ERADICATING WEAK LINKS: EXTENDING THE THEORY OF CLUBS AND CLUB GOVERNANCE MODEL TO FORMATION OF BANKERS' CARTELS IN THE GLOBAL EFFORTS OF ANTI-MONEY LAUNDERING AND COUNTERING OF FINANCING OF TERRORISM

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Introduction

The global drive to free international financial system from the tentacles of money laundering, terrorist financing (ML/TF) and related criminal elements is a path constantly challenged. The effectiveness of the global efforts to counter the threat of money laundering and terrorist financing is as strong as the weakest link in the chain (Monetary Authority of Singapore, 2018). The "weakest link" in the global context would be the jurisdictions that fail or do not meet the international criteria in anti-money laundering and countering of financing of terrorism (AML/CFT) requirements. At national level, the weakest link could be a firm within a specific sector of Institutions as designated or identified as a reporting institution to the Financial Intelligence Units (FIUs), or a specific sector that carries number of such weak links. As the weakest link could be manipulated to carry out illicit activities surreptitiously,the global anti-money laundering and countering of terrorism financing (AML/CFT) framework is often reviewed[1] as attempting to eradicate weak links in the international financial system. This essay refers to a scenario where the weak link would be a bank with global syndication and international network that could be strengthened by being a member of a cartel or a club consisting of banks. Such cartel/club should have adequate governance mechanisms, member responsibilities constitutionalized within contractual obligations, well defined property rights ensuring Pareto optimal outcomes[2] that minimize externalities and motivated by club governance model. This essay discusses the

[1]The Financial Action Task Force reviews and revises the FATF Recommendations and effectiveness criteria at its Annual Plenaries held in the months of February, June and October in each calendar year.

[2]Pareto optimality is a state of allocation of resources from which it is impossible to reallocate so as to make any one individual or preference criterion better off without making at least one individual or preference criterion worse off.

benefits of formation of a club like structure among likely banks, adhere to a club governance structure that strengthens its AML/CFT framework. To this end, understanding the successes achieved by an international governance body like the Financial Action Task Force (FATF) in honouring it objectives, would provide a good insight to the club form being effective at national and domestic level. This essay would extend the argument of club governance and club good rationale as adaptable within the Sri Lankan banking sector by formation of a cartel or club with like-minded and efficient members. The members, in turn,would use their collective goodwill and prestige in harnessing quality, strength and efficiency required to combat ML/TF risks and related crimes.

In positioning the above argument, this paper will break the narrative into three segments. The first is dedicated to describe the FATF as a membership driven club and its efficient mechanism. Second segment will look into the characteristics of a good club, the economic theory of clubs and the club governance model and extend the comparison to the local banking system and formation of club like cartels and the benefits of such exercise. The last segment will discuss the importance of AML/CFT policies and risk mitigation stratagem as a value enhancer of club governance and overall welfare. This essay will conclude by positing the argument that the benefit that would accrue to the banks in attempting to adopt such type of governance while increasing the overall customer welfare and satisfaction is far greater than the risks faced due to a weak link that stands alone.

I

The unique role of the FATF and how it achieves its objectives

The mantle of carrying on the global fight against money laundering and terrorist financing had fallen on the shoulders of the Financial Action Task Force since early 1990s. The Financial Action Task Force, much recognized by its more famous acronym 'FATF', has been at the forefront of policy development and is tasked with standards setting and promoting effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats that challenge the integrity of the international and national financial systems.[3] Since its inception, the FATF has carried on its responsibilities effectively, with jurisdictional compliance to its forty recommendations being achieved by a peer review and acknowledgment process. FATF efforts are tantamount to an exercise that defines achieving global congruence in meting out the critical, central objectives of combating money laundering, terrorist financing and other related threats. Moreover, looking at its annual plenary proceedings (Financial Action Task Force, 2018), it is evident that FATF is quite effective at snuffing out jurisdictions that could be tagged as weak links.

The manner, in which, FATF engages itself and its members in reaching congruence require closer scrutiny. FATF places in the limelight the errant member jurisdiction, allowing

[3] FATF Website (http://www.fatf-gafi.org/)

the cohesive forces of peer pressure to be focused on such jurisdiction to ensure that the errant member achieves compliance. Understanding the phenomenon is important in two aspects. Firstly, it shows the importance placed on ML/TF and related crime risk mitigation and how the international community view ML/TF and related crime as crimes against global society, threat to the financial system, economic stability. Secondly, it allows one to emulate the same aspect of control and strive to achieve a high level of compliance by strengthening the domestic AML/CFT regimes.

