Multinational Corporations and their Subsidiaries

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Executive Summary

A majority-owned subsidiary has two different and possibly conflicting ownership interests: the majority interest of the parent company and the minority interests of the remaining shareholders. This project examines 10 multinational corporations (MNCs) that have majority-owned subsidiaries listed on stock exchanges in emerging markets: Colgate Palmolive; Diageo; GlaxoSmithKline; Heidelberg Cement; Heineken; LaFarge Holcim; Nestle; Procter & Gamble; PZ Cussons; and Unilever. It explores the relationship between the MNC, as majority or controlling shareholder, and the minority shareholders of its subsidiaries based in Asia and Africa. The report draws out examples of MNCs that have behaved well towards minority shareholders, taking into account their needs, and those that have behaved badly, ignoring or acting against the interests of the minority shareholders.

This research on multinationals and their subsidiaries reveals the following issues as prominent in determining the quality of relationships between multinational corporations and their subsidiaries. In answering the questions posed below we may see the true colours of an MNC in terms of its view of overseas subsidiaries and its treatment of minority shareholders in emerging markets.

1. **Buyouts and de-listings -** *Is the offer price deemed fair?*
2. **Restructuring and/or mergers** - *Will the holdings of minority shareholders be diluted?*
3. **Related party transactions, royalty payments and service agreements -** *Does the subsidiary receive genuine benefits proportionate to the fee and is it able to negotiate?*
4. **Strategic decisions** - *Does the MNC permit the subsidiary to grow or does it hinder this by directing opportunities to other group subsidiaries?*
5. **Autonomy of subsidiary board** - *Does the MNC accept local board input or simply impose orders from above?*
6. **Engaging with minority shareholders and/or local management** - *Does the MNC provide information to all shareholders, opportunities for input at AGMs and discussion around major decisions?*
7. **Raising standards in emerging economies** – *Does the MNC expect the subsidiary to meet high ethical and voluntary standards with regard to social, environmental issues as well as accountability and transparency?*

In general the emerging market countries researched in this report appear to have a high regard for multinationals operating in their economy and welcome their investment. Our findings support theories of multinational investment that suggest it can serve not only to develop the local economy, but to enhance local wage rates, employment conditions and environmental practices.

Our findings confirm that the behavior of an MNC in relation to any particular subsidiary can vary widely depending on group strategy, reputational risk, local market conditions and local legal requirements. It will also depend on the interaction between the culture and governance frameworks of the parent and subsidiary countries; as well as the MNE's own balance between integration and diversity of approach.

Introduction

Many of the world's largest multinational companies (MNCs) have subsidiaries in emerging markets that are listed on a local stock exchange. This arrangement creates interesting challenges for corporate governance that tend to be overlooked in national governance codes and regulatory frameworks due to their boundary-spanning nature. In a practical sense, the subsidiary must manage two different and potentially conflicting ownership interests:

1. The majority interest of the overseas parent (the parent may wish to make decisions based on the MNC's overall group strategy)
2. The minority interests of its local shareholders (who will be concerned with the performance and sustainability of the local subsidiary)

This report explores the relationships between MNCs, their subsidiaries and the subsidiary's minority shareholders. It does so by investigating the behaviour of a sample of multinationals that have subsidiaries across emerging markets in Asia and Africa. The way in which MNCs deal with these complicated group relationships is likely to reflect the sophistication of their governance as a whole. Quite often when companies fail in their corporate governance, problems are revealed at subsidiary level. Thus subsidiary governance is increasingly seen as an important risk that ought to be managed appropriately.[1]

This research focuses on how multinational corporations (MNCs) treat minority shareholders in their majority-owned subsidiaries. Essentially the question is whether MNCs communicate and engage with minority shareholders and permit their input into significant decisions. Defined in this way engagement could encompass matters concerning group strategy, financial performance and non-financial risks, particularly conduct, reputational and culture risk.

Governance of subsidiaries

Against a background of globalisation, the governance of subsidiaries has emerged as a challenging area for corporations and a topic that is very under-researched.[2] This is because of the complexity of the issue and the difficulty in obtaining information about corporate groups and their internal policies. Processes for managing these relationships are further complicated when the parent company operates within a different national governance regime than its subsidiary (see Figure 1). A report by Deloitte surveying their clients finds that subsidiary governance arrangements vary widely.[3] Parent companies may vary their governance processes for subsidiaries depending on factors such as: a subsidiary's strategic importance; the level of share ownership; whether the subsidiary's shares are listed; and its risk to the group. Some parent companies will take a whole-group approach to policy implementation and others will encourage a level of subsidiary independence.[4] Although a parent company may wish to have rigorous controls over the whole corporate group, legal impediments may impair the ability to exert this control. Indeed, if the parent company wishes to retain the advantages of limited liability it must not be seen as a controlling shadow director of the subsidiary nor as owing duties of care in tort law.

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[1] See PWC, 2013 'Subsidiary Governance: an unappreciated risk', available at https://www.pwc.com/gx/en/services/legal/entity-governance-compliance/subsidiary-governance.html

[2] Jorgenson, Sandra, 'Beyond the Parent Board: Downstream Corporate Governance, Findlaw, available at https://corporate.findlaw.com/corporate-governance/beyond-the-parent-board-downstream-corporate-governance.html

[3] Deloitte, Governance of Subsidiaries: A survey of global companies, September 2013 available at https://deloitte.wsj.com/riskandcompliance/2016/12/07/the-boards-agenda-subsidiary-governance-in-a-multidimensional-environment/

[4] Strikwerda, 2009 How to combine a Group Strategy with Subsidiary Governance https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1426806

Figure 1 Example of Multinational Corporations and their Subsidiaries

Legal relationships

These legal relationships have recently been under scrutiny in three cases in the United Kingdom involving harm caused to local communities by overseas subsidiaries of Royal Dutch Shell, Unilever and Vedanta Resources.[5] The courts have held that a parent company will owe a duty of care in relation to the actions of its subsidiary in circumstances where it exerts operational control directly over the subsidiary. The duty of care is not imposed simply because the parent has a group-wide system of mandatory policies as long as the subsidiary maintains day-to-day control over its operations. The law draws a very fine line between (1) a parent company seeking to implement group-wide governance and safety policies; and (2) a parent company seeking to take control of the day-to-day operations of the subsidiary.[6]

Directors of subsidiaries in nearly all jurisdictions will have a legal duty to act in the best interests of the subsidiary, not the group. This can place them in a difficult position when the interests of the subsidiary conflict with the interests of the majority shareholder. The composition of subsidiary boards can therefore be very important. Although some overlap of subsidiary and parent company directors is important for information flow, a subsidiary board will require local knowledge, independent judgment, and must take the interests of all its shareholders into account, not just the parent company.

Protection of minority shareholders

The legal systems in emerging markets vary widely in the extent to which they provide protection and legal remedies for minority shareholders. Of course, many of the available legal protections for minority shareholders are aimed at private, non-listed companies where minority shareholders can become trapped in an unfair situation. Unlike shareholders in a listed company, they do not have a public market in which to sell their shares. They can be left with only two options:

1. Sell to the majority shareholder – at reduced price (*squeeze out*).
2. Stay but have no control over what is going on (*freeze out*).

[5] *Okpabi and others v Royal Dutch Shell Plc and another* [2018] EWCA Civ 191; *Lungowe and others v Vedanta and KCM* [2017] EWCA Civ 1528; *AAA & Others v Unilever PLC and Unilever Tea Kenya Limited* [2018] EWCA Civ 1532.

[6] See e.g. Norton Rose Fulbright, 'New guidance on parent company liability for the actions of foreign subsidiaries, December 2018 available at https://www.nortonrosefulbright.com/en/knowledge/publications/fe7fc1d3/new-guidance-on-parent-company-liability-for-the-actions-of-foreign-subsidiaries

For minority shareholders of listed companies these options can be similar if less severe. Behaviour of the controlling shareholder may reduce the value of shares such that they can be sold only at minimal value or it may dilute voting rights to the point of insignificance.

Certain types of conduct by majority shareholders have been recognised by the law in many jurisdictions as oppressive or unfair. These include manipulating finances so profits are not paid out as dividends but diverted to majority shareholders (often through salaries/bonuses to employee-shareholders or royalty/service payments to the parent); issuing shares in order to dilute minority voting rights; refusing to provide information to minority shareholders; or refusing to call shareholder meetings. In summary, conduct that destroys or substantially diminishes the value of a minority shareholder's interest by reducing or eliminating economic benefit or violating the rights associated with share ownership.

Although most jurisdictions provide legal remedies for minority shareholders who have been treated unfairly there can be high hurdles in bringing a successful action. The available remedies are unlikely to be of assistance in cases where the unfairness is subtle, hidden or unintentional. A cross-national comparative study on legal protections of minority shareholder rights for 78 countries was compiled by Guillén and Capron.[7] The dataset analysed the ten key legal provisions identified by scholars as being the most relevant to the protection of minority shareholder rights, assigning an annual score between 0 and 10. It found that minority shareholder rights were not fully protected in the legal provisions of any country in our sample (see Table 1). Over time, all countries within the sample had strengthened legal protections for minority shareholders, although some were starting from a base of virtually no protections. As at 2016, India had the strongest legal protections and Pakistan the weakest.

Majority-minority conflicts

The academic literature refers to conflicts between controlling shareholders and minority shareholders as principal-principal conflicts, thereby distinguishing them from principal-agent conflicts found between shareholders and managers. They can result from concentrated ownership, extensive family ownership and control, business group structures, and weak legal protection of minority shareholders. These conflicts have been identified as a major concern of corporate governance in emerging economies.[8] This is because informal institutions, such as relational ties, business groups, family connections, and government contacts, play a greater role in shaping corporate governance in emerging economies than they might do in other countries. Dominant controlling shareholders may appoint representatives to board positions, creating information asymmetry problems between controlling and minority shareholders. This can be problematic, especially, 'if parent company owners prioritize parent company interests, avoid maximizing shareholder value, or avoid distributing profits to all shareholders, including minority shareholders'.[9] Sakawa and Watanabel find that parent company control can weaken dividend payouts and profitability of subsidiaries yet strengthen sales growth.

[7] Guillen MF and Capron L, 2016 'State Capacity, Minority Shareholder Protections and Stock Market Development', *Administrative Science Quarterly*,

[8] Young, M.N., Peng, M.W., Ahlstrom, D., Bruton, G.D., Jiang, Y., 2008. Corporate governance in emerging economies: a review of the principal–principal perspective, *Journal of Management Studies* 45 (1), 196–220.

[9] Sakawa, H and Watanabel N, 2018, Parent control and ownership monitoring in publicly listed subsidiaries in Japan- Research, in *International Business and Finance*, Vol. 45, p7-14

Table 1 Relative Strength of Legal Protections of Minority Shareholders

Country	Timeframe1	Timeframe2	Timeframe3
Egypt	2007-2016: 5.92*	2002-2006: 4.92	1981- 2001: 4.17
Ghana	2010-2016: 5	2007-2010: 3.5 -4.5	1970-2005: 2.75
India	2010-2016 6.88	2000-2009: 6 -6.88	1991-1999: 5.5-5.75
Indonesia	2000-2016 4.25**	1995-1999: 3.25	1970-1994: 0-0.75
Malaysia	2001-2016 6.25	1999-2000: 6	1970-1998: 5.28
Nigeria	1990-2016 5.25	1970-1989: 3.25	ND
Pakistan	2000-2016 3.58	1990-2001: 1.5 -2.83	1970-1989
Tanzania	Not in database		
Uganda	Not in database		

* Scores from 0 to 10 for legal protection
**2007 is 4.75
Source: Guillen-Capron Shareholder Rights Index, Version 4.0, updated to 2016.

