attracting its share of world-wide foreign direct investment); <http://siteresources.worldbank.org/INTMENA/Resources/tradefdidev.pdf> (last visited Mar. 1, 2010). See also Svitlana Khyeda, *Foreign Direct Investment in the Middle East: Major Regulatory Restrictions*, 9 *INSIGHT TURKEY* 73 (2007) (discussing the legal, structural and political obstacles to FDI in the Middle East, focusing on Egypt, Saudi Arabia, and Turkey).

are not systems in place to allow for trust-building between the family enterprise and outside stakeholders, such as potential investors.

That there is not a duty of loyalty requirement among stockholders in Lebanese companies will naturally give pause to potential passive investors, particularly those not in the country and able to actively monitor the organization in person. In other words, individuals or entities that would perhaps commit foreign direct investment to promising Lebanese companies will be hesitant to do so because, once they purchase a minority stake in the company, they lose almost all leverage to protect their investment. Although, because so many Lebanese SMEs are family controlled, the natural tendency of family members to communicate and, hopefully, treat one another fairly when they are stakeholders should alleviate some concerns that all minority shareholders are at risk of being abused by the majority. However, those outside of the family – such as equity investors and investment groups looking to place foreign direct investment – will still legitimately not trust the family firms without corporate governance and institutional reforms, or other assurances.

Accordingly, the need to restructure corporate governance of family enterprises and curb corruption is important in Lebanon and directly tied to the need for better corporate governance. As the former Lebanese government minister and corporate governance expert Nassir Saidi, writes, “[corporate governance] principles and their effective implementation are essential tools for combating corruption and waste in Lebanon and corporate mal-governance that have taken their toll over the years in [several high-profile Lebanese corporate scandals].”¹⁷⁰ This collection of poor corporate governance influences creates disincentives for the management of these firms to act ethically in terms of minority shareholder treatment. In essence, the weak external corporate governance from the Lebanese state creates a situation in which Lebanese small and medium-sized family businesses have chosen not to opt into international best practices because they are not required to take on that burden. Yet, this may be a short-sighted deferral of adopting best practices that is both based on an inclination to remain insular and opaque, and to avoid becoming a target for bribery.

As a result, these Lebanese family-controlled SMEs (and SMEs in MENA generally) have, to date, not voluntarily adopted the corporate governance and ethics best practices put forth by the model codes discussed above in Section II. Because these entities have not faced significant market pressure internally or externally from investors the way large publically traded and multinational companies have, they are not inviting targets for international investors. Thus, because these businesses are not

¹⁷⁰ Saidi, *Corporate Governance in MENA Countries*, *supra* note 125, at 31.

transparent and do not provide proper minority shareholder protection, investors have not come forward to provide the capital necessary for growth.¹⁷¹

In effect, these small and medium-sized family enterprises have hit an ethical glass ceiling that stunts their growth and development. If these entities would, along with the LCC and the Lebanese courts, provide adequate protections, investors would be more likely to put their capital and trust in Lebanese companies. Because of poor corporate governance, Lebanese companies have a propensity to engage in short-term profit-maximizing corruption, to remain financially opaque, and to not voluntarily adopt governance mechanisms to protect investors by contract, or otherwise, the non-family investment never materializes. These businesses are essentially limited in their growth potential to the equity stake investments they can raise from family members and Lebanese nationals within their trust network or through traditional high-interest and securitized bank loans. To exacerbate the problem, it is likely that these entities do not perceive this short-term acquiescence to corruption as creating a ceiling to their long-term development and stability.