Among scores of similarly nuanced international governance bodies the FATF is unique in its effectiveness. Such has been accomplished due to its members who are like-minded stakeholders-the countries who are members of the FATF and its regional bodies, and international observer organizations including the ADB, Basel Committee on Bank Supervision (BCBS), IMF, IOSCO, World Bank and UNODC to name few(Financial Action Task Force, 2018).FATF's effectiveness is enhanced by the approach it adopts. FATF does not act as an enforcer or as a sanctioning arm in the same context as the United Nations Security Council. FATF uses its position as a policy formulator and standards setter,pushing countries forward to comply with its standards through a combination of peer review process, and encourages strong multilateral actions imposed by peers (Kook, 2013). Enforcement is relied upon member jurisdictions of FATF in enforcing its recommendations,[4] and taking counter measures upon identified jurisdictions. The mainstay of this approach is the global and national importance placed on the risks posed by money laundering, terrorist financing and other related crimes affecting the integrity and stability of international financial system. FATF has carried out mutual evaluations, monitoring of countries' progress and level of compliance in implementing the FATF Recommendations, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of the FATF Recommendations globally.

A very effective method adopted by the FATF is identifying a country within its "Public Statement" and requesting its member countries to adhere to certain actions or inactions in relation to the identified country. This, in a way, is a punitive measure of 'naming and shaming', which has proven to be critically very effective (Kyriakos-Saad, 2008). The main body of the FATF meets thrice a year, at these plenary meetings, its Public Statement is reviewed and issued. Currently, the FATF had listed within its "Public Statement", countries that have strategic deficiencies in AML/CFT effectiveness what is known as the "Grey list"[5]. FATF also compiles a list of jurisdictions where the FATF calls on its members and other jurisdictions to apply enhanced due diligence measures proportionate with the risks arising from the jurisdiction. Known as the "Dark Grey list", it is currently occupied by the Islamic Republic of Iran. Further, FATF publishes a "Black list" which identify jurisdictions subject to a FATF call on its members and other jurisdictions to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and financing of terrorism (ML/FT) risks. Democratic Peoples' Republic of Korea (DPRK) is currently the sole occupant within the Black list (Financial Action Task Force, 2018).

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[4]40 Recommendations, revised in 2012 and reviewed periodically.

[5]As at end October 2018, the Grey List was occupied by The Bahamas, Botswana, Ethiopia, Ghana, Pakistan, Serbia, Sri Lanka, Syria, Trinidad and Tobago, Tunisia and Yemen

This exercise defines an instance where global congruence is achieved in carrying out the objectives of combating money laundering, terrorist financing and other related threats. Identified jurisdictions have to comply with the international recommendations and get themselves out of the "Public Statement" as expeditiously as possible, otherwise, countermeasures by FATF members and associates could bear on the jurisdiction and its international relations in numerous ways including commercial transactions, correspondent banking to travel warnings, restrictions and these may have a cascading effect on the jurisdiction's commerce and national stability.

II
The Economic Theory of Clubs, Club Goods and Club Governance for Bank Cartels

In economic parlance, the FATF system of effectiveness can be identified as falling within the parameters of the economic theory of clubs. The theory of clubs can be used in describing the behaviour of international organizations, which let its members utilize the advantage of being a member of the club i.e. for an international organization such as FATF, membership is a sign of prestige and a mark of a superior compliant environment within such jurisdiction, for NATO, membership is a mark of support, coordination and reassurance of a network dedicated for defence against possible global/regional threats. The general theory of clubs could be extended to financial systems, especially to banks and banking products. Club could be formed by a motivated group of banks getting together to formalize a cartel of banks to provide a service or product to its customers and share the benefit from utilizing such facility among the banks that are members of the cartel. Cartels of banks exist at present in lending syndications, sovereign bond issuance leads etc. This theory argues a permanent code governing a club with membership of Banks. Theoretically, services and products offered by banks fall within the ambit of private goods, by design. A private good, according to Nobel Laureate Paul Samuelson (Samuelson, 1954) is a product that must be purchased to be consumed, and consumption by one individual prevents another individual from consuming it. Economists refer to private goods as rivalrous and excludable. A private good should be identified opposed to the other extremity, the public good. A public good (those goods and services that are purely public) is a commodity or service that is provided without profit to all members of a society, either by the government or by a private individual or organization. To simplify what are private, public and club goods an anecdotal example of a swimming pool could be used. A private swimming pool with access only to its owners is a private good. A public good would be an infinite sized public swimming pool, where all members of the public could partake of its benefits. A club good would be a swimming pool large enough for the majority of club membership to enjoy, where access is restricted to nonmembers of the club or cartel.