The literature also identifies the importance of allowing minority shareholders to have representatives on the board of subsidiaries to increase directors' accountability and reduce conflict with the majority shareholder. [10] Independent minority directors can question self-dealing operations by controlling owners and potentially increase compliance with best practice in corporate governance.. It has been suggested that controlling shareholders should be subject to fiduciary duties in Asia rather than placing this duty on directors.[11]

[10] Moscariello N, Pizzo M, Govorun D and Kostyuk A, 2019 Independent minority directors and firm value in a principal-principal agency setting: evidence from Italy, *Journal of Management and Governance*, Vol 23, pp165-194.
[11] Lim E, 2017 'Controlling shareholders and fiduciary duties in Asia', *Journal of Corporate Law Studies* 18(1).

Scope of Research

This research was conducted in two stages (1) desktop research on the ten MNCs and their listed subsidiaries in key emerging markets (**Table 2 Research Sample**); (2) interviews with independent corporate governance experts based in India, Pakistan, Africa and Malaysia. The details of our research methodology are set out in **Appendix 1.** Its limitations include the fact that we were reliant on publicly available data, particularly media reports which tend to reveal information based on (a) examples of poor rather than good behavior; and (b) discrete transactions rather than overall approach.

Table 5 Research Sample Companies and Country Operations

SOUTH ASIA		SOUTH EAST ASIA		AFRICA			
INDIA	PAKISTAN	MALAYSIA	INDONESIA	GHANA	NIGERIA	UGANDA TANZANIA	EGYPT
Colgate Palmolive India				PZ Cussons Ghana	PZ Cussons Nigeria		
GSK Consumer India	GSK Pakistan				GSK Consumer Nigeria		GSK SAE
Nestle India	Nestle Pakistan	Nestle Malaysia			Nestle Nigeria		
Gillette India (P&G)	Gillette Pakistan (P&G)						
P&G Hygiene & Health Care	GSK Consumer Healthcare Pakistan (P&G)						
United Spirits (Diageo)				Guinness Ghana	Guinness Nigeria (Diageo)	East African Breweries (Diageo)	
Ambuja Cement (Lafarge)		Lafarge Malaysia	Holcim Indonesia (Lafarge)		Lafarge Africa		
Heidelberg Cement (India)			Indocement (Heidelberg)			Tanzania Portland Cement (Heidelberg)	Suez Cement (Heidelberg)
Hindustan Unilever			Unilever Indonesia	Unilever Ghana			
United Breweries (India)		Heineken Malaysia	Multi Bintang Indonesia Heineken		Nigerian Breweries Heineken		

Research Findings

Detailed findings on each of the ten MNCs are presented in **Appendix 2.** In this section we summarise the themes of the analysis, drawing out examples of MNCs that have either behaved well towards minority shareholders, taking into account their needs, or behaved badly, ignoring or acting against the interests of the minority shareholders. We supplement these findings with insights from experts in Africa, Malaysia, India and Pakistan with local market knowledge.

Research themes: potential for misuse of power

The research revealed five situations in which MNCs have discretion to use their controlling power in a way that could disadvantage minority shareholders:

- **Buyouts and de-listings** - *Is the offer price fair or not?*
- **Restructuring and/or mergers** - *Will the holdings of minority shareholders be diluted?*
- **Related party transactions, royalty payments and service agreements** - *Is the price fair or is it a way to leak profits to the parent?*
- **Strategic decisions** - *Does the MNC permit the subsidiary to grow or does it hinder this by directing opportunities to other group subsidiaries?*
- **Autonomy of subsidiary board** - *Does the MNC accept local board input or simply impose orders from above?*

Buy-outs and de-listings

The reasons for the existence of listed subsidiaries are varied. Some subsidiaries have always been listed and their shares slowly acquired by the MNC until a majority stake is held. Others are listed due to local requirements around foreign ownership whereby a small local float is seen as beneficial to the local economy. In either case the MNC may wish to consolidate its holdings and, if permitted by local laws, to ultimately delist the subsidiary so has to have full control. In India in particular there have been companies attempting to delist after a change in regulation. In the 1990s foreign-owned companies were required to be listed and when this changed some attempted to buy out minority shareholders. In some cases this was successful and in others shareholders raised concerns over the price and the delisting failed.

Indeed, there are many examples amongst the sample companies of an MNC making an offer to buy shares from the minority shareholders of one or more of its subsidiaries. The success or failure of such offers will hinge on the offer price and whether it is seen as fair. For example, in 2013 GSK sought to increase its stake in both its Indian subsidiary GSK Pharma and its Nigerian subsidiary from around 50% to 75%. Although in both cases the offer price was set at a premium to the prevailing share price there was debate on whether this was fair based on significant variations in the share price either before or after the offer. In markets with share price volatility it is always difficult for the MNC to pick the right price, however, if communication and engagement occurs with minority shareholders there is much less risk of disappointment. Heineken is an example of an MNC with a clearly disclosed strategy of delisting. The buy-out of minority shareholders in Holicim Apasco in Mexico provides an example of a successful buyout. The premium was high at approximately 45% of the average market price the year prior and was accompanied by a fairness opinion from a local investment bank.

Restructuring or mergers

Minority shareholders can be adversely affected by group restructuring or mergers. For example in 2013 Lafarge Holcim restructured its twin Indian subsidiaries in a deal whereby one of the subsidiaries, Ambuja Cement, purchased Holcim's holding in the other subsidiary ACC. The deal involved a large cash payment to the Swiss-based MNC seen by many as a transfer of funds to the parent group.

Lafarge Holcim was criticised again in 2014 for its merger of its businesses in Nigeria and South Africa. The deal was said to be skewed against Nigerian minority shareholders in particular as their shareholdings in the new entity, Lafarge Africa, would be diluted.

Related party transactions including royalty payments and service agreements

Another issue affecting subsidiaries of MNCs is the payment of royalties to the parent company by the subsidiary. The idea behind payment of royalties is that the subsidiary ought to pay to get access to the parent company's technology and R&D capabilities and the right to the leverage of the global portfolio of the multinational. However, when royalty payments increase (for example as has happened in recent years in India) this can impact on the earnings of minority shareholders. Interviewees did not question whether royalty payments to the MNC parent amount to a legitimate practice, but how the quantum is decided and whether it reflects a fair assessment of the benefits received. Contention between MNCs and local shareholders on the scale and reasons for royalty payments may prove inevitable due to the disparities in both knowledge and power between the two parties. Although royalties will usually be within 2-7% of the subsidiary's revenue they can represent up to 30-40% of profit which is very high and impacts on the dividend to local shareholders.

In 2010 the Indian government liberalised royalty rules which led to a sharp rise in payments to MNCs. Nestle India was one of the top three royalty-paying companies in which the money remitted increased more than three times from 2007-08 to 2011-12, while the collective revenue of these companies increased only 1.8 times. The companies were said to have paid no dividends in the past five years, though they had paid significant amounts in royalty to their foreign partners. The capacity of MNCs to influence the determination of these payments upon compliant subsidiary boards is problematic. Government regulation is now in place in India to protect minority shareholders from unwarranted royalty increases, but it is a potential issue in other economies.

In Nigeria some minority shareholders have taken issue with the way in which MNCs, such as Nestle, Unilever and Lafarge, require technical fees to be paid by subsidiaries. They argue that the way in which technical fees are charged, on turnover, benefits only the foreign partners, and instead they should be charged on profit after tax.

Strategic decisions

MNC strategy will often be based on the interests of the group as a whole which may mean that the interests of any individual subsidiary take second place. Examples of this include Colgate-Palmolive's purchase of the Bombay Shaving Company which was viewed as potentially in competition with its listed subsidiary Colgate-Palmolive India. If Bombay Shaving Company were to take business away from Colgate Palmolive India this would be detrimental to minority shareholders but not to the MNC.

Experts mentioned the fact that MNC's can also set up new unlisted subsidiaries, in addition to the listed subsidiary, which then they use to manufacture new product lines, curtailing the opportunity for the listed subsidiary to grow and benefit from these new products.

Autonomy of subsidiary board

In some cases the autonomy of the board of the subsidiary is called into question. Although the board of the local subsidiary formally has decision-making power and a duty to act in the interests of the subsidiary company (not the group), this is not always easy for directors in practice. For example the board of GSK's Bangladesh subsidiary was criticised when it decided to close its pharmaceutical manufacturing business. This looked very much like a group decision originating from the MNC's headquarters without benefit for minority shareholders or the local community.

Directors on the boards of subsidiaries are often seen by experts as having little independence from the parent MNC in terms of their decision-making and ability to grow the company and set strategy. MNCs are often reluctant to engage in strategic conversations or allow the subsidiary to give feedback to the parent company. The relationship frequently is seen as very one-sided. For example Heineken has taken over several African companies – it was seen to have come in with a certain method and approach with very little tolerance for dissent or difference of opinion. In this kind of relationship the directors are selected based on their loyalty to the parent and independence is avoided. The management team is controlled from overseas.

Research themes: good practice

The research also revealed examples of MNCs treating their subsidiaries well:

- engaging with and supporting minority shareholders and/or local management;
- raising standards in emerging economies.

Successful engagement

We noted several instances where the MNC communicated well with the minority shareholders of a subsidiary in order to overcome difficulties or achieve restructuring in an informed and supportive manner. For example, Diageo's engagement with local minority shareholders in relation to its struggling Nigerian subsidiaries provides an example of good practice. Diageo managed a successful rights issue in order to reduce the company's debt/equity ratio which had become problematic due to the economic conditions in Nigeria Experts noted that the relationship between subsidiary and parent was often dependent on the criticality of the subsidiary to the group as a whole. For example, in India, Nestle's subsidiary represents only 1-2% of total revenue whereas for Unilever the Indian subsidiary represents almost 9% resulting in a slightly more balanced relationship. Unilever has a policy of circulating its managers around the world so that they do acquire an understanding of local conditions. In some corporations though, overseas subsidiaries are often seen as outposts rather than business partners or opportunities. Localakeovers by MNCs have been done well with engagement and education rather than imposition of a rigid system, but this is in a minority of cases..Communication between MNC and subsidiary will also depend on the local regulation in place around minority shareholder rights and related party transactions. For example, in 2015, in India, new regulations were introduced preventing the majority shareholder from voting on resolutions involving related party transactions such as royalties, master service agreements and some business sales. This has resulted in much more engagement between the MNC parent company and local minority shareholders when it comes to determining the basis of payment of royalties.

MNCs as positive exemplars

In general, subsidiaries of MNCs are welcomed in emerging markets, they are seen to have high standards of corporate governance; access to long-term capital and global know-how; tried and tested business models; and a concern for their reputation that leads them to meet or exceed local regulatory requirements. This means the shares of subsidiaries of MNCs are popular - they are seen as strong, resilient dividend-yield stocks that are relatively low risk due to the size and established nature of the MNC. They tend to outperform the main index and are stable, driven by the quality of the MNC parent. Particularly in the FMCG sector, the MNC brands are more entrenched than the domestic players and have the reach to cope with large markets. Subsidiaries of MNCs are also seen as good places to work both in terms of pay rates and their policies and procedures. They are professionally run, meaning less surprises for local leaders of these companies. This is seen as an advantage when compared to local family-run businesses where controlling shareholders can be very unpredictable, and business is often relationship-based rather than market-based.