It is also the case that these corporate governance factors that promote family enterprise insularity may wall off the business from corrupt government officials and bureaucrats. For instance, if the family management, with the acquiescence of other owners, manipulates the entity's finances to show a loss, then the firm is a less attractive target for corrupt officials. There is also a sense in MENA family enterprises that, because they are surrounded by acts of corruption, paying an accurate amount of tax is foolish since a corrupt political system will likely squander that payment and the taxes will never reach actual public works programs, like infrastructure development. However, this tight-knit, defensive "circling the wagons" mentality also has negative spillovers. The insularity can lead to a situation where there is an artificial cap on growth, again enabling the ethics glass ceiling effect. The tendency of family enterprises in developing countries such as Lebanon to "stay below the radar" of corrupt officials also makes the organization opaque and uninviting for potentially important outside stakeholders, including foreign direct investors.

¹⁷¹ Consequently, this macro-level result is an example of corruption-influenced ceiling to growth and competitiveness for an entire country.

V. Suggestions for Breaking Through the Glass Ceiling to Growth and Unanswered Questions

A. Strategies for Alleviating the Corruption Constraint on Businesses in MENA

To properly address the structural problems in corporate governance in Lebanon, and by example for the MENA region, the Lebanese legal system must make significant changes to the management structure of Lebanese domestic corporations, including family enterprises. The simple goal of those changes is to formalize ethical stakeholder-focused protections and, thus, encourage greater equity-stake participation, particularly in the form of foreign direct investment from outside the country. Moreover, these measures will bolster the ongoing movement by NGOs to change the prevailing culture of implicit support for corruption and resistance to corporate governance from the Lebanese business community. The unifying theme for these recommendations is that corporate governance improvements can aid SMEs and small medium family enterprises in combating corruption and provide the assurance investors require.¹⁷²

This requires a two-pronged approach. Initially, there needs to be improved rules and ethical guidelines related to international corporate governance standards and, second, there needs to be consistent, fair and corruption-free enforcement of the rules. To accomplish this fully, it is necessary to enact greater minority shareholder protection through changes to the LCC and through business-friendly court decisions for greater predictability, as well as proper enforcement from administrative agencies within the government. In both instances the commitment to reform by the firms themselves is crucial.

First, the Lebanese Code of Commerce should be changed to allow for the Western corporate model of chartered corporations with limited liability and officers as well as directors to manage the entity in the interests of the shareholders.¹⁷³ At a minimum, the LCC should allow companies to opt-out of the unitary Board of Directors model and move toward encouraging a system of managing officers and overseer directors, in line with international best practices.

This paradigm shift in corporate governance is essential because, at this point, there is little or no separation between the management and control of Lebanese companies. Nor is there a specific enunciation of corporate fiduciary duties – including prohibitions on self-dealing, insider transactions, or a duty of loyalty. While not expressly a problem for SMEs, this situation discourages ownership by non-family members or any minority shareholder, including foreign investors. Furthermore, the LCC

¹⁷² See, e.g., Davis, *supra* note 37, at 43 (commenting that, “[i]nvestors in corporations require assurance that their contributions – financial capital, human capital, social capital – will generate a return”).

¹⁷³ For alternatives to the corporate governance status quo embodied in the current Lebanese corporate laws, see generally ABDELSATER-ABUSAMRA & BISHARA, *supra* note 26 (providing a comprehensive, voluntary framework for reforming the existing laws for SMEs to conform to international best practices).

should be amended to make clear the principle of “one share, one vote,” which again will provide consistency and shareholder protection against an existing LCC mechanism whereby long-term corporate shareholders can increase their proportional ownership at the expense of new shareholders.

Second, transparency should be encouraged through better regulation of the financial reporting requirements of firms, including greater tax enforcement by independent agencies that are corruption free. These changes could include intra-corporation governance rules that require the development, adoption, and implementation of prohibitions against the firm or its agents engaging in or supporting corruption or nepotism. In addition, these rules should provide for audit committees charged with monitoring the company and its agents, and ensuring that the entity refrains from corrupt acts and reports requests for bribes from government officials to independent government authorities or NGO monitors.