A club good carries certain degree of the characteristics of excludability and rivalry in consumption. Excludability is the degree to which consumption of a good or service is limited to paying customers (nationally broadcasted television has a low or non-excludability compared to a pay TV / cable network). In some instances goods or services are non-excludable by choice or design.

Rivalry in consumption or rivalry refers to the degree to which one person consuming a particular unit of a good or service precludes others from consuming the same unit of good or service.

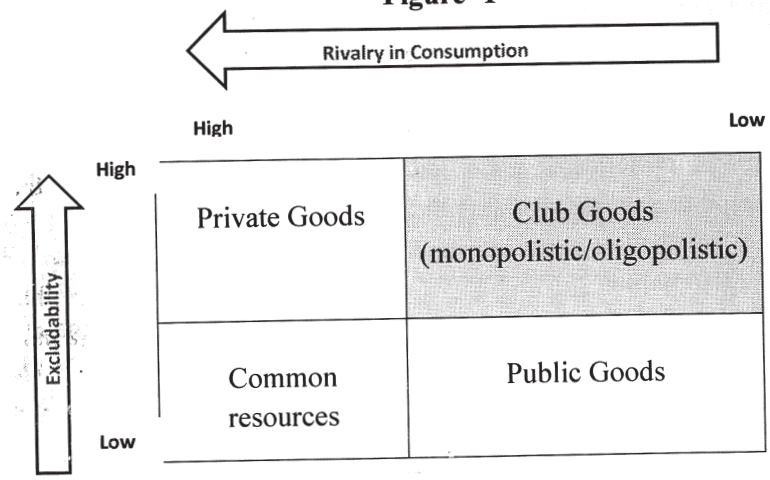
1) Club goods show high excludability - Individuals who do not contribute to financing (membership fees), adhering to defined membership criteria of the club can be prevented, at relatively low cost, from gaining access to the benefits offered by being in the bank cartel or a member of the club;

2) Club goods are less rival and congestible –individual banks are quite rivalrous due to the private goods/services offered by banks competing for market share. However, consumption of the benefits offered by the club association may contain some rivalry (not to the same level as in the case of a private good, a one-to-one relationship between the amount consumed by one person and the amount available for consumption by others). Controls must be in place so that each member of the club does not impose a negative externality on his fellows such as product crowding, which decreases the quality of the benefits consumed by all members;

3) Club goods are divisible - Once a club's membership has reached its optimal size (to be decided among member banks at the time of formation of club), banks who do not fulfil the criteria required to join may get excluded but could form a new club of likely situated banks to compete at club levels, in services offered and products. In principle, clubs can be cloned as the demand for them warrants more.

However, in the pure form of club good, the excludable and congestible characteristic will not remain. The characteristics could be summarized below (Figure-1)

Figure -1



It is argued that the Club Good - as discoursed by John Buchanan in his seminal work An Economic Theory of Clubs (Buchanan, 1965)[6] -is an attempt to bridge the vacuum between the two extremities of purely public good and a purely private good defined by Paul Samuelson, and such, could be extended to the domestic banking sector. Often depicted as enjoyed by monopolistic market behaviour, it is posited that its immediate adjacent behaviour - the oligopoly-enjoyed by banks could be encouraging to form a club/cartel structure. This paper extends John Buchanan's the general theory of clubs or consumption-ownership-membership arrangements to a defined cartel of banks that comes together with an agenda liken to a club where they agree to mutual services and product sharing, customer access to services provided by each member, member product uniformity and exclusivity offered to its customers.

