

Chapter 2

Corporate Social Responsibility, Corporate Governance and Corporate Regulation

2.1 Introduction

CSR is increasingly an essential issue for companies.¹ It is a complex and multi-dimensional organisational phenomenon that is understood as the scope for which, and the ways in which, an organisation is consciously responsible for its actions and non-actions and their impact on its stakeholders. It represents not just a change to the commercial setting in which individual companies operates, but also a pragmatic response of a company to its consumers and society.² It is increasingly being understood as a means by which companies may endeavour to achieve a balance between their efforts to generate profits and the societies that they impact in these efforts.³ This chapter discusses these issues. First, it describes CSR and its core principles. Second, it describes CG and narrates CG's convergence with CSR. Third, it highlights how different economies are incorporating CSR notions in their corporate regulation.

¹ Jeremy Moon and David Vogel, 'Corporate Social Responsibility, Government, and Civil Society' in Andrew Crane et al. (eds), *Oxford Handbook of Corporate Social Responsibility* (2008) 303; David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (2005); Nada K Kakabadse, Cecile Rozuel and Linda Lee-Davies, 'Corporate Social Responsibility and Stakeholder Approach: A Conceptual Review' (2005) 1(4) *International Journal of Business Governance and Ethics* 277, 279.

² Wilfred Luetkenhorst, 'Corporate Social Responsibility and the Development Agenda. The Case for Actively Involving Small and Medium Companies' (2004) *Intereconomics* 157, 166.

³ John Clark, *Worlds Apart: Civil Society and the Battle for Ethical Globalisation* (2003) 2002–2003; Bridget M Hutter and Joan O'Mahony, 'The Role of Civil Society Organisations in Regulating Business' (Centre for Analysis of Risk and Regulation, London School of Economics and Political Science, 2004) 3.

2.2 Corporate Social Responsibility (CSR)

The role of business in society is an ancient concern.⁴ However, until now this concern has not been conclusively determined; business communities and international civil societies have not yet been able to reach to an overall agreement⁵ when defining the responsibilities of companies to society.⁶ Indeed, defining CSR is complex and contingent on situational factors. Moreover, there are an enormous number of varied definitions for CSR. One of the reasons behind the inconclusiveness of the definitions of CSR is rooted in its interchangeable and overlapping characteristics with other terminologies.⁷ Another reason may also lie in the fact that the contemporary CSR agenda essentially involves the concept of stakeholders and development as an integral issue of business operations. Another reason is related to the ever-changing and dynamic character of CSR and its expansion of practices aligned with the increased demands from society and from development issues.⁸ Despite the inconclusive definitions, different approaches and many dimensions of CSR, the principal notions of this paradigm are almost established. Although these notions are not conclusive, they are consistent and have converged on common characteristics and similar elements. These are related to the economic, social and environmental impacts of business operations and their responses to customers' expectations, employees, shareholders and stakeholders in the context of these impacts. CSR is no longer confined to corporate philanthropy; rather, it has been established that accepting social responsibilities has a positive effect on

⁴ Richard C Warren, 'The Evolution of Business Legitimacy' (2003) 15(3) *European Business Review* 153, 154; Rob Gray, Dave Owen and Adams Carol, *Accounting and Accountability: Changes and Challenges in Corporate Social and Environmental Reporting* (1996) 1–2.

⁵ Michael Hopkins 'Corporate Social Responsibility: An Issue Paper' (Working Paper No. 27, Policy Integration Department, World Commission on Social Dimension of Globalisation, 2004). http://www.ilo.org/integration/resources/papers/lang-en/docName-WCMS_079130/index.htm at 23 July 2010. For details, see M Van Marrewijk, 'Concept and Definitions of CSR and Corporate Sustainability: Between Agency and Communion' (2003) 44(2–3) *Journal of Business Ethics* 95, 105.

⁶ Jamie Snider et al., in their article titled 'Corporate Social Responsibility in the 21st Century: A View from the World's Most Successful Firms' stated that an exact definition of CSR is elusive since beliefs and attitudes regarding the nature of CSR fluctuate with the relevant issue of the day. As such, viewpoints have varied over time and occasionally have even been opposing. See also T Pinkston and Archie B Carroll, 'A Retrospective Examination of CSR Orientations: Have They Changed?' (1996) 15(2) *Journal of Business Ethics* 199, 207.