As another solution, the well-appreciated corporate officer and director duties present in United States corporate governance should be absorbed into voluntary Lebanese codes of governance and, ideally, the LCC. Without a provision for fiduciary duties and the attendant penalties for violating those duties, minority shareholders are left without protection or recourse for the abuse of management power over their investment. The risks associated with settling for the corporate governance status quo are too high and, as a result, foreign direct investment in the country is relatively low,¹⁷⁴ and the benefits of FDI are kept from Lebanese companies and the economy as a whole.

In the case of Lebanon, and elsewhere in MENA and the developing world where armed conflict and political and ethnic tensions are a reality, having strong and corruption-resistance family enterprises has an additional benefit. Stakeholder-focused reforms that recognize the importance of external stakeholders for funding can have a reverberating influence by demonstrating a public stance against corruption to the rest of society. In addition, stronger, more resilient businesses with a greater chance of smooth inter-generation succession can also potentially add to the stability of a nation because of the realization that commercial prosperity will increase employment and wealth, thus acting as a counterweight to instability and violence. This sort of broad view of social impact remains consistent

¹⁷⁴ See, e.g., Nizar Atrissi, *Speech: Mobilizing Investment for Development in the MENA Region*, Investment Development Authority of Lebanon, Istanbul, Turkey, Feb. 11, 2004, at 2, <http://www.oecd.org/dataoecd/56/62/28498563.pdf> (last visited Mar. 1, 2010) (“While Lebanon has made important strides in structural reform, the promotion of FDI is still lagging behind, and forecasted amounts of foreign investment do not meet the growth requirements of the Lebanese economy” because the country “relied...on short term investments but failed to attract longer-term more stable and beneficial international capital. The challenges facing Lebanon revolve around four angles: Governance, Public Finance, Perception and Geopolitical Conditions”).

with an expansive stakeholder approach to conducting the business of family enterprises, and the role of corporations as mediating institutions.¹⁷⁵

At this point the question arises: why have transparency and accountability for family enterprises that are privately held? Multilateral model codes, for instance, are focused on large organizations with dispersed ownership and a separation between ownership and management.¹⁷⁶ Therefore, with these entities there is a need for disclosure to all stakeholders (internal and external) who might not otherwise be in a position to view and understand the organization's inner workings. However, with regard to internal stakeholders, SME financial disclosure is less crucial, as long as all owner and manager stakeholders are taking part in the very decisions that normally would need to be disclosed to a larger stakeholder base.

Nonetheless, family business transparency remains crucial for external users of the firm's information, such as government tax agencies, as well as banks and other funding sources. In cases where there is government oversight and anti-bribery laws, reporting might be required.¹⁷⁷ However, another compelling reason is that well-run and transparent family enterprises, even when they need not be transparent in their expenditures, still have an ethical imperative to avoid immoral behavior, such as bribery. Again, the tangible benefit to being transparent is that it can increase a family enterprise's access to financing, whether from traditional sources such as bank loans, or from potential equity investors. Moreover, for firms in developing countries, there is a reward to being transparent and corruption-free if they want to reap the benefits of interaction with international customers, particularly foreign multinational companies that have ethics requirements of their suppliers.¹⁷⁸

Another reason that small and medium-sized family enterprises should be transparent, even though they are not required to (as are publically traded firms), is the ethical imperative that they, in the aggregate, "have the opportunity to make a real difference by helping create a culture of zero tolerance towards bribery."¹⁷⁹ In essence, the assertion is that all businesses are accountable to society. This is consistent with the conclusion that overt corruption in the form of bribery violates an ethical hypernorm because that aversion cuts across nations, cultural settings, moral systems, and religious traditions.¹⁸⁰

¹⁷⁵ See generally FORT, ETHICS AND GOVERNANCE, *supra* note 22, at 30-38.

¹⁷⁶ See, e.g., OECD PRINCIPLES OF CORPORATION GOVERNANCE, *supra* note 50.

¹⁷⁷ For example, see the anti-corruption provisions of the FOREIGN CORRUPT PRACTICES ACT, *supra* note 43.