In this context, banking sector being a multiproduct sector would provide an ideal scenario to be used within a club formation. Membership has to be by way of a formal agreement so as to satisfy the property rights and minimize negative externalities in a Coase theorem sense. The cartel of Banks with similar characteristics such as market presence, size of the customer base, liquidity levels and capacity, forming an exclusive club will have many benefits accruing to the member banks of the club. Joining of a sharing arrangement (club) itself should be economic (as opposed to joining out of camaraderie) and the utility that a member may receive from the consumption of the club good would depend upon the number of other persons with whom he must share the benefits.

Club theory provides the rationale for the effectiveness of the international alliances and to the success of associations such as the FATF and NATO. The exclusivity, opportunity and the benefit derived from being part of the membership of the international organizations act as sociological enticements. Currently the main body of FATF has 37 member jurisdictions. As at end October 2018, three non-member jurisdictions[7] , acting as observer jurisdictions, are waiting at the perimeters to be admitted to the main body. So the membership is exclusive and sought after as it displays a stringent set of requirements have been achieved and that the member has a sound AML/CFT regime within its national territory. Such should be the clubs in domestic banking sector, where it is sought after for all reasons explained above and for more benefits that are outlined next.

Benefits accruing to the members of the club of banks

The club model would allow the banks that are members of the cartel to enjoy privileged access to products and services offered by the members of the club. Partly, the benefit is driven sociologically. The potential customer would be drawn to the banks forming the cartel in order to experience the exclusivity afforded to the customers of the banks who are members of the club of banks. Sociologically, club would attract individuals who want the exclusivity of being a member of the club as well as consuming what it has to offer, which may be better than non-

[6]Buchanan, John M. (1965) An Economic Theory of Clubs, Economica (February, 1965)
[7] Saudi Arabia, Indonesia and Israel

cartel banks. Gersbachet. al. (Gersbach & Haller, 2003) identified the distinguishing feature of the club model to be that individuals shop for both club memberships and private consumption. This means that club memberships are priced via admission fees or valuations. Each person makes optimal choices, given his/her individual budget constraint.

Secondly, in the context of AML/CFT, the club would afford its members information and share the experience of typologies, risk mitigation and other strategic advantages at lower costs. The likelihood of risks facing the members would be similar as risk variation would be from similar areas – however this aspect will be discussed within section below on the risk based approach of ML/TF risk mitigation by the banks.

Thirdly, Banks forming the club make a strong lobby arm. Adverse externalities such as taxation by fiscal authorities could be renegotiated as the club provides a legitimate stance taken with the objective of providing a Pareto optimal condition to its members. Such lobbying arm would ensure that optimal conditions are achieved in order to provide its members with being better off without making another worse off.

Fourthly, the club formation minimizes information asymmetry among the club membership – leading its members to make sound decisions devoid of arbitrages that may arise due to lack of information or low quality of the information.

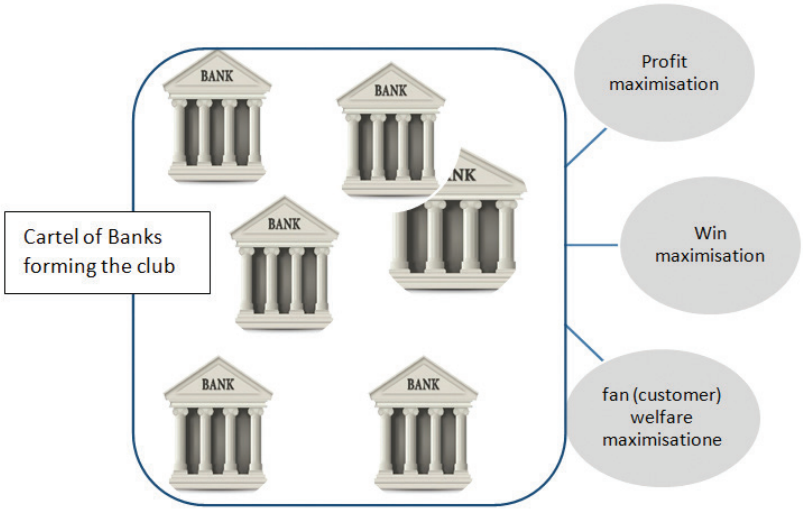
Fifthly, if the club membership is sufficiently large, it would result in lower transaction costs due to the characteristic of marginal substitution being lower in a club good (Sandler & Tchirhart, 1997). A service could be offered to an additional customer at minimum or no cost. This also paves way for economies of scale where all members understand and share the information that leads to better products and efficient services. Efficiency in service and banking products would be the driving force of exclusivity of the club. Such would also add to the prestige of the cartel as a sound and viable club arrangement.