Discussion and Conclusions

The emerging market countries researched in this report appear to have a high regard for multinationals operating in their economy and welcome their investment. Our findings support theories of multinational investment that suggest it can serve not only to develop the local economy, but to enhance local wage rates, employment conditions and environmental practices. When a subsidiary is valued by the MNC, the parent-subsidiary relationship can work very well. Yet at the start of a new relationship, when a domestic company is newly taken over by an MNC there can be culture clashes. Equally, at the other end of the relationship, when an MNC is attempting to extract itself from a market, or assert its own central corporate interests above those of the subsidiary, there may be conflicts.

The attractions of investing in subsidiaries of established multinationals in expanding emerging economies with a growing middle class are considerable. However, with higher rates of growth and greater volatility, together with often a weak rule of law and immature political systems, a risk-aware approach is required. This necessitates the parent company maintaining a good relationship with local minority shareholders. Each of the multinational companies in this sample demonstrates awareness of and capability for dealing with these issues. But in almost every case at some stage difficulties were encountered, and how these were resolved is important. It should also be noted that the problems were often originated among majority shareholders in the main parent company, rather than minority shareholders in the local subsidiary.

The literature suggests that one-size does not fit all when it comes to governance of foreign subsidiaries and the best structure may depend on the strategic role to be carried out by the subsidiary.[12] Our findings confirm that the behavior of an MNC in relation to any particular subsidiary will vary depending on group strategy, reputational risk, local market conditions and local legal requirements. It will also depend on the interaction between the culture and governance frameworks of the parent and subsidiary countries; as well as the MNE's own balance between integration and variation.[13] There are clearly almost universally different institutional logics at play between multinational enterprises and their subsidiaries, with the multinational possessing an international concern for the logic of its own enterprise and strategies, and subsidiaries embedded to varying degrees in the realities of local market concerns and priorities (see **Table 3**). Multinationals negotiate their way through the complexities of these regional and cultural differences with different degrees of sophistication and success at different stages in the development of their subsidiaries.

There is significant risk that the cultural values of the parent MNC are not transplanted automatically into regional subsidiaries by rebranding alone. This can lead to misplaced confidence that an increased depth and breadth of market share in regional markets by a multinational necessarily ensures equal spread of integrity and probity both in and by the corporation. MNCs have large footprints in emerging markets through direct and indirect investment, and there needs to be tangible evidence of alignment between stated purpose and actual practice with demonstrable due diligence.[14] Investors in parent controlled subsidiaries are vulnerable in two ways: firstly in being largely reliant on the stated commitments of the parent company to ensure the probity of conduct and efficacy of risk controls within the subsidiary, secondly investors committed to responsible investing can be impacted by customer reaction when there is international concern regarding the policies of MNCs who are deemed responsible for protecting the global social good.

[12] Kim et al Differentiated governance of foreign subsidiaries in transnational corporations: an agency theory perspective https://www.sciencedirect.com/science/article/pii/S1075425304000754; Kiel et al 2006 Corporate Governance Options for the Local Subsidiaries of Multinational Enterprises https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1467-8683.2006.00531.x

[13] Alpay, G., Bodur, M.,Ener, H. and Talug, C. (2005) Comparing board-level governance at MNEs and local firms, Journal of International Management, 11, 1, 67-86; Pant, A. and Ramachandran, J. 2017 Navigating identity duality in mulitinational subsidiaries: A Pardox lens on identity claims at Hindustan Unilever 1959-2015, Journal of International Business Studies, 46, 664-692

[14] Casson, M. (2013) Foreign direct Investment in high-risk environments: An historical perspective' (2013) 55(3) *Business History* 375

Table 3   Institutional Logics between Multinationals and their Subsidiaries

Institutional Logics	MNC Enterprise Logic	Subsidiary Domicile Logic
Ideology	Managerial Capitalism	Market and welfare capitalism
Source of identity	Multinational Enterprise	Geography: host country culture
Source legitimacy	Performance in MNC	Local engagement, Local community
Basis of Mission	Defend MNC interests	Contribute to national economic growth
Focus	Sales & Profitability	Impact and leadership in community
Cycles of Time	CEO tenure, annual results	Tenure of Government, Continuity and stability
Basis of Governance	Business units, Functional, Regional Heads	Compliance with local regulations, Subsidiary Board of Directors
Strategy	Global integration	Local responsiveness

Source: Adapted from Anirvan Pant and Ramachandran (2018); Thornton et al (2012)[15]

The Institute of Chartered Secretaries and Administrators (ICSA) has some basic guidelines and recommendations on subsidiary governance which take these differences into account and suggest that strong lines of communication are key to successful implementation of appropriate governance frameworks.[16] It is essential to maintain direct and open lines of communication to engender confidence and reduce reputational risk, particularly at moments of crisis. Maintaining an appropriate balance is the role of the investor relations team, whose function is defined by the Corporate Finance Institute as combining, “finance, communication, and marketing to effectively control the flow of information between a public company, its investors, and its stakeholders”.[17] The information offered is to provide an evidential basis to justify the company share price and investor confidence, reflecting the fundamental value of the corporation taking into account material and reputational risk.

Corporate governance within the emerging economies remains a work in progress with “continuing tensions with the international movement for corporate governance reforms throughout the emerging economies, the insistent capital market pressures for convergence of emerging economies’ corporate governance toward international standards, the vibrant cultural and institutional tendencies in the emerging economies toward diversity in their corporate governance institutions and practices, and how these distinctive cultures and institutions of the emerging economies represent a vital differentiator that might delineate much of business development of these countries”.[18]

[15] Thornton, P. H., Ocasio, W., & Lounsbury, M. 2012. The institutional logics perspective. New York: Oxford University Press
[16] ICSA. https://www.icsa.org.uk/knowledge/blog/establishing-a-subsidiary-governance-framework-a-checklist
[17] https://corporatefinanceinstitute.com/resources/careers/jobs/role-of-investor-relations-ir/
[18] Clarke, T (2015) The transformation of corporate governance in emerging economies, *Emerging Markets Finance and Trade*, 51, 25-46,26

Appendix 1 Research Methodology

For each of the ten multinational companies a concise case study analysis was applied, examining the relationships and interests of the multinationals and their subsidiary shareholders, and how other stakeholders are served. Primary and secondary sources of data were used to explore the way in which these companies treat their minority shareholders. The research brief excluded interviews with the sample companies themselves. Thus unique insights were secured through interviews with independent professionals in emerging markets who could advise on the extent and quality of investor relations between multinationals and subsidiary investors, and who could comment on any defects in the management of investor risk.

This informs how issues might be addressed by exercising 'voice' over 'exit' (that is being able to influence issues by engagement or selling the shares and exiting). The contribution to effective stewardship and integrity of investor relationships was focused on throughout. Company publications were examined including annual reports, market reports, company websites, and investor reports. In addition, media reports, NGO reports, court cases, disclosures and negotiated settlements with market conduct or competition regulators were considered where relevant.

Stage 1: Desk research

Stage one of the research took each of the 10 MNCs and identified its subsidiaries that were listed on a stock exchange in an emerging market (see **Table 4**). Based on this sample it was possible to identify the markets with the most listed subsidiaries. This narrowed our sample to approximately 6-8 markets each of which had two or more listed subsidiaries of the 10 MNCs (see **Table 2 Research Sample**). Background information on each of these subsidiaries and its shareholders was obtained using company websites, annual reports and databases such as Morningstar and Bloomberg. We also searched media databases for any reports on minority shareholder conflicts relating to these subsidiaries.

Stage 2: Expert interviews

In accordance with the agreed research methodology, only organisations that were independent of the 10 MNCs and their subsidiaries were approached for interviews. These included organisations with an interest in corporate governance such as: share market operators; shareholder/investor associations; professional associations (such as the Institute of Directors and Chartered Secretaries); policy think-tanks; government agencies; academic institutions; and the financial press. These bodies had knowledge of corporate governance issues in their local market and represented different stakeholders interested in governance.

Research Sample

Table 4 Subsidiaries of the 10 MNCs listed in an emerging market

MNC	MNC HQ	MNC Listing	Listed Subsidiaries in emerging markets
Colgate Palmolive	US	NYSE	Colgate Palmolive (India) Colgate Palmolive (Pakistan)*
Diageo	UK	LSE NYSE	United Spirits Ltd (USL) (India) East African Breweries (Uganda, Tanzania) Guinness Ghana Breweries Sichuan Swellfun Co (China) Guinness Nigeria Seychelles Breweries
GlaxoSmith Kline	UK	LSE NYSE	GSK Consumer Healthcare (India) GSK Pharmaceuticals (India) GSK Bangladesh GSK Consumer Healthcare Pakistan GSK Pakistan GSK SAE (Egypt)

			GSK Consumer Nigeria*
Heidelberg Cement	Germany	Germany	Suez Cement (Egypt) Heidelberg Cement (India) Tanzania Portland Cement Indocement Tunggal Prakarsa (Indonesia)
Heineken	Netherlands	Netherlands	Nigerian Breweries Heineken Malaysia Multi Bintang Indonesia Commonwealth Brewery (Bahamas) United Breweries (India)* CCU (Chile)*
Lafarge Holcim	Switzerland	Zurich Paris	Bamburi Cement (Kenya) Lafarge Cement Zimbabwe Lafarge Africa (Nigeria) Lafarge Jordan Lafarge Ciment Moldova Lafarge Malaysia Holcim Liban Holcim Indonesia Ambuja Cements (India) Holcim Argentina Holcim Costa Rica Holcim Ecuador Holcim Azerbaijan
Nestle	Switzerland	SIX Swiss	Nestle India Nestle Nigeria Nestle Malaysia Nestle Pakistan Nestle Sri Lanka Nestle Cote d'Ivoire
P&G	US	NYSE	Gillette India Procter & Gamble Hygiene & Health Care (India) Gillette Pakistan
PZ Cussons	UK	LSE	PZ Cussons Nigeria PZ Cussons Ghana
Unilever	UK Netherlands	Netherlands NYSE LSE	Unilever Cote d'Ivoire Hindustan Unilever Unilever Indonesia* Unilever Nigeria Unilever Ghana Unilever Caribbean

Source: Listed subsidiaries identified through annual reports and Bloomberg Database. * not listed in Bloomberg Database. Emerging market defined by FTSE list as at end-2018 (so e.g. Heineken's Grupa Zywiec in Poland not included, nor subsidiaries in Belgium or Spain

Colgate-Palmolive

Company description: Colgate-Palmolive is a leading consumer products company. It is a global leader in oral care with the leading toothpaste and toothbrush brands through many parts of the world. It also has global leadership in liquid hand soap and deodorant; home care products such as dishwashing liquid and fabric conditioner; and cat and dog food through Hills Pet Nutrition.
Parent company: headquartered in the United States, listed on the New York Stock Exchange
Listed subsidiaries: Colgate has numerous subsidiary organisations spanning 200 countries, but of these only two are publicly listed.
Colgate-Palmolive (India) – 51% - remaining shares listed on the Bombay Stock Exchange and NSE
Colgate-Palmolive (Pakistan) -58% - remaining shares listed on the Lahore Stock Exchange.