¹⁷⁸ Transparency International, *Business Principles for Countering Bribery, Small and Medium Enterprise (SME) Edition* (2008) (discussing the need for integrity for stakeholders, including potential foreign partners with anti-bribery standards of their own).

¹⁷⁹ *Id.* at 4.

¹⁸⁰ See Timothy L. Fort & James J. Noone, *Gifts, Bribes, and Exchange: Relationships in Non-Market Economies and Lessons for Pax E-Commercia*, 33 CORNELL INT'L L.J. 515, 521-22 (2000).

Bribery, thus, is wrong because it violates the hypernorm of necessary social efficiency by harming political participation and leading to the inefficient distribution of resources.¹⁸¹

Voluntary adoption of better corporate governance for SMEs and FOEs may also encourage macro economic and social development. While an individual SME takes on a short-term risk by innovating with corporate governance changes when it might be inclined to maintain the status quo, there are potential benefits to showing leadership in this regard. Such a firm (or any individual stakeholder pushing for reform) would fit the description of an institutional entrepreneur.¹⁸² When an individual, or in this instance an entire organization, acts as an institutional entrepreneur in fighting corruption the result can be a change to the status quo such that corruption and its impact can be lessened.¹⁸³ It is this sort of internalization of a culture of anti-corruption as opposed to the imposition of legal rules or a “social edict” that is important in, as business ethics and corruption scholar Dean Steven Salbu has put it, not undermining the “social and cultural foundations that most effectively translate policy into practice.”¹⁸⁴ Having the solutions to corruption coming, at least in part, from within indigenous firms in developing countries also circumvents the possible issue of imposing a sort of cultural imperialism in corruption control.¹⁸⁵

There are, however, clear short-term gains to, for instance, garnering an advantage over competitors by bribing a public official to favor an organization in a bidding contest for a public project. Therefore, management may take unethical actions that are nonetheless in the company’s financial interest. If the relevant internal stakeholders within the business are in agreement to act improperly, particularly if it is a family business where everyone agrees with the family leadership, the corruption is not a hidden tax on the organization and, thus, by extension the shareholder. To the contrary, there are situations where conflicts of interest arise when an insider puts her self-interest ahead of the corporation and contracts for services on behalf of the business to the organization’s disadvantage. In that instance, clear governance and ethics rules on transparency and accountability are useful to protect the business and stakeholders from this temptation to gain a corruption-based advantage.

Finally, the above critique of broad principles of accountability and transparency when applied to small and medium-sized family enterprises demonstrates that the generalized corporate governance and

¹⁸¹ See *Id.* See also Thomas W. Dunfee & Timothy L. Fort, *Corporate Hypergoals, Sustainable Peace, and the Adapted Firm*, 36 VAND. J. TRANSNAT’L L. 563, 565 (2003) (discussing the concept of corporate hypergoals).

¹⁸² For a discussion of the role of institutional entrepreneurs and corruption control, see Misangyi et. al, *Ending Corruption: The Interplay Among Institutional Logics, Resources, and Institutional Entrepreneurs*, 33 ACAD. MGMT. REV. 750 (2008).

¹⁸³ *Id.* at 757 (discussing institutional entrepreneurs as “those social actors intent on establishing a new institutional form” with the resources and goal of promoting new beliefs, values and norms in organizations).

¹⁸⁴ Steven R. Salbu, *True Codes versus Voluntary Codes of Ethics in International Markets: Towards the Preservation of Colloquy in Emerging Global Communities*, 15 U. PA. J. INT’L BUS. L. 327, 365 (1994).

¹⁸⁵ See, e.g., Spahn, *supra* note 58.

ethics principles are useful for SMEs, but need to be adapted for these small and usually localized family organizations. Specifically, rather than trying to apply a blanket set of transparency and accountability rules in a “one size fits all” manner to all types of businesses, they must be scaled and tailored to benefit the entities.