Membership is exclusive and limited due to the stringent criteria for joining as well as a joining fee that would be kept as a funding source for club welfare and budgetary allocations for programs run by the club. Non-member banks could form new alliances with other similarly circumstanced banks – formation of new clubs ultimately driving the welfare maximization of the customers.

Lastly, club arrangement would lead way to club governance, which opens up a multitude of options rather than the earlier firm centric single directive of achieving profit maximization. The mantra of profit maximization has been long endorsed by the Board of Directors, to the satisfaction of the shareholders. However, this mantra has proven to be a source of crisis as well. Global financial crisis and prior to that the crash of corporate giants such as Enron and WorldCom have provided ample examples of profit maximization gone wrong.

In the club governance structure(Madden, 2012), instead of the profit maximization agenda, the club arrangement would pave way for two other objectives, win maximization and fan welfare maximization (Figure 2). If one is to bring the club parlance into the corporate ideals, win maximization refers to wins (achievements, milestones) and would be similar to leading your firm and club to be leaders at any given scenario. Introducing new products, embracing cutting edge technologies, products and services that would enhance the performance of the members of the club, making such club to achieve market wins repeatedly as the market leaders would be few such scenarios. Fan welfare maximization is akin to the customer welfare maximization. Customers enjoy wider range of benefits that increase the customer welfare. Normative studies done on club governance models have discovered that rather than profit maximization objective, the fan welfare and win maximization objective has reaped greater dividends in the long run.

Figure -2



Therefore, win maximisation and welfare maximisation should be embraced by the club architecture as providing more to the combined brand value and increasing the overall benefits rather than the firm driven profit maximization agenda.

This leads the discussion to its conclusive part – anti money laundering and countering terrorism financing as a value enhancer of club governance model of a banking sector cartel.

III
The need for sound ML/TF risk management

Historically, the financial sector of a country is more vulnerable to money laundering and terrorist financing risks owing to the range and the complexity of products available making it far easier for prospective launderer to misuse. Bank cartels are no exception to this. In the recent past, regulators and anti-money laundering and countering of financing of terrorism (AML/CFT) supervisory framework, responded sharply to this vulnerability. Past several years saw an increase in vigilance and prompt dissuasive sanctions. In recent years, regulators have dramatically stepped up the sanctioning of some of the major global financial sector participants. Often compliance related fines exceeded hundreds of millions, and at times, over a billion US dollars, raising the bar for the financial sector in its approach towards financial crime compliance (FCC). In this context, club governance involving a banking cartel stands to gain from increased awareness and compliance functions often shared among its members.

At firm level, over time, the Board of Directors' role in the firm's compliance framework is quite significant. Financial costs of a proper risk mitigation AML/CFT system is often being grumbled at by the Board of Directors. Risk mitigation comes at a cost, and with the argument whether such cost is worthwhile. The basic risk mitigation stratagem involves the 'three lines of defence' approach, while supporting the attitudinal approach offered by the club governance model, i.e. win maximization and customer welfare maximization. The club governance model further the argument for value enhancement, linked to the reputation of the institution at the firm level and/or a collective of such like-minded institutions forming a loose cartel-like presence in the banking sector. The focus also revolves around the recommendations and adherence mechanisms brought up by the club model engaged by the FATF, the international policy making body on AML/CFT framework for countries.

Sound money laundering and terrorist financing (ML/TF) risk management is relevant toward the overall safety and soundness of the bank as a firm, the bank cartel, as well as the overall financial system. An inadequate or inefficient system that fails to cater to the dynamic environment of ML/TF risks exposes the bank/bank cartel to reputation risks, operational risks, compliance risk and concentration risks. These risks are interrelated. The fines and sanctions imposed by the regulatory authorities on account of ML/TF compliance lapses would reflect heavily on the Board of Directors, senior management and relevant operational divisions furthering the win maximization and welfare maximization objectives. Apart from ownership backlashes due to reduced margins resulting from payment of hefty fines, potential reputation and financial losses may also occur to the club of banks as a result of consequential withdrawal of custodian banking relationships, termination of wholesale funding arrangements, increase in claims against the bank, criminal investigations, asset seizure and forfeiture due to criminal proceeds found intermixed with bank's assets. As a cartel, each bank is responsible to the cartel's welfare and such responsibilities require enhanced vigilance. A simple cost-benefit analysis would sway the scale towards a compliant bank and its club environs armed with strong risk mitigation policies as opposed to a risk prone institution with weak ML/TF risk mitigation framework.