Treatment of minority shareholders
Colgate-Palmolive Asia Pacific's purchase of a 14% stake in Bombay Shaving Company (BSC) in 2018 was controversial as it was seen to be contrary to the interests of the shareholders of Colgate-Palmolive India. As soon as the sale was announced the price of the subsidiary's shares decreased by 1.8%.[19] Although the acquisition was small it raised concerns around governance due to category overlap: both BSC and Colgate Palmolive India operate in the personal care and grooming sector creating conflicts of interest. If BSC's business was to ramp up over time, Colgate India shareholders would be devoid of any upside from the acquisition. The Mumbai brokerage firm CLSA felt that given Colgate-Palmolive India's local understanding and strong distribution, it would have made more sense if the acquisition was done by the listed company.

Another issue affecting the Indian subsidiary of Colgate (as well as other Indian subsidiaries of MNCs) is the payment of royalties to the parent company. The idea behind payment of royalties is that the subsidiary needs to pay to get access to the parent company's technology and R&D capabilities and the right to leverage of the global portfolio in India. However, when royalty payments increase (as has happened in recent years) this can impact on the earnings of minority shareholders.[20] Colgate Palmolive India has been noted as having the second highest royalty rate in India at 5% of revenues. The focus on sales and revenue is seen as hurting minority shareholders becasue profit and dividend will grow much more slowly than revenue.[21]

[19] Economic Times, CLSA raises red flag on Colgate after group arm's India investment, 25 August 2018 available at https://economictimes.indiatimes.com/markets/stocks/news/clsa-raises-red-flag-on-colgate-after-group-arms-india-investment/articleshow/65537956.cms
[20] Moneylife (2013) Royalty hikes by foreign consumer companies to impact minority shareholders, 26 March 2013, https://www.moneylife.in/article/royalty-hikes-by-foreign-consumer-companies-to-impact-minority-shareholders/31866.html
[21] Kant Krishna, Royalty bigger than dividends for MNCs Business Standard, 18 January 2014 https://www.business-standard.com/article/companies/royalty-bigger-than-dividends-for-mncs-114011701117_1.html

Diageo

Company description: Diageo is a global leader in beverage alcohol with a wide collection of brands across spirits and beer. These include Johnnie Walker, Smirnoff, Captain Morgan, Tanqueray and Guinness. It uses a market-based business model to apply country-based strategies to meet consumer and customer needs.

Parent company: headquartered in the United Kingdom, listed on the London Stock Exchange and New York Stock Exchange

Listed subsidiaries: United Spirits Ltd (USL) (India); East African Breweries (Uganda, also listed Tanzania); Guinness Ghana Breweries; Sichuan Swellfun Co (China); Guinness Nigeria; Seychelles Breweries

Treatment of Minority Shareholders

United Spirits Ltd India

United Spirits Ltd (USL) is India's largest spirits producer, once the jewel in the crown of liquor baron Vijay Mallya, the company has a share of about 45 per cent of India's rapidly growing spirits market. Diageo won control of the company in 2014 after a protracted battle. It managed to increase its stake from 28.8% to 54.8% by way of a second sweetened offer to public shareholders.[22] It then struggled to obtain approval from minority shareholders to make, sell and distribute its parent's products.[23] Diageo argued that the deal would give USL a competitive advantage in India's growing premium alcohol market but research houses advising minority shareholders considered there was not enough detail on how costs and benefits would be split between the parent and subsidiary. India's new Companies Act which strengthens protection for minority shareholders around related party transactions, together with the introduction of electronic voting, has increased shareholder activism around such issues. Diageo's revised proposal explained that the manufacture, sale and licencing agreement would generate more revenue than the commission earned from selling Diageo brands.

Sichuan Swellfun China

China currently represents a relatively small part of Diageo's business. Its China exposure is primarily through its scotch brands but also through Sichuan distiller of baijiu, a fiery white spirit. In March 2019 it was announced that Diageo wished to increase its stake in Chinese Sichuan Swellfun from 60% to 70%. Traders saw the offer price as fair. Diageo has steadily increased its stake since buying 20% of the company in 2007 and increasing this in 2011, 2013 (to approx. 40%) and 2018 to 60%.[24]

Guinness Nigeria

In 2007 Nigeria overtook Ireland to become the second largest market for Guinness and Africa has been a strong market since. However in 2017 the company recorded its first loss in 30 years due to the high cost of debt, threat of higher taxes and reduced consumer spending. The company approached shareholders for their approval for a rights issue – existing shareholders were offered additional shares at a price of N58 per share to raise money and reduce the company's debt/equity ratio. The offer was successful with shareholders fully exercising their rights. The Chairman of Guinness Nigeria, Mr. Babatunde Savage explained that the company had embarked on a number of restructuring initiatives including "sourcing more raw materials locally; deepening partnerships with local distributors; and broadening the product portfolio to meet consumer preferences".[25] He made it clear that every shareholder, both minority and majority, would have the opportunity to buy additional shares with the rights issue.

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[22] Times of India, (2014) Diageo takes full control of USL, 3 July 2014, available at https://timesofindia.indiatimes.com/business/india-business/Diageo-takes-full-control-of-USL/articleshow/37658513.cms
[23] Kazmin Amy (2015) Diageo wins India United Spirits vote, 11 January 2015, available at https://www.ft.com/content/e6ca7dfc-9968-11e4-a3d7-00144feabdc0
[24] Reuters (2018) Britain's Diageo offers to raise stake in Chinas Sichuan Shuijingfang, 25 June 2018, available at https://www.reuters.com/article/us-sichuan-m-a-diageo/diageo-offers-to-raise-stake-in-chinas-sichuan-shuijingfang-idUSKBN1JL1JN
[25] This Day (2018) Guinness Nigeria: Saved by Rights Issue, 14 February 2018 available at https://www.thisdaylive.com/index.php/2018/02/14/guinness-nigeria-saved-by-rights-issue/

[26] Marketing spend was also increased by 18%.[27] The impression is of a company that is in tune with local markets and has a level of autonomy.

In 2016, Diageo had planned to increase its stake in Guinness Nigeria from 54% to 70%, however the proposed tender was scrapped due to the tough market conditions in Nigeria. Instead, Diageo offered a loan facility to its subsidiary to ensure it was able to operate efficiently in very challenging macroeconomic environment.[28]

Seychelles Breweries

Seychelles Breweries listed its shares on the Seychelles stock exchange, Trop-X, for the first time in 2016. The aim was to realise value for shareholders as well as support the Seychelles economy. Seychelles Breweries is the only mass-production brewery in the Seychelles and was the fourth local company to be listed on the Trop-X exchange which has been in operation since 2013.[29] (Seychelles News Agency 2016).

[26] Adebowale Segun Guiness Nigeria shareholders to endorse N40b rights issue, 25 January 2017, available at https://theeagleonline.com.ng/guinness-nigeria-shareholders-endorse-n40b-rights-issue/
[27] Olowookere Dipo (2018) Guinness Nigeria to pay shareholders N1.80k dividend Oct 25, 31 August 2018 https://businesspost.ng/2018/08/31/guinness-nigeria-to-pay-shareholders-n1-80k-dividend-oct-25/
[28] Reuters (2017) Guinness Nigeria set to launch $127 mln rights issue, 24 January 2017, available at https://uk.reuters.com/article/nigeria-guinness-nigeria-idUKL5N1FD3K4
[29] Seychelles News Agency, Seychelles Breweries is listed on stock exchange, providing value for shareholders, 1 July 2016

GlaxoSmithKline

Company description: GlaxoSmithKline (GSK) is a science-led global healthcare company manufacturing pharmaceuticals, vaccines and consumer healthcare

Parent company: headquartered in the United Kingdom, listed on the London Stock Exchange (LSE) and New York Stock Exchange (NYSE)

Listed subsidiaries: GSK Consumer Healthcare (India); GSK Pharmaceuticals (India); GSK Bangladesh; GSK Consumer Healthcare Pakistan; GSK Pakistan; GSK SAE (Egypt); GSK Consumer Nigeria*

Treatment of minority shareholders

GSK Pharmaceuticals (India)

GSK has a long history of operations in India spanning over 90 years. It is one of the leading pharmaceuticals companies in the country and the top vaccines company in the private vaccines market in India. In consumer healthcare GSK is the category leader in heath food drinks with Horlicks as its flagship product. GSK ranks highly in Business World's 'most respected companies' in India list and has won many awards for its workplace practices and corporate responsibility.

In December 2013, the parent company GSK Plc sought to increase its stake in GSK Pharmaceuticals from 50.7% to 75%. A voluntary open offer was announced at a price of INR 3,100 per share. Securities regulation in India require a minimum public shareholding of 25% for a company to maintain a public listing in the country. The offer price was at a premium of around 26-28% over the share price. However this premium was not seen to be very generous taking into account the recent drop in the share price – it equated to only 12.5% if you took the share price only a few months previous to the offer.[30]

GSK Consumer Nigeria

Also in 2013 (as part of the same group strategy to increase control of subsidiaries) GSK plc wished to increase its stake in GSK Consumer Nigeria from 46% to 75%. This ran into unexpectedly fierce minority shareholder opposition. This was partly due to the Nigerian takeover rules, which unlike in the UK, permit GSK to vote its stake in favour. However, it was also due to the offer price which was seen to be very low. At the time the price was set it was a 28% premium on the subsidiary's share price but that premium soon vanished as Nigerian stocks rose 25%. Commentators criticised the subsidiary board, "it clearly caved in too quickly when big brother in London came calling".[31]

GSK Consumer Healthcare (India)

GSK Consumer Healthcare (GSK CH) makes up to 80% of its sales from Horlicks with the remainder coming from brands such as Sensodyne, Crocin, Eno and Otravin. There was speculation in March 2018 over whether GSK plc would sell off the Horlicks brand or its whole stake in GSK CH.[32] In December 2018 GSK CH was merged with Unilever Hindustan with 4.39 shares of HUL being allotted for every share in GSK CH India.[33]

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[30] Ananthanarayanan Ravi, (2013) GSK Pharma: the options for investors, Live Mint, 16 December 2013 available at https://www.livemint.com/Money/HG43BhMZktkmbfhvQtaqrK/GSK-Pharma-the-options-for-investors.html

[31] Financial Times (2013) GlaxoSmithKline: Nigerian complications, 19 July 2013, https://www.ft.com/content/252a274e-eef4-11e2-b8ec-00144feabdc0

[32] Vyas, Jwalit (2018) Miority investors to gain from GSK's strategic review, Economic Times, 29 March 2018, available at https://economictimes.indiatimes.com/markets/stocks/news/minority-investors-to-gain-from-gsks-strategic-review/articleshow/63526776.cms

[33] The Hindu (2018) Hindustan Unilever board approves merger with GlaxoSmithKline Consumer Healthcare India, 3 December 2018 https://www.thehindu.com/business/Industry/hul-board-approves-merger-with-glaxosmithkline-consumer-healthcare/article25653714.ece

GSK Bangladesh

After six decades of operation, GSK recently shut its pharmaceutical manufacturing business in Bangladesh. There were protests from a group of nearly 200 of the 1000 employees in Chittagong, however the directors of the subsidiary explained that it was an old plant that had been incurring losses for years and was struggling to maintain GSK's global standards.[34] GSK was to raise product packaging standards which would likely inflict further losses.[35] The CEO of the Bangladesh subsidiary explained that GSK would run pharmaceuticals in the emerging markets as an integrated operation' suggesting this was a group rather than local decision. Whilst some reports suggest the local board of directors made the decision it was clearly part of an overall group restructuring plan.[36] GSK Bangladesh convened a shareholders meeting to approve the closure. A few months later GSK sold its 82% stake in the Bangladesh subsidiary to Unilever. It was reported that the subsidiary board 'was informed via a notification letter', again suggesting that the local board had little to do with the decision.[37] The minority shareholders are made up of state-run Investment Corporation of Bangladesh (12%) and other institutional shareholders (6%) and appear not to have commented on the transaction.