B. Additional Research on the Role of Corruption and a Business Ethics Glass Ceiling

This paper is by its nature a theoretical analysis of the factors contributing to the business ethics glass ceiling proposed herein. Consequently, additional research is necessary to fully chart the parameters of these constraints. In that vein, several aspects of this paper’s evaluation of the business ethics glass ceiling problem are useful in setting an agenda for understanding the governance issues related to corruption concerns impacting firm growth and development.

First and foremost, more empirical research is needed to further clarify the link between business ethics issues, particularly corruption, and business reform. Until now much of the research has been limited to the large scale evaluations of corruption and the cost of compliance for large companies forced to take on more mechanisms for transparency and accountability. These include the omnibus Corruption Perceptions Index (CPI)¹⁸⁶ compiled by Transparency International, the World Bank’s *Doing Business* report¹⁸⁷ and social science research focused on political corruption.¹⁸⁸ For instance, the CPI is published each year and has grown to include over 180 countries. The CPI is developed by country affiliates so there is some localized expertise being sought, although the instrument measures *perceived* corruption from business persons around the world, and does not gauge *actual* corruption.¹⁸⁹ Similarly, the *Doing Business* report takes stock of important rule of law indicators related to business activity. However it leaves out any integration of cultural, political, and ethical analysis. In both cases, the CPI and *Doing Business* reports fail to account for the unique governance situation in each country and are less useful for gauging the confluence of inputs which create the glass ceiling at a local level.

On the corporate governance side there are numerous international guidelines in the form of model corporate governance codes¹⁹⁰ and a growing number of country-specific codes.¹⁹¹ However, there is a deficit of academic research showing a before and after picture of the usefulness of such codes beyond the rhetorical and symbolic nature of solidifying guidelines. Moreover, as argued here, there is a

¹⁸⁶ TRANSPARENCY INTERNATIONAL, CORRUPTIONS PERCEPTION INDEX 2009, *supra* note 35.

¹⁸⁷ WORLD BANK & INTERNATIONAL MONETARY FUND, *supra* note 92.

¹⁸⁸ See, e.g., JOHNSTON, SYNDROMES OF CORRUPTION, *supra* note 10; and POLITICAL CORRUPTION: CONCEPTS AND CONTEXTS (Heidenheimer & Johnston, eds.), *supra* note 10.

¹⁸⁹ For a recent critique of the Corruption Perceptions Index, see Danielle E. Warren & William S. Laufer, *Are Corruption Indices a Self-fulfilling Prophecy? A Social Labeling Perspective of Corruption*, J. BUS. ETHICS (forthcoming).

¹⁹⁰ See *supra* note 50, and accompanying text.

¹⁹¹ See *supra* notes 60 and 61, and accompanying text.

general lack of research on the relation between business ethics and corporate governance in SMEs and family businesses.¹⁹² As two corporate law scholars writing about the Middle East have acknowledged, “[i]t is easy for the state to draft legislation that would facilitate formation of limited liability forms of business organizations,” but that despite the support of multilateral funders, “[m]any Middle East countries, however, have steadfastly resisted efforts at substantive reform and still place substantial roadblocks in the path of small-business creation.”¹⁹³

It has also been observed that in the case of corruption there are differences between the calculus of those engaging in petty bribery and those involved in grand bribery, from both the bribe asker and the bribe payer perspectives.¹⁹⁴ While there are debilitating effects of either type of corruption, the exact impact of those activities on SMEs and family businesses is uncertain. Thus, it will be important in coming years for there to be additional research beyond investigations into the raw cost of a corruption tax in terms of estimated economic losses, but also related to the psychological barriers to investment, reinvestment, capital flight, and FDI in emerging markets. It would also be useful to have a detailed time series picture of what happens to regions that adopt a corporate governance-driven business ethics reform agenda to better understand the constraints placed on businesses of every size. Put another way, it would be advantageous to see over a period of time what happens to business growth once institutional and corruption constraints are removed.

