

Contemporary Issues in

LAW

Volume 12 Issue 1
ISSN 1357-0374

**CORPORATE SOCIAL RESPONSIBILITY
(CSR) AND LAW**

**LAWTEXT
PUBLISHING**

CONTENTS

CONTEMPORARY ISSUES IN LAW
VOLUME 12 ISSUE 1

Published by Lawtext Publishing Limited – www.lawtext.com

CORPORATE SOCIAL RESPONSIBILITY (CSR) AND LAW

INTRODUCTION

vi

Adaeze Okoye, Guest Editor

'ISLAMIC BANKING, CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY IN NIGERIA: PROSPECTS AND CHALLENGES

1

Olufemi Amao, Brunel Law School, Brunel University London

This article explores corporate governance and corporate social responsibility issues in the emerging Islamic banking sector in the Nigerian context. The paper shows that the peculiarity of the Islamic banking system, as opposed to the conventional banking system, raises issues which are different and unique to the Islamic banking sector. It is, therefore, pertinent to examine the development of both conventional and Islamic banking in Nigeria. The article notes that there is a link between the concept of corporate social responsibility and Islamic banking which may have an important role in the Nigerian context. Similarly, the corporate governance framework is important especially in relation to the proper functioning of the Islamic system and its ability to abide by its unique operating principles. The article also draws on insights from the United Kingdom which has introduced a framework for Islamic banking within its secular system.

EXPLORING CORPORATE SOCIAL RESPONSIBILITY FROM A LAW-JOBS PERSPECTIVE

20

Adaeze Okoye, Senior Lecturer, Department of Law and Criminal Justice Studies, Canterbury Christ Church University

A substantial amount of Corporate Social Responsibility (CSR) definitions appear to exclude law by the use of phrases such as: 'beyond the legal requirements', 'voluntary' or 'beyond that which is required by law'. This indicates that the role of law within CSR is at the very least contested. Yet it is accepted that CSR in general deals with various issues arising from the relationship between business corporations and society and law is a fundamental aspect of such relationship. Law can be perceived in many ways and an underlying premise of this paper is that the way law is defined will spell out the role for law within CSR. This paper therefore proposes that CSR can be explored from a law-jobs perspective. Llewellyn's law-jobs perspective involves finding law through its role in relational and original settings. This perspective strips law by definition to its bare bones and ask what jobs law is capable of doing. The point of such exploration within CSR will be to present a perspective that asks crucial questions about the role law can perform in any business- society relationship. It will allow for a fuller exploration of law's relevance to CSR.

CORPORATE SOCIAL RESPONSIBILITY-FAIRNESS AND PROMISE AS THE FUNDAMENTS FOR JURIDIFICATION OF SOCIAL DISCLOSURES

46

Dr Onyeka Osuji, Senior Lecturer, Law School, University of Exeter

One of the effects of regarding corporate social responsibility as extralegal activities and voluntary compliance with society's demands is the difficulty of providing theoretical justifications for regulatory interventions in the area. This is a key challenge to the development of corporate social, environmental and sustainability reporting and its resolution is arguably intricately linked to the role of law in providing accountability mechanisms. This paper uses the James Hardie and *Nike v Kasky* cases as illustrations, and proposes the juridification of corporate social, environmental and sustainability reporting from a position that reflects its ethical origin. The proposed juridification also involves the designation of distinct legal consequences for social disclosures, particularly flawed information. The paper argues that Pound's Theory of Jural Postulates can apply to social disclosures and suggests sufficient theoretical justifications for regulatory interventions in such reporting. It demonstrates the imperativeness of an enforceable morality approach to the law relating to corporate social disclosures by drawing on the concepts of fairness and promise in Pound's Theory of Jural Postulates and von Mehren's investigation of the enforcement of promises.

LEGISLATING CORPORATE PHILANTHROPY: THE NEW CORPORATE ACCOUNTABILITY

75

Dr Renginee G. Pillay, Lecturer in Law, School of Law, University of Surrey.

The idea of corporate social responsibility (CSR) has risen to prominence with remarkable rapidity in recent years. It has not only become an increasingly fashionable field of study amongst academics, been embraced by corporations and entered common consciousness, but it has also increasingly been advanced by non-governmental organisations (NGOs) and policymakers as a potential mechanism for achieving social policy objectives and furthering sustainable development. The popularity of CSR can be attributed to the fact that it is associated with voluntary mechanisms such as codes of conduct and principles of intent, and, more recently in the international development arena, public-private partnerships. However, in the last decade or so, the CSR movement has come under increasing criticism precisely because of its emphasis on voluntarism and corporate self-regulation. As a result, the notion of 'corporate accountability' started to gain ground. The defining characteristic of the latter movement is its focus on legal and mandatory rules, which, it is suggested, will render corporations more socially responsible. Interestingly, it is in the developing world that government-led CSR legislation has come to the fore. Thus, in 2007, Indonesia became the first country in the world to mandate CSR. In similar vein, at the beginning of July 2009, Mauritius implemented new legislation which requires companies to either spend two per cent of their profits on CSR activities approved by the government or to transfer these funds to the government to be used in the fight against poverty.

This paper seeks to explore the interaction between the CSR and the corporate accountability movements by examining the newly-enacted legislations in Indonesia and Mauritius. The paper starts by locating the nature of contemporary CSR within an ameliorative framework in contrast to the transformative aspirations of the 'socially responsible corporation' which emerged in the 1920s and 30s. Contemporary CSR is thus seen as being non-confrontational in relation to corporations as it advocates collaboration between business, governments, United Nation agencies and NGOs. The paper then looks at the critique of CSR and charts the rise of the corporate accountability movement, especially in the context of international development. In this respect, it delineates the distinguishing features of the latter movement: confrontation and legalistic regulation. The next section focuses on the nature of the Indonesian and Mauritian CSR legislations, arguing that these countries have, in effect, legislated corporate philanthropy. It also examines their implications in terms of the CSR and the corporate accountability movements. It concludes that, in this regard, the potential and value of CSR as well as that of the corporate accountability movement as a whole, especially in the developing world, although praiseworthy, necessarily remain limited.