[34] Rahman, Sajjadur (2018) GSK shuts factory after six decades, *The Daily Star*, 27 July 2018, available at https://www.thedailystar.net/backpage/medicine-production-bangladesh-gsk-shuts-its-unit-after-six-decades-1611799

[35] Habib Ahsan (2018) GSK seeks shareholders' nod to close pharma unit, The Daily Star, 14 September 2018

[36] Quadir, Serajul (2018) GSK to shut Bangladesh drug making factory by end-2018, Reuters, 28 July 2018, available at https://www.reuters.com/article/us-gsk-bangladesh-factory/gsk-to-shut-bangladesh-drug-making-factory-by-end-2018-idUSKBN1KH1TK

[37] Mahmud, Niaz, Unilever acquires controlling stake of GSK Bangladesh, Dhaka Tribune, 4 December 2018 available at https://www.dhakatribune.com/business/stock/2018/12/04/unilever-acquires-controlling-stake-of-gsk-bangladesh

Heidelberg Cement

Company description: Heidelberg Cement operates in 3,030 locations in 60 countries with 59,000 employees, and is internationally number one in aggregates, number 2 in cement and number 3 in ready-mixed concrete.
Parent company: Listed in Germany. **Listed subsidiaries:** Suez Cement (Egypt); Heidelberg Cement (India); Tanzania Portland Cement; Indocement Tunggal Prakarsa (Indonesia)

Treatment of minority shareholders

As with other very large international resources corporations though Heidelberg Cements activities and assets are widely distributed across the world, the ownership structure is very concentrated in developed markets: geographically ownership of shares is 32% Germany, 27% North America, 13% Continental Europe, and 10% UK, with the rest of the world and private investors constituting 18% of the shareholder base.[38] \German family interests and the large institutional investors dominate the shareholding structure and voting rights including a 26% stake controlled by Ludwig Merckle. Vernimmen et al et al cite Heidelberg as a family run business: "The dilemma is often between growth, control and risk. A company that wishes to grow but whose shareholders wish to avoid being diluted by capital increases to which they are unable to subscribe, is condemned to borrowing and will be fragile in times of crisis (Heidelberg Cement, Porsche etc)."[39] Heidelberg has grown through major international acquisitions including Hanson in 2007, and Italcementi in 2016 largely employing debt and equity to raise finance for these major acquisitions. Meanwhile the vast portfolio of Heidelberg assets is tested against three commercial principles: non-core business; weak market position; and idle assets. For example, the majority owned integrated plants in the Democratic Republic of Congo might be considered for divestment due to political instability.[40]

Issues in Subsidiary Companies

In Israeli occupied West Bank Heidelberg Cement's wholly owned subsidiary *Hanson Israel* manufactures ready-made cement, aggregates and asphalt for Israel's construction industry. In March 2009 the Israeli human rights organization Yesh Din filed a petition with the Israeli high court demanding a halt to mining activity in West Bank quarries, including Hanson Israel's *Nahal Raba* quarry. According to research of the ARD magazine *Panorama* on 2 September 2010 and the ARD Studios Tel Aviv, the minerals produced are brought to Israel without any benefit to the Palestinian communities. Palestinians from the village of az-Zawiya in the immediate vicinity of the quarry lay claim to the land. The Israeli Supreme Court rejected the petition from Yesh Din in December 2011. In 2015, Heidelberg Cement founded a new subsidiary, Heidelberg Cement Palestine and started the import of cement to Gaza and West Bank. Heidelberg Cement Palestine is now in the process of setting up quarry operations in Palestine. The largest Danish pension fund, PFA Pensions, has divested its interest from Heidelberg Cement, due to "Violation of basic human rights, which conflicts with UN Global Compact principles 1 and 2."[41]

At Suez Cement (Egypt) in 2016 the company was unable to repatriate profits of 50 million Euro for about a year, and denied speculation it was planning to leave the country. Returning to profit in 2018, early in 2019 a flood from a wastewater treatment plant caused 5 million Euro in damage. More seriously both Lafarge and Suez Cement were subject of a lawsuit filed by the Habi Center for Environmental Rights challenging the companies use of coal until they disclose their environmental impact assessment studies. [42] An academic study of Tanzania Portland Cement concludes "One of the difficulties in dealing with corporate governance principles is that it is quite easy in the abstract to analyse and discuss such principles. However, it is far more difficult to develop practical strategies to ensure that these principles are effectively embedded as part of a company's day to day operations." [43]

[38] See https://www.heidelbergcement.com/en/shareholder-structure
[39] Vernimmen, P.,Quiry,P., Dallocchio,M., Le Fur, Y., Salvi A.,, (2017) Corporate Finance: Theory and Practice, Wiley, 940
[40] https://markets.businessinsider.com/news/stocks/heidelbergcement-sale-now-on-7029694
[41] https://whoprofits.org/company/heidelbergcement/
[42] https://www.business-humanrights.org/en/lafarge-suez-cement-lawsuit-re-air-pollution-egypt
[43] http://scholar.mzumbe.ac.tz/handle/11192/2311

Heineken

Company description: Heineken is a global brewer, the number one brewer in Europe and number two globally with a large portfolio of over 300 beers and cider brands. **Parent company:** Headquartered in the Netherlands. **Listed subsidiaries:** Nigerian Breweries; Heineken Malaysia; Multi Bintang Indonesia; Commonwealth Brewery (Bahamas); United Breweries (India); CCU (Chile)

Expansion
Heineken has taken majority-controlled stakes in brewing operations in Nigeria as well as across the African continent. Heineken has rapidly expanded its brewing operations in Mozambique. This has been accompanied by the purchase of a minority stake in the Belize Brewing Company, and a major consolidation of its operations in Brazil through the acquisition of Kirin, the country's second largest brewery.

Treatment of minority shareholders
Most recently, the internationalisation agenda has included expansion into China. Through CR Beer (a subsidiary of the state-controlled China Resources Group), Heineken has taken a 40% shareholding in the CR parent, as part of a licensing and distribution arrangement. Each full or partial acquisition has been progressively integrated into the Heineken stable. It recognises, however, that joint-ventures can be problematic: "Heineken has undertaken business activities with other market parties in the form of joint ventures and strategic partnerships. Where Heineken does not have effective control, decisions taken by these entities may not be fully harmonized with Heineken's strategic objectives. Moreover, Heineken may not be able to identify and manage risks to the same extent as in the rest of the Group" (*Annual Report 2017-2018*, 26). To counteract this risk, where possible, Heineken pursues a disclosed delisting strategy, especially in nascent or emerging markets. In so doing, Heineken retains centralisation of strategic decision-making.[44]

While cognisant of the advertising mechanisms required to appeal to specific cultural markets (and tastes), a critical goal is the expansion in availability of its own core product, which remains brewed solely in The Netherlands. The measure is partially designed to ensure quality control but primarily to maintain premium pricing. As Heineken makes clear: "We aim to reduce the risks that could impact our reputation to the furthest extent possible, accepting that this may come at a cost" (*Annual Report 2017-2018*, 26). This approach impacts notably upon minority shareholders in the partially-owned subsidiaries awaiting delisting and integration into the Netherlands stable. This problem is highlighted in a recent expose, *Heineken in Africa*.[45] It was reviewed by David Pilling, the distinguished Africa Editor of the *Financial Times*. Because the company provides taxes across the continent, Heineken is held to have inordinate influence. (Heineken *Annual Report 2017-2018*, 141 (for breakdown of total corporate tax of Euro 824m, of which 11% was paid in the Middle East and Africa and a global effective tax rate of 26.4%). How that influence is used is alleged to be problematic.

There are some tensions between regional corporate performance in Africa with parent company sensibilities and promises. This includes alleged infractions of the law over which the corporation itself has no power, including for example, illegitimate taxing of revenue by rebel militia in Rwanda subsequently booked (and accepted for tax purposes) as losses (through the complicity of the central tax office).[46]
It also includes a perceived lack of care in treatment of promotional personnel women across both Asia and Africa, making employees vulnerable to sexual exploitation. Furthermore, school development programs are accused to comprise insidious forms of advertising that could (if erroneously) be construed as the surreptitious introduction of

[44] Dieng et al 2009 'Subsidiary Brands as a Resource and the Redistribution of Decision Making Authority following Acquisitions', Advances in Mergers and Acquisitions, September 2009
[45] https://www.ft.com/content/2f8dea6c-256d-11e9-b329-c7e6ceb5ffdf
[46] https://www.ft.com/content/2f8dea6c-256d-11e9-b329-c7e6ceb5ffdf

alcohol to those beneath the age of legal consent. This is in marked contrast to Heineken' mission as identified in the opening paragraph of this report and commitment made in *2017-2018 Annual Report* to sustainability and tax.[47]

As with other MNCs, Heineken is increasingly dependent on emerging markets for growth. A combination of lack-lustre appetite in developed markets and future expansion through mergers and acquisitions to buttress distribution channels, reveals a corporate governance conundrum: Is Heineken's goal promoting innovation and competition (within the conglomerate) to provide further growth opportunities for the core brand, with the acquired brews loss-leaders for the Heineken brand?. This puts in some doubt local brands future. Some MNCs such as P&G adopt a straight-forward command and control model of hierarchy that limits both innovation and decision-making outside of the parent. Although research is limited, within the brewing world centralisation dynamics have been observed, particularly with Heineken. Mergers and acquisitions are the primary growth model for MNCs. In Heineken's case acquisitions open markets and adds initial diversification but are not necessarily used as a governance resource in terms of a practical engagement in local governance.[48] The formal procedures of governance including non-executive directors of boards, annual reports and AGMs, buttressed by local corporation acts. However these means are not often deployed effectively by minority shareholders in emerging markets. This shows the limitations of minority shareholders in those markets to shape or influence national and global priorities while Heineken seeks full de-listing. The wisdom for Heineken of such a strategy became apparent over the acquisition of Tiger in Singapore and control of its operations in Cambodia. A similar story is apparent in Jamaica over the delisting of the holding company behind Red Stripe.[49] Most recently Heineken has been enlarging its presence in India raising its stake in United Breweries to 46% making it one of the leading players in the Indian beer market in a struggle with Diageo which raised its stake in United Spirits to 55% to gain control of the company.[50]

Dominance of Heineken Holding N.V

The company uses a shareholding model that ensures the ongoing dominance of the founding Heineken and Hoyer families, which, through Heineken Holding N.V. holds 50.005% of Heineken N.V., both of which are listed on the Euronext Amsterdam Exchange. Heineken Holding, however, is at pains to emphasise that its role is to identify and protect long-term strategic priorities not exercise operational control. The shareholding of the remaining free float is geographically dispersed (although heavily dominated by the America and the United Kingdom and Ireland with only 1% in The Netherlands itself). The shares of Heineken NV are more widely dispersed, with 2% holding in The Netherlands and 15.7% in Europe. This suggests a model of centralised control and diversified ownership. The shareholder base is diversified, although the beneficial ownership is hard to ascertain in 26.3% in 2017, up from 15.5% the previous year.[51] Heineken offers the most substantive information on ownership, operating processes and governance. It is also clear on its strategic objective, which is to subsume its acquisitions through a process of progressive delisting. [52] The benefits to Heineken are clearer than any articulated advantages for the minority shareholders and the companies in the emerging markets.

