

SUSTAINABLE BUSINESS & CORPORATE GOVERNANCE

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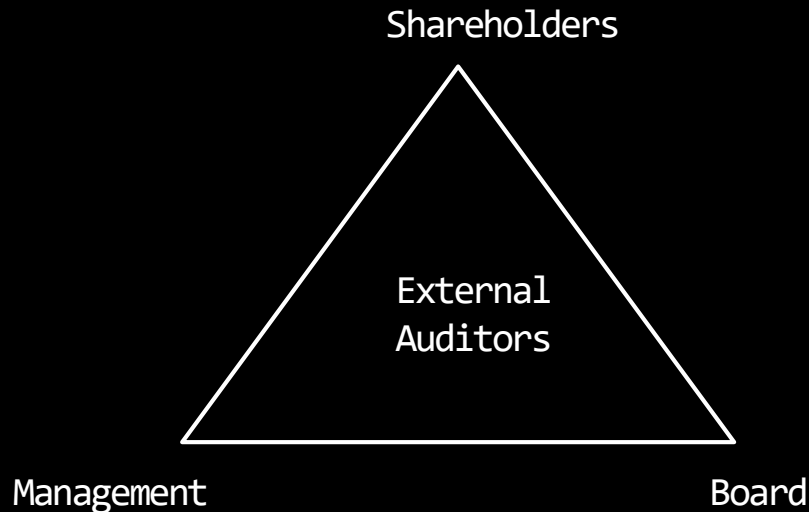
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ICAN Secretariat Annexe, 82 Muritala Muhammed Way, Ebute Meta

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Corporate Governance Triangle

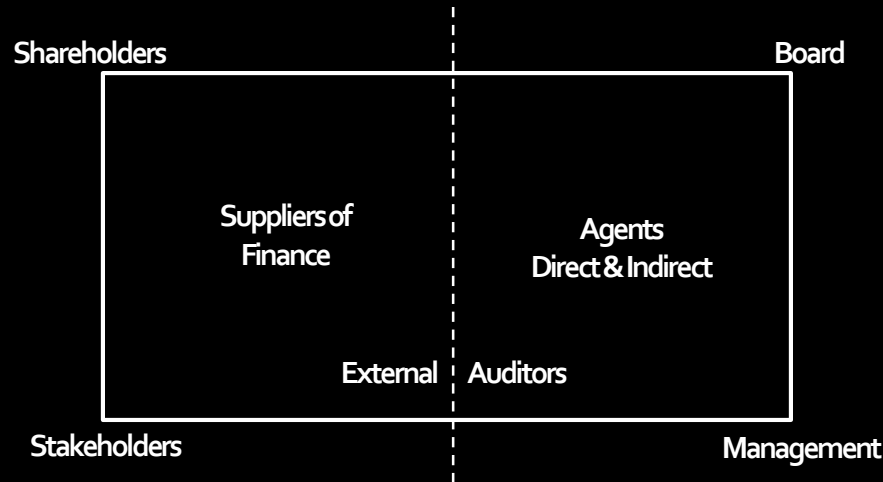
Anglo-Saxon Wide Dispersal



1. When ownership is separated from control, there tends to emerge a managerial economy in which the interest of managers tends to diverge from the interest of owners.
2. How about where ownership has not separated from control or has only partially separated?
3. You have corporate governance characterized by ethical weakness
4. Anglo-Saxon : 2 parties. Concentration: 4 parties
5. Apply & Explain: Explain to whom? To yourself, half mad! Baroness Hogg: Chairman: UK FRC (2012)
6. Mandatory 6 Codes: (5 + 1) where is the intellectual explanation of the superiority of Apply & Explain in a very weak political governance characterized by a very weak legal, regulatory and judicial framework?

Corporate Governance Rectangle Concentration

	IFRS
<u>ASSETS</u>	100
<u>EQ&R</u>	18
<u>CONT. 14</u> <u>MINO. 4</u>	18
<u>STK</u>	82
	100



Others (Typical)

Non-Bank

	<u>B</u>	<u>%</u>
Assets	74	Assets
EQ&R	27	36
STK	47	64
	74	100

Concerns: Two-Fold

- (1) Who are the people to stop non-performing loans?
- (2) Will the world bring FDI without board oversight?
- (3) How do our youths get employed?
- (4) *You do not expect someone to take care of somebody else's money as he would take care of his own—Adam Smith (1776 Wealth of Nations)*

CODE 2016 (5 + 1) BOARD COMPOSITION

CODE 2018 (5 + Zero) BOARD COMPOSITION

2016 (5 + 1)	2018 (5 + 0)
1. Controlling Shareholders & Representatives (Shadow)	Controlling Shareholders & Representatives (Shadow)
2. Chairman	Chairman
3. MD	MD
4. EDs	EDs
5. NEDs	NEDs
6. INEDs** oversight committees	Zero *** No oversight
** With a lead, if Chairman is NED.	*** Without a lead, and Chairman is NED, oversight is Zero.