Similarly, there is a need for empirical research such as surveys of SMEs and FOEs to further map the influence of business ethics constraints, including the glass ceiling. Such an assessment of these small and medium firms in developing countries could help determine the depth to which their growth and access to FDI and equity capital in general is restricted by corruption and weak corporate governance. This research might also identify the structural reasons why managers and shareholders in developing country SMEs have been slow to opt out of a cycle of corruption and opt into voluntary reforms such as better corporate governance. Further theoretical work on which factors contributing to the glass ceiling are most important in various contexts and their interaction would also be useful in understanding the role of corporate governance and corruption in these firms.

Again, in general, much of the current ethics and governance research is focused on large, publically traded companies. For example, ongoing reviews of the role of U.S. legislation, such as Sarbanes-Oxley, will not be relevant to small and medium enterprises and the vast majority of family businesses, save the relatively limited number of very large ones. In this regard additional research on

¹⁹² See Spence & Rutherford, *supra* note 64.

¹⁹³ Ayres & Macey, *supra* note 3, at 399.

¹⁹⁴ See, e.g., S. Douglas Beets, *Understanding the Demand-Side Issues of International Corruption*, 57 J. BUS. ETHICS 65 (2005). See also Spahn, *supra* note 58, at 209-211.

the role of trust networks in the financing of SMEs and family business in the developing world would assist in illuminating possible reforms to encourage and enable companies to move beyond a small network of trusted financiers and also move past a glass ceiling on growth which restricts access to outside investors.

As a basic matter, scholars' insights would be aided by both a broader and a regionally-focused understanding of the role of corporate governance in influencing business ethics and fighting corruption. Ultimately, any insights gained from this research in the MENA region will also be useful in understanding the hindrances to family businesses and small enterprises in other developing regions, which also inevitably face corruption and other ethics challenges.¹⁹⁵

VI. Conclusion

Despite the proliferation of corporate governance and business ethics best practices in the last few decades and the push to implement those guidelines in family businesses and SMEs in MENA, there is much additional work to be done. The first step is to recognize the barriers such as the business ethics glass ceiling to implementing these best practices to promote organizational growth and development. Beyond those policy prescriptions there is also a need for both broader and deeper research on the subject to better understand the links between business ethics failings such as corruption and weak governance, alongside cultural and social, and political and economic influences.

The efforts to develop corporate governance and business ethics codes that are properly scaled to address family enterprise issues in the Middle East are necessary first steps. The way to sustain higher levels of investment is to eliminate ethics-based barriers to small and medium-sized family enterprise growth in the region by working for systemic reforms from MENA governments. However, realistically many MENA governments are autocratic and resistant to change without serious pressure, both internally and externally. Accordingly, the next best alternative is to convince family enterprises that voluntarily adding best practices to their internal governance schemes will have market-based benefits in the long-term. More comprehensive research sketching out the parameters of the ethics glass ceiling and quantifying its restraint on growth will also aid in making compelling arguments to governments, investors, and interested NGOs that speedy corporate governance reform is essential.

¹⁹⁵ A recent and expansive critique of the role of the private sector and corruption in restricting the development of emerging markets is the TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 2009 (2009) (concluding, in general, that corruption is an immense drag on business growth and global economic development).

For good reason MENA regional commentators are cautious when expressing optimism for corporate governance reform and a related drop in ethical lapses, such as corruption. For example, calls by local academics to increase the quality of human capital in the region are infused with the painfully obvious caveat that, “[c]learly, implementing measures to enhance security and facilitate social and political stability is a prerequisite.”¹⁹⁶ Still, with serious attention to governance reforms there is cause for optimism that MENA’s SMEs and family enterprises will emerge from this period of transition with a stronger and more growth-friendly corporate governance framework, as well as an appreciation of business ethics and shareholder rights.

¹⁹⁶ Louis G. Hobeika, *How to Increase Productivity of Lebanese Companies*, THE DAILY STAR, Feb. 4, 2006.