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[47] SOMO Centre for Research on Multinational Corporations), *Heineken: Overview of controversial business practices in 2009* Amsterdam, 2010 5-7 2010

[48] Dieng et al 2009 op cit Beugelsdijk, S., Slangen**,** A.**,** van Herpen, M. Shapes of organizational change: The case of Heineken Inc (2002) 15(3*) Journal of Organizational Change Management* 311, 312; Sluyterman, K. and Bouwens, B., From colonial empires to developing countries and on to emerging economies: The international expansion of the Dutch brewery Heineken, 1930–2010, (2015) 10(2) Management & Organizational History 103; Gammelgaard, J. and Dorrenbacher, C. (eds.), The Global Brewery Industry: Markets, Strategies, and Rivalries (Edward Elgar 2013

[49] https://www.ft.com/content/ab7ce35c-d762-11e8-a854-33d6f82e62f8. https://www.reuters.com/article/us-thai-apb/thai-billionaire-muscles-in-on-heineken-tiger-beer-deal-idUSBRE8760KI20120807; https://www.wsj.com/articles/SB10000872396390444042704577589123496323552

[50] https://www.foodbusinessafrica.com/2019/04/01/heineken-buys-2-8-stake-in-united-breweries-to-grow-indian-beer-market/

[51] *Heineken Holding NV 2018 Annual Report*, 2, https://www.theheinekencompany.com/Latest-Reports https://www.theheinekencompany.com/Investors/Share-Information/Shareholder-Base

[52] https://asia.nikkei.com/Business/Asia-s-beer-war-is-a-battle-of-acquisitions.]

Lafarge Holcim

Company description: LafargeHolcim is a leading global building materials and solutions company in cement, aggregates and ready-mix concrete.
Parent company: headquartered in Switzerland, listed in Zurich and Paris
Listed subsidiaries: LafargeHolcim Bangladesh Limited Bangladesh 29.4%; ACC Limited India 36.1%; Ambuja Cements Ltd. India 63.1%; PT Holcim Indonesia Tbk. Indonesia 80.6%; Lafarge Malaysia Berhad Malaysia 51.0%; Holcim Philippines Inc. Philippines 75.3%; Holcim (Argentina) S.A. Argentina 79.6%; Holcim (Costa Rica) S.A. Costa Rica 65.6%; Holcim (Ecuador) S.A. Ecuador 92.2%; Jordan Cement Factories Company P.S.C. Jordan 50.3%; Bamburi Cement Limited Kenya 58.6%; Holcim (Liban) S.A.L. Lebanon 52.1%; Lafarge Africa Plc. Nigeria 76.3%; Lafarge Cement Zambia Plc Zambia 75.0%; Lafarge Cement Zimbabwe Limited Zimbabwe 76.5%;

Treatment of minority shareholders
Holcim India
In July 2013 Holcim restructured its twin Indian subsidiaries Ambuja Cement and ACC Cement on the grounds that it would deliver $150m in annual cost reductions. Ambuja purchased Holcim's holding in ACC, in a deal that included a Rs35bn ($592m) cash payment to the Swiss based parent company Holcim, making ACC a subsidiary of Ambuja, and increasing Holcim's stake in Ambuja from 50% to 61%. In the immediate aftermath, the value of Ambuja shares dropped and the stock was downgraded. The deal was characterised by some analysts as a transfer of funds to the Swiss parent group (Crabtree, 2013). Sanjeev Prasad, head of research at Kotak Institutional Equities, a Mumbai-based brokerage said, "It is an outright case of bad corporate governance, and probably the worst examples from a global company I have seen in India. It is really unacceptable." Foreign institutional investors were also concerned that the cost savings would not be realised and that the subsidiaries were forced into the deal to benefit the parent company, Holcim (Crabtree, 2013).There were also concerns that Holcim was delaying the merger of ACC and Ambuja to enable it to wait until ACC had a lower valuation in a few years' time then merge it with Ambuja to avoid having to pay for its stake in the merged entity. Proponents of a merger argued that the realised synergies would benefit all stakeholders (Sanjai, and Khan, 2013).

Prior to the 2014 merger of Lafarge and Holcim, Indian minority shareholders of ACC and Ambuja Cements, were concerned that, post-merger, the two subsidiaries would cease to exist. Their concerns were founded on the 2013 deal described above (Business Standard, 2014). Shareholders called for the independent directors to ensure that minority shareholders would not be short-changed if it was decided to merge Lafarge India with Ambuja Cements or ACC. At the time, ACC Chairman NS Sekhsaria, downplayed the likely impact on minority shareholders in India and reassured investors that "Holcim always believes in providing right value for minority shareholders," and in transparent transactions that would not be unfair to minority shareholders (The Hindu Business Line, 2014). Pre 2014, ACC and Ambuja Cements proposed increasing royalty payments to parent Holcim. Holcim was forced to agree to a lower increase in royalty following the objections of the independent directors on the boards of both companies on the grounds that it was against the interest of minority shareholders. In India, the Companies Act, 2013 gave minority shareholders more power to question royalty payments to foreign parent companies by requiring listed companies to have at least one-third of the total number of directors as independent directors. The Act also incorporated strict rules on the qualifications, tenure and re-appointment of independent directors (Vardhini, 2014).

LafargeHolcim India
In 2016 LafargeHolcim received approval for streamlining of its ownership structure in India from the independent directors, minority shareholders, the Securities and Exchange Board of India, stock exchanges, respective High Courts in India and the Cabinet Committee on Economic Affairs. Through the restructure, LafargeHolcim would increase its shareholding in Ambuja to 61.14% and Ambuja in turn would acquire LafargeHolcim's 50.05% stake in ACC Limited. As at 21 July 2016, the company was waiting for approval from the Foreign Investment Promotion Board (FIPB) in order to close the transaction (Lafargeholcim, 2016). ACC became a subsidiary of Ambuja after the merger of the latter with Holcim (India) in August 2016. In May 2017, the boards of ACC and Ambuja constituted a special committee of directors, with a majority of independent directors, to undertake a comprehensive evaluation of a

potential merger of the two companies that had been signalled from 2013. In February 2018 the merger plans were shelved, although the ACC Board signalled that it remained an ultimate objective (FE Bureau, 2018).

Lafarge Africa

In 2014 Lafarge Group announced plans to transfer all of its shares in its businesses in Nigeria and South Africa into Lafarge Cement WAPCO Nigeria plc (Lafarge Wapco), resulting in Lafarge Cement WAPCO Nigeria plc being renamed Lafarge Africa plc. A group of minority shareholders raised concerns about the deal. South Africa based fund management company, Coronation Fund Managers, said the deal was unfavourable to minority shareholders of the company and raised concerns about pricing and valuation, suggesting that the deal was skewed against minority shareholders in Nigeria in particular. The Fund noted that, “by issuing shares at a rating that is 67% lower than the rating on the acquired assets, minority shareholders are greatly prejudiced,” and that the increase in Lafarge S.A’s shareholding in Lafarge WAPCO would be at the expense of minority shareholders (Xclusive Nigeria, 2014).

Lafarge Cement WAPCO said the deal was ‘fair to all,’ and that KPMG Professional Services had done a fairness evaluation of the deal. They said the negotiations were undertaken by Nigerian directors, and not by Lafarge. They provided more information about the deal to minority shareholders when requested. Lafarge Cement WAPCO’s stated intention was not to increase their shareholding, but to create liquidity in the market a greater platform for expansion (Xclusive Nigeria, 2014).

The deal was ultimately approved by shareholders, but analysts said “the deal could dilute existing shareholders” (Mayowa and Ohuocha, 2014). In 2018 analysts at a Lagos based investment house, said that Lafarge Group’s 2014 decision to combine its businesses in Nigeria and South Africa had diluted shareholders’ value. They estimated that the M&A, “resulted in the dilution of the share of minority shareholders’ stake in the old WAPCO to 22 percent currently…from 40 percent pre-merger level,” (Nnorom, 2018). In 2014, following the merger of Lafarge's Nigerian and South Africa's businesses, Lafarge Africa made an offer to buy out minority shareholders in its subsidiary Ashaka Cement. The Board of Ashaka Cement advised minority shareholders to accept the offer. Minority shareholders were offered shares in Lafarge Africa plus a cash consideration. The Board of Ashaka considered the offer to be fair to all shareholders (CemNet.com, 2014). In 2016 Ashaka Cement decided to voluntarily delist from the Nigerian Stock Exchange because its free float (15.03%) was below the standard of the stock market, 20%. The company’s board of directors believed that the continued listing was not in the best interest of any shareholders. Lafarge Africa offered minority shareholders of AshakaCem Lafarge Africa shares and a cash consideration in exchange for their shares in Ashaka (Ecofin Agency, 2016).

Holcim Latin America

In 2004 Holcim purchased shares from all minority shareholders of Holcim Apasco, S.A. de C.V. in Mexico. The offer price was supported by a fairness opinion of Santander Central Hispano Investment S.A. It corresponded to a premium of approximately 45.5% compared to the average market price of 2003 (Lafargeholcim, 2004). The offer was met with wide acceptance (CemNet.com, 2004).In 2005 Holcim made a successful buyout offer to minority shareholders of Cemento de El Salvador for the same purchase price as in late 2004. More than 300 shareholders accepted the offer (Lafargeholcim, 2005).

Holcim North America

In 2007 Holcim made an offer to minority shareholders of Montreal-based St. Lawrence Cement Group Inc. The initial offer was widely rejected as too low. One of St Lawrence’s largest minority shareholders expressed concern that minority shareholders could get squeezed in the deal, which at the time the shareholder maintained, “happens routinely in Canada when a controlling shareholder in a public company offers to buy out the minority” (Silcoff, 2007). Holcim subsequently raised its offer price and the buyout was successful (*The Economic Times*, 2007).

Nestle

Company description: Nestle is the largest food and beverage company in the world It produces a wide range of products across a number of markets. Many of the the company's brands are globally renowned: Nescafe, Nestea, Carnation, Nido, Bear Brand, Coffee-Mate, Lactogen, Cerelac, Maggi, Buitoni, Kit Kat, Smarties, Butterfinger, Polo, Purina, Friskies, Milo, Nestea, Alpo, Nesvita, Perrier and others.