CONTROLLING SHAREHOLDERS CODE 2018 [5+0 CODE]

1. *Committee Remit was to review 2016 Code and make recommendations*
2. *What the Committee did:*
 - 2.1 *It ignored 2016 Code completely and never referred to it once. It ignored its existence.*
 - 2.2 *It re-adopted the 2003 Governance Code as a template, pushing the nation back 15 years*
 - 2.3 *It copied many pages from 2016 Code and never acknowledged it, plagiarism of a particularly bad kind, sending a very bad signal to students in the Universities.*
 - 2.4 *Many academics are on that Committee. I don't know why they allowed or tolerated the plagiarism, whatever the circumstance!*
 - 2.5 *It produced a Code, without tenures, Chairman, MD, ED, NED, no tenure except INEDs that are not wanted, 9 years.*
 - 2.6 *Board Structure, Committees, Processes, Charters iii - defined*

JOINT AUDIT

Multinationality is predicated on concentration. Without concentration, there will be no multinationality because you need the majority equity as a basis for central corporate control – which takes us back to shareholders primacy (1862) and shareholder value.

The need for joint audit in 'concentration' is based on the relatively low value of equity compared to non-equity stakeholder capital. Leaving external audit of significant entities in Nigeria, for example, in the hands of one external auditor using shareholder value and primacy, is leaving audit in the hands of a minority capital providers (equity), to the exclusion of majority capital providers (non equity stakeholders). Multinationality dictates that a secret between two people is a secret, a secret between three people is no longer a secret, hence the abhorrence of a joint audit!!! France disagrees.

The 2018 Committee erred by ignoring joint audit provisions in 2016 Code without a document explaining why, in the form of an Explanation of Material Variations, the sort of document expected from any official Committee in this type of circumstances.

SUMMARY

1. *Governance Board (2018) is badly structured and skewed towards controlling equity ownership, thus facilitating unchallenged board proposals and strategy.*
2. *Section 359 bundled up, no clarity between Board Audit Committee and Statutory Audit Committee. The Committee did not consider the criticism of Section 359 worldwide.*
3. *Outsourcing of internal audit craftily allowed instead of outright ban (See Carillion, 2018).*
4. *The Code provisions for each of the 3 oversight committees specifically end with 'majority of them should be INEDs, where possible' thus leaving room for majority NEDs on oversight Committees in the country. This does not demonstrate scholarship*
5. *The Chairman of Statutory Audit Committee (SAC) should be selected among its members and should have financial literacy [i.e not necessarily an expert to relate with External Auditors!]*
6. *Minority shareholder protection is nil! All the Code says in Sec. 18.1.3 is that the Board should ensure that 'minority shareholders are adequately protected from abusive actions by controlling shareholders'. No provision to this effect. The word 'minority' is noted in Code 2003 (1), 2016 (19), 2018 (2). 2018 Code seems to derive its template from 2003.*
7. *Where the Regulator is satisfied of abuse of office by Auditor, the word 'Regulator' is now replaced by the word 'Board', and the show of hands voting for auditor removal was deleted and silent to accommodate controlling shareholders who will not remove the auditor anyway.*

CONCLUDING MESSAGE

My own message today can be summarized in these few words: attracting investment requires protecting investors and no country has a divine right to foreign direct investment. In our country today, neither the quality of law nor its enforcement can be said to be very adequate. We do not as a Nation have an enforceable concept of the fiduciary duties that controlling shareholders, directors and managers owe to investors – particularly the minorities. Nigerian companies are increasingly reliant on stakeholder capital, but do everything imaginable to avoid adequate internal or external oversight. Investor protection requires both law and regulation. Investors whether equity or loan will not invest in a country or company regarded as unstable, corrupt or utterly lacking basic protections for their investments and rights. Nigeria needs a very strong Code. The world will see through any weak and deceptive Code. We should not try it!

Victor Odiase

9th July, 2018