Doing the basics right: Policy and strategy in relation to the AML/CFT risk

A sound system of ML/TF risk mitigation is a mix of judicious policies and strategic use of resources available with the banks. The basic components include the following:

1) An assessment and understanding of risks facing the bank at the firm level and the cartel of banks as a group: the bank and cartel should be aware of its residual and inherent risk factors and how they contribute to the overall risk of the institution/group. This internal policy should be formulated after taking appropriate steps to identify, assess and manage the bank's money laundering and terrorist financing risks in relation to: a.) its customers; b.) countries or geographical areas; c.) products and services; and d.) transactions and delivery channels.[8]

2) Proper governance arrangements: Every bank is required to formulate an internal policy on AML and CFT. Such policy should be approved by the Board of Directors of the bank and overseen to be carried out effectively. Therefore, the Board of Directors, has a tremendous responsibility to guide the AML/CFT policy of the institution which they manage with the assistance of the compliance officer and the staff.

3) Having an effective three lines of defence: Effective risk mitigation involves having in place the three lines of defence, which are, as the 1st line of defence - front office and customer-facing activity; 2nd line of defence – compliance officer in charge of AML/CFT, human resources and technology; 3rd line of defence – internal audit function. Many jurisdictions also strengthen the 3rd line of defence by having periodically an external audit conducted by an independent auditor.

4) Adequate transaction monitoring system – an adequate system should cater to the firm's size, complexity, activities and the risks to which the firm is exposed. Automation may be necessary but not mandatory. However, an optimal mix of human resources and technical solutions is the best way forward. The system should be capable of generating reports that would be useful to the senior management to be aware of the trends and risks facing the institutions.

In meeting the basic requirements, each bank or club should have a clear idea of the ML/TF risks it faces, carry out assessments in order to understand the risk, document the findings of such assessment, determine the overall risk levels and type of mitigation to be applied, continue periodic assessments over time and have adequate mechanisms to provide risk assessment feedback to the supervisory authorities. The policy should be formulated upon proper identification and fulfilling of the criteria above.

As the risk based approach is embraced, an institution should avoid "one-size-fits-all" solutions, usually in the form of readily available advisory or consultancy agency product that would "map" the general risk profile of a bank that fits the conventional institutional description.

[8]Rule 5, Financial institutions (Customer Due Diligence) Rules, No. 01 of 2016 issued under the Financial Transactions Reporting Act, No. 6 of 2006.

Such approach does not provide the "best fit" to meet the ML/TF risks specific to the institution, nor the cartel specific characteristics (such as large branch network with wide regional presence, varied types of customers consisting mostly of rural and suburban clientele, wider exposure to SME sector, financial inclusion challenges, cash intensive businesses or geographical presence of ML/TF risks). Furthermore, the win maximization efforts may cause further complications as complex financial landscape and financial products (such as technological advances in the sector, complex products, international syndications and group wide policies) would cause high risk products to be used within a bank cartel by its members.

The dynamic nature of ML/TF threats arising within the financial system would no doubt challenge a bank or a bank cartel/club of bank. Advent of new technologies expose the vulnerability of internal risk mitigation policies that do not rise to the challenge or are not abreast of or, at least, keeping pace with the new developments. In such context, constantly evolving ML/TF risk mitigation mechanism should support the institutions overall financial crimes compliance mechanism (FCC). The FCC and AML/CFT systems should possess characteristics to withstand the challenges and evolve according to the risks faced. Financial institutions individually, as well as in the club form, should have the best suited balance of strength and flexibility fitting the institution's risks. This essay places forth the argument that a club mechanism, if properly formed should be adequate in safeguarding the weak links / weaker members of the club. However, such approach needs to be consistent in risk appraisal, evaluation of risks and threats in order to provide an accurate signal to the management, without wrapping them in a false aura of security. Thus, the responsibility is very heavy much more as the ripple effects of a failure of a club will be far greater and more terrible at systemic level compared to consequences from a stand-alone institutional failure to the financial system.

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