Parent company: headquartered in Switzerland, listed Swiss SIX

Subsidiaries: Examples of subsidiaries with majority holdings include: L'Oreal SA – 23.2% –listed in Paris; Nestle Waters Egypt – 63.8%; Nestle Ghana 76%; Nestle Cote d'Ivoire – 86.5 –listed on Abidjan stock exchange; Nestle Nigeria plc 66.2% – listed on Nigerian Stock exchange; Nestle India 62% - notes listed on Bombay stock exchange; Nestle Malaysia 72% - listed on KL stock exchange; Nestle Pakistan 59% - listed on Pakistan stock exchange; Nestle Sri Lanka 90.8% - listed on Colombo stock exchange.

Treatment of minority shareholders

Novartis treatment of Alcon minority shareholders

Nestle is an example of a company that would in principle lay claim to the highest standards of corporate governance and ethical conduct in business (having long ago experienced the pain of its record with baby formula in Nigeria). However the number of events in which Nestle has appeared to be pursuing its own corporate instincts and interests rather than those of the Nestle subsidiaries and their shareholders illustrates the complexity of operating many subsidiaries.

In 2010 Novartis bought Nestle's stake in Alcon, a manufacturer of contact lenses and solutions, ophthalmic surgery products, and eye-care pharmaceuticals. Novartis was accused of bullying minority shareholders by using a legal loophole to get around legal protections for minority shareholders and to offer a price that was 15%-22% lower than that offered to the majority shareholder, Nestle. Alcon's independent board repeatedly said Novartis's offer to minority shareholders was too low. Novartis elected five board members to overcome opposition. Novartis' approach was viewed within the finance sector as "incredibly hostile" (Shane Finemore, chief of Manikay Partners, quoted in Fortune (Tully, S., 2010)

Osem buyout

Osem is the largest listed food company in Israel. In 2016, Osem's minority shareholders approved the ILS-3.3-billion (EUR 757m/USD 856m) buyout offer of Swiss food giant Nestle (VTX:NESN). Upon completion of the deal, Nestle planned on delisting Osem (SeeNews, 2016). Israeli consulting firm Entropy Consultants Ltd had advised shareholders against accepting the offer saying it was too low and less than other purchases by Nestle in recent years. However, Osem rejected the argument, saying the terms were fair. Nestle held a 63.7% interest in Osem, while institutional investors owned 7% (Scheer, S. 2016).

Indian royalty payments

In 2010 the Indian government liberalised royalty rules which led to a sharp rise in payments to MNCs. Of 75 companies listed on the BSE, royalty payments more than tripled between 2007-08 and 2011-12, though sales grew 80% and net profit a little over 30% (Chatterjee, D.2014). Nestle India was one of the top three royalty-paying companies in which the money remitted increased more than three times from 2007-08 to 2011-12, while the collective revenue of these companies increased only 1.8 times. The companies were said to have paid no dividends in the past five years, though they had paid significant amounts in royalty to their foreign partners (Chatterjee, D. 2014).

India introduced protections for minority shareholders in the Companies Act (Section 188), which made it mandatory that all related-party transactions be passed through a special resolution, requiring 75% minority shareholders' consent (Basu, N. 2014). The local Indian market regulator, The Securities and Exchange Board of India (SEBI) introduced new rules to require the local units of global MNCs to get the approval from the "majority of minority" shareholders to make royalty payments beyond 2% of consolidated revenue. Credit Suisse estimated that the projected earnings of local units of the consumer companies Colgate, GSK, HUL, and Nestle could see an increase of 6-15%, with the biggest beneficiaries being Colgate and Nestle (Shyam, A. 2018).

Nigerian technical fee payments

In Nigeria some minority shareholders have taken issue with the way in which MNCs, such as Nestle, Unilever and Lafarge, require technical fees to be paid by subsidiaries. The Nigerian Investment Promotion Commission's Legal and Regulatory Framework for Setting up Business in Nigeria, allows for a technical service agreement, in which a party will agree to offer technical services to a company for the payment of a fee. Some shareholders have objected to foreign parent companies and technical partners imposing high royalties and technical fees on Nigerian companies, saying that local minority shareholders are cheated. They argue that the way in which technical fees are charged, on turnover, benefits only the foreign partners, and instead they should be charged on profit after tax. However, there is some concern that allegations made by shareholders may be an attempt to extort money from company directors. Other shareholders have said that it is the National Office for Technology Acquisition and Promotion (NOTAB), an agency of the Federal Government, that determines what the companies pay to their technical partners. Others have said that the fees being paid by the affected companies were part of the historical agreements signed when the investors came to Nigeria.

Nestle Malaysia

In 2017 Nestle Malaysia was recognised by the Minority Shareholder Watchdog Group (MSWG) with the Industry Excellence Award under the Consumer Product category at the ASEAN Corporate Governance Awards, for "exemplary standards of corporate governance" (Nestle, 2017). For example, Nestle Malaysia appoints Independent Non-Executive Directors to the Board, whose primary responsibility is to protect the interest of minority shareholders and other stakeholders (Nestle, 2017 ii). The Group also has procedures regarding its related party transactions which include the requirement that all related party transactions are undertaken "on an arm's length basis and on normal commercial terms not more favourable than those generally available to the public and other suppliers, and are not detrimental to the minority Shareholders" (Nestle, 2017 ii).

Proctor & Gamble

Company description: Procter & Gamble (P&G) is a dominant MNC, focusing on consumer markets for personal health and hygiene. These include beauty, grooming, laundry and cleaning products. Among its most famous brands are Gillette and Braun (men's grooming), Tide, Ariel and Bounce (laundry products), Tampax (feminine hygiene) and Oral-B (toothpaste and toothbrushes). **Parent company**: The United States domiciled corporation is headquartered in Cincinnati, Ohio. It is listed solely on the New York Stock Exchange having delisted from Euronext Paris in March 2019, citing low trading volume. **Listed subsidiaries**: Gillette India; Procter & Gamble Hygiene & Health Care (India); Gillette Pakistan

Royalty payments

P&G has two majority-held pubic subsidiaries listed on the National Exchange of India (BSE) – P&G Hygiene and Healthcare and Gillette India. Significant revenue streams from the listed Indian entities are redirected as royalty payments to unlisted entities in India controlled by the parent. [53]

Corporate Parent Strategies and Subsidiary Interests

Following activist pressure led by Bill Ackman's Pershing Square hedge fund, which bought 1% of the company in 2012, the emphasis on performance intensified in 2016 with a proxy war waged by Trian Partners that eventually won a seat on the board for its managing partner, Nelson Peltz, who advocated (but lost) a campaign for a P&G breakup.[54]

This divestiture policy was accompanied by a substantial reduction in global headcount, from 121,000 in 2013 to 92,000 in 2018. Both strategies occurred as P&G itself was fighting for its own independent survival. This required the active courting of minority shareholders in the parent. Equally notably, however, was the fact that the repositioning on tactical and strategic grounds was ignored in the public reporting of the offshore listed entities. In part, this can be explained by the expansion and ongoing profitability of the Indian operations, as reflected in growth in both share price and dividend payments. Equally, telling was a slightly different corporate messaging in successive annual reports, in large part because of the mandatory nature of corporate social responsibility reporting and expenditure in India.

While the rationale for a fundamental change in governance at P&G was fought out on these terms in US markets, the position of minority shareholders in influencing outcomes remained very weak unless their help was required through expensive, if rare, proxy battles. In the P&G case, over 2bn votes were eventually cast. The challenger lost by a margin of less than 0.25%. Notwithstanding the loss, the board gave Peltz a seat. Although the strategic advice of a break-up was not followed, the company intensified a process of rationalisation and concentration on cost-cutting initiatives, delivering superior economic performance and further enhanced dividend payments.

Treatment of minority shareholders

The rise in shareholder activism is by no means confined to the United States. In Asia, the major concern has focussed on related party transactions and royalty payments India has seen a corresponding increase in activism, with poor corporate governance a battleground because of the expansive provisions of the *Companies Act 2013* and listing requirements. [55]While P&G may be vulnerable to criticisms regarding communication and engagement with subsidiary boards, it has proven impervious to challenge. P&G's operations in India are strong performers on the BSE index. This is perhaps more reflective of the poor state of practice in corporate governance in the country rather than necessarily a vote of confidence in P&G. It is indicative that the Chair of Procter & Gamble Hygiene and

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[53] https://economictimes.indiatimes.com/procter-gamble-hygiene-healthcare-ltd/stocks/companyid-13253.cms; https://economictimes.indiatimes.com/gillette-india-ltd/stocks/companyid-13567.cms

[54] https://www.ft.com/content/eb442eda-6b27-11e2-9670-00144feab49a
https://www.forbes.com/sites/esade/2018/12/10/shareholder-activism-is-on-the-rise-caution-required/#666c31fb4844

[55] https://www.jpmorgan.com/jpmpdf/1320745400533.pdf

Healthcare, Rajendra Shah, has held director positions with the listed entity for 51 years! This hardly qualifies him as independent, and is inconsistent with best-practice, including in India itself which suggests term limits of 10 years. As with other MNCs, P&G has come under criticism for the structure of its Indian operations. What has concerned minority investors for some time is how much profit gets siphoned off to unlisted partner companies as royalty payments.[56]

In May 2019 Proctor and Gamble following the acquisition of the consumer health business of Merck KGaA, renamed this as Proctor and Gamble Health Limited with a 52% stake.[57] This is the fourth legal entity of Proctor and Gamble in India (Proctor and Gamble Hygiene and Healthcare (PGHH) in with P&G have 70%; Proctor and Gamble Home Products (PGHP) a wholly owned subsidiary; and Gillette India in which it has a 75% shareholding. The P & G Group has a combined turnover of over $1.5 billion in India.[58] It has been suggested that notwithstanding its long history in the country, formed in 1964, the public listing is simply a shell operation. The flagship operation is Procter and Gamble Hygiene and Healthcare (India), which has no subsidiaries. It is inextricably linked to three unlisted entities P&G International Private Ltd, P&G Marketing Private and P&G Network Services Ltd. P&G Hygiene and Healthcare is 69% owned by local promoters, with a further 12 % held by foreign counterpart. Gillette India follows a similar pattern, however is has a slightly different local-foreign promoter ration, standing at 35:40. It maintains deeply intertwined relationships with Gillette Diversified Operates Private Ltd and Gillette Products Private, Ltd.

‘According to a study by brokerage Ambit Capital [on P&G Hygiene and Healthcare] the unlisted subsidiary’s revenues amounted to 93% of that of its listed sister company in financial year 2000-01. But by 2012-13, its size had increased to 286% on a relative basis, indicating a preference for the company in which it gets to keep a larger share of profits. Despite all this, P&G Hygiene and Healthcare’s shares have been among the best performing multinational firm stocks with annual average returns of 22.7% in the past 10 years. During the same time, the CNX 500 index has risen annually by 12.6% and the CNX MNC index has risen by 14.3%. Although growth in the unlisted company has been higher, investors have been pleased with the growth in the listed subsidiary as well’. Despite these misgivings, return on investment in the listed company shows the relative weakness of corporate governance as a touchstone issue and relative weakness of minority shareholders to impact on both tactics and strategy. [59]

P&G defends its operating procedure. It argues that in India, for example, ‘we continue to record sustained growth across our entities and our listed entity PGHH is testament to this, having delivered consistent double-digit growth and shareholder value over the past decade.” It is a view upheld in successive iterations of the Indian listed company annual report (2008-2018). It is also subject to disclosure of a specific policy on related-party transactions, which is prominently disclosed. According to the 2017-2028 report, “This policy deals with the review and approval of related party transactions. All related party transactions are placed before the Audit Committee for review and approval.”

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[56] https://economictimes.indiatimes.com/industry/cons-products/fmcg/pgs-royalty-rise-in-india-irks-investors/articleshow/8944646.cms?from=mdr.

[57] https://www.livemint.com/companies/news/p-g-renames-merck-as-procter-gamble-health-ltd-1557211127259.html
[58] https://timesofindia.indiatimes.com/business/india-business/pg-to-acquire-52-in-merck-india-for-rs-1300cr/articleshow/63837621.cms
[59] https://www.livemint.com/Money/38pMz96Ei9atgB4J21rGeM/If-theyre-multinationals-why-bother-about-corporate-govern.html
https://www.moneycontrol.com/news/business/markets/fund-managers-keenbig-returns-not-corporate-governance-1081905.html.
http://www.businessworld.in/article/The-Indian-Cash-Cow/08-11-2014-74978/

PZ Cussons

Company description: Founded in 1884 in Sierra Leone now headquartered in Manchester. The principal activities of the Group are the manufacture and distribution of soaps, detergents, toiletries, beauty products, pharmaceuticals, electrical goods, edible oils, fats and spreads and nutritional products.
Parent company: headquartered in the United Kingdom, listed on the London Stock Exchange

Subsidiaries: Partially owned subsidiaries include:
PZ Cussons Ghana Limited Distribution Ghana 90% (shares held by a subsidiary); HPZ Limited Manufacturing Nigeria 55% (HPZ Limited is 74.99% owned by PZ Cussons Nigeria Plc and is therefore consolidated); PZ Cussons Nigeria Plc Manufacturing Nigeria 73% (shares held by a subsidiary);
Guardian Holdings Company Limited Thailand 49% (shares held by a subsidiary). In addition 3 joint venture companies with PZ Wilmar. Listed subsidiaries:

- PZ Cussons Nigeria Plc (listed on Nigerian Stock Exchange)
- PZ Cussons Ghana Ltd (listed on Ghana Stock Exchange)

PZ Cussons in 2007 appeared in a list of the 20 worst performing companies ethically in the FTSE 350[60]

Communication with shareholders
Both PZ Cussons Nigeria and Ghana state that "The Board is committed to an open and consistent communication policy with Shareholders and other stakeholders. The guiding principle is that all Shareholders should be given equal treatment in equal situations. Thus price sensitive information is published timely in full, simple and transparent format to all Shareholders at the same time. Furthermore, all Shareholders have equal opportunity at the Annual General Meeting to present questions to the Board and make comments on any aspect of the financial statements" (PZ Cussons Nigeria Plc, 2018 and PZ Cussons Ghana Limited, 2018) These are standard corporate governance policy commitments, the test is the extent to which they are operational in emerging markets, where information about performance of commitments is difficult to secure

PZ Cussons Nigeria
PZ Cussons Nigeria successfully completed the Corporate Governance Rating System exercise conducted by the Nigerian Stock Exchange (NSE) and the Convention on Business Integrity (CBI) and was accorded the CGRS certification mark. The Company scored 80.64% which is above the 70% threshold for attaining certification (PZ Cussons Nigeria Plc, 2018).[61] The process involves three stages independent, verified self-assessment by the company, a certification of director awareness of their fiduciary duty, and a corporate integrity assessment with feedback on actual company behaviour sought from external stakeholders. 35 Nigerian companies and 437 directors passed the 70% threshold in 2018. The rigour and continuity of this exercise will be significant to the NSE maintaining its reputation internationally.

In 2015, Nigeria's capital market regulator, the Securities and Exchange Commission (SEC), suspended a stockbroking and investment firm-Woodland Capital Market, over the unauthorised sale of 3,750 units of PZ Cussons Nigeria Plc shares belonging to an investor (Salako, T, 2015). While trading conditions have varied with the Nigerian economies oil revenues, PZ Cussons is one of the biggest branded product manufacturers in Nigeria in soaps and detergents in an economy with a growing population of 180 million.

[60] https://www.theguardian.com/business/2007/sep/02/5
[61] https://www.cbinigeria.com/the-convention-on-business-integrity-cbi-and-the-nigerian-stock-exchange-nse-honour-companies-and-directors-for-passing-corporate-governance-rating-assessment/

Unilever

Company description: Unilever is one of the world's most powerful transnational consumer goods manufacturers. It holds dominant positions in household goods, beauty, personal hygiene and beverage markets.
Parent company: It is governed and controlled from joint headquarters in London and Rotterdam and listed on three exchanges: the London Stock Exchange, the NYSE and the Euronext Amsterdam Exchange.
Listed subsidiaries: Unilever Cote d'Ivoire; Hindustan Unilever; Unilever Indonesia; Unilever Nigeria; Unilever Ghana; Unilever Caribbean

Treatment of minority shareholders
However, this picture of inclusive well-being is not born out fully by analysis of the manner is which subsidiaries and their shareholders are treated. In India here Unilever operates primarily through a subsidiary, Hindustan Unilever Ltd (HUL), of which it holds s 67.5% stake. HUL is listed on the Mumbai Stock Exchange. It previously traded under the name Hindustan Lever Ltd (HLL). India is an exceptionally important and profitable market, as highlighted in the consolidated Unilever 2018 Annual Report. HUL's website conforms to the main Unilever template. Much content in its annual reports replicate the parent commitments. It adds further detail on specific projects, designed to enhance the goals of the 'Sustainable Living Plan', a commitment that dates at parent level back to 2010. It is also one where the commitment to environmental protection and worker wellbeing has been most scrutinized and potentially compromised. The controversy centres on the operations of a thermometer factory in Kodaikanal, Tamil Nadu that had itself been transported from New York State in 1984. The move was an early example of offshoring and included the transportation of mercury, a highly toxic substance that must be handled with utmost care. In March 2001 local residents discovered waste mercury at a scrapyard in close proximity to the factory. It transpired that HLL had entered into a contract for the transfer of 5.3 metric tonnes of mercury-tainted waste glass. The removal led to significant ground and water contamination. The discovery forced the closure of the plant that year. HUL blamed the contamination on the contracted scrap dealer. HUL further suggested the contamination occurred at the dealer's facility, three kilometres distant. Legal issues associated with reparations to workers, however, continued as late as 2016. HUL (as the company was then named) made an *ex gratia* payment to a group of 591 workers and their families. Without admitting liability, HUL claimed the payment was made on 'humanitarian grounds'. The suit was filed suit a decade earlier at the Madras High Court, three years after HLL had made what it then termed final settlements. The area remains heavily contaminated and trials eventually began to rectify the matter in 2017. As disclosed in the HUL *Business Sustainability Report* for 2016-2017, 'Your Company is committed to cleaning up the former factory site in Kodaikanal to a standard that is fully protective of human health and the environment.' The claim was repeated in the 2017-2018 Annual Report. The length of time it has taken both HUL and Unilever to deal with these matters, their reactive and heavily legalistic approach, and minimalist reporting stands in mark contrast to the stated commitment to its own definition of sustainable living and environmental protection. Resulting reputation damage must have impacted on subsidiary shareholders interests.[62]

Unilever's commitment to equality and worker protection was questioned by two separate problems associated with its
operations in Kenya. Sexual harassment claims by workers who alleged that they had to pay supervisors bribes to stop unwanted advances were detailed in a critical report issued jointly by a Dutch NGO and the Kenya Human Rights Commission in 2011. The report had the potential to damage Unilever and also the credibility of the sustainability standard certification it has relied on, the Rainforest Alliance. Unilever rejected the claims, pointing to its extensive program of training introduced in the aftermath of the publication of the initial report. It also featured the case in its 2014 Annual Report, noting the improvements but omitting mention of the initial veracity of the claims or its tardiness in addressing them.[63]

[62] https://www.somo.nl/certified-unilever-tea/

[63] https://www.somo.nl/certified-unilever-tea/

From an economic perspective, for a corporation like Unilever, further reputational damage and damage to subsidiary shareholder interests can lie in investigation of anti-competitive practices, such as abuse of dominant market position and involvement in cartel activity. Throughout the 2000-2018 period, Unilever found itself caught up in these investigations in South Africa. Allegations of abusive practices were not confined to emerging markets. In 2011, Unilever along with Procter & Gamble were convicted in relation to price-fixing laundry products across eight European Union countries between 2002-2005, with Unilever paying a fine of €104million. What particularly irked the EU Competition Commissioner was that the cartel derived from industry discussions to make their products more environmentally friendly. [64]

In 2014 Unilever was among a group of multinationals, including L'Oreal, Procter & Gamble and Colgate-Palmolive, fined €951 million by the French Competition Authority for price-fixing and limiting supplies between 2003-2006. Unilever was fined €70.522m in relation to home care products and €102.022m in relation to personal care products.[65] At no stage did Unilever provide an overarching statement on how its internal control and codes of conduct had or would be strengthened or accept any responsibility for the misconduct. Instead, the sole focus was on repositioning the company towards ethical responsibility. Mr Polman was replaced as CEO on 1 January 2019 by Alan Jope. Mr Jope had previously been president of the Beauty and Personal Care Division of Unilever, the largest division of the corporation and the one at the centre of the price-fixing investigations. In a conference call, he emphasised that growth would be the number one priority for the company, a return to shareholder return model and reinforced the move away from mass market products towards niche ones, including those that are marketed on the basis of environmental protection.

This is consistent with its 2018 program of partial acquisitions, including Italian skincare company Equilbra (75% control), and 100% ownership of Schmidt in the United States. In 2017 Unilever acquired 100% control of Brazil's Mãe Terra (Natural Foods); Sundial (Beauty) and Tazo (Specialist Tea) in the United States. It also acquired Pukka Herbs (Tea) in the UK, and sole control in Latin America of Quala (Haircare). Of equal significance is its disposal of global spreads operation, which had proved so problematic in the price-fixing investigations. Unilever has sought to buy credibility through external acquisition of niche products and minimise its exposure to mass market products. At the same time, it has adopted an aggressive legal approach; and guilt by protecting the strength of the corporate veil. Its approach has successful in fending off a hostile bid from Kraft-Heinz, owned by Brazilian private equity firm 3G Capital, with backing from Berkshire Hathaway, in 2017. Whether the evidence is strong enough should another hostile bid emerge is another matter entirely (Migdal 2017).[66]

[64] https://www.nytimes.com/2011/04/14/business/global/14cartel.html
https://www.timeslive.co.za/news/south-africa/2017-03-01-cooking-oil-fix-unilever-south-africa-to-be-fried-in-cartel-case/ ;
https://www.reuters.com/article/us-unilvr-pricefixing-safrica/south-africas-antitrust-watchdog-seeks-fine-for-unilever-idUSKBN1684U0

[65] https://www.euronews.com/2014/12/18/multinationals-including-l-oreal-and-unilever-fined-millions-for-price-fixing.;
https://www.theguardian.com/business/2014/dec/18/france-fines-unilever-reckitt-benckiser-procter-and-gamble-gillette-price-fixing

[66] https://www.foodnavigator.com/Article/2019/02/05/Growth-is-our-number-one-priority-Unilever-s-new-CEO-on-the-need-to-move-beyond-the-mass-market-model
https://knowledge.insead.edu/blog/insead-blog/should-the-unilever-model-of-capitalism-be-protected-530
https://www.hbs.edu/faculty/Pages/item.aspx?num=52733