⁷ Parliamentary Joint Committee on Corporations and Financial Services, *Corporate Responsibility: Managing Risk and Creating Value* (2006) 4; for details, see Michale Blowfield and Jerdej George Frynas, 'Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in the Developing World' (2005) 81(3) *International Affairs* 499, 501; Dirk Matten and Jeremy Moon, '"Implicit" and "Explicit" CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility' (2008) 33(2) *Academy of Management Review* 404, 505.

⁸ Jamie Snider et al., 'Corporate Social Responsibility in the 21st Century: A View from the World's Most Successful Firms' (2003) 48(2) *Journal of Business Ethics* 175; see also Pinkston and Carroll, above n 6, 207.

companies' financial performances. Thus, CSR has established the core principles for furthering appropriate strategies for incorporating its different notions into business practice.

This section will not provide a thorough discussion on the definition of CSR, as this is believed to be a study in itself, and in this book no distinction is made between the different meanings attached to this term. This book is not focused on the philosophies in CSR. Rather, it concentrates on identifying the core principles of CSR and suitable legal regulatory strategies to incorporate these principles into corporate self-regulation in weak economies.

CSR is a fluid concept.⁹ Its interchangeable and overlapping character is dominant in its definition. To some scholars, this concept resembles the source of competitive advantage; to others, it is 'an important response to the increasing demands of key stakeholders such as employees, investors, consumers and environmentalists.'¹⁰ Again, the precepts of CSR change with each generation, and its criteria may change according to the society in question.¹¹ For instance, its meaning in the Continental European welfare society is different to its meaning in the USA or in developing or transitional societies.¹² In the USA, companies consider philanthropy as a dominant factor of CSR; in the Northern economies companies bear their social responsibilities by paying taxes.¹³ In these circumstances, a consistent terminology for this concept is yet to be developed. It is currently described using a number of terms: corporate citizenship, the ethical corporation, CG, corporate sustainability, socially responsible investment, corporate accountability and so on, and there is no overall agreement on its definition.¹⁴ The concepts underlying these terms are internally consistent and converge on certain common qualities and similar elements. In a broader sense, CSR is about the impact of business on a society or, in other words, the role of companies in the development of the society. In a narrower sense, it is a complex and multi-dimensional organisational phenomenon that may be defined as the extent to which, and the way in which, an organisation is consciously responsible for its actions (and non-actions) and the impact of these on its stakeholders.

The concept of CSR can be defined in various ways and may have different meanings. Archie B Carroll gave a long account of the evolution of the definition of CSR beginning from the 1950s and continuing through to the 1990s with the

⁹ Hopkins, above n 5, 1; Marrewijk, above n 5, 105.

¹⁰ Aida Bagi, Marina Krabalo and Lana Narani, 'An Overview of Corporate Social Responsibility in Croatia' (2004) *Zagreb: AED*; Pinkston and Carroll, above n 6.

¹¹ Kakabadse, above n 1.

¹² Emma Daugherty, 'Public Relations and Social Responsibility' (2001) *Handbook of Public Relations* 389, in Kakabadse, above n 1, 280.

¹³ Kakabadse, above n 1, 280.

¹⁴ William Werther and David Chandler, *Strategic Corporate Social Responsibility: Stakeholders in a Global Environment* (2010) 6; see also Michael Bowfield and Jerdej George Frynas, above n 7, 501; Matten and Moon, above n 7, 505; Australian Parliamentary Joint Committee and Financial Service, *Corporate Responsibility: Managing Risks and Creating Value* (Report 2006) 4.

specific features of each decade in terms of its development.¹⁵ In the 1980s, as he mentioned, some alternative theoretical issues were added to the concept itself, including corporate social performance, stakeholder theory, and business ethics theory.¹⁶ In the definitional development that occurred in the 1990s, these alternative themes took centre stage in the manifestation of CSR¹⁷ and all subsequent definitions were dominated by the stakeholder and societal approach, with the recognition of social, economic, and environmental issues as the basic components of responsibility. The best illustration of this is available in the definitions and views developed in the late 1990s and subsequently by different intergovernmental, government and development organisations and some postmodern academics.¹⁸

The World Business Council for Sustainable Development defines CSR as ‘the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.’¹⁹ According to this definition, business societies have responsibilities to contribute to the development of their employees, their families, the local community and wider society to improve their quality of life and thus to try to ensure sustainable economic development.²⁰ The phrase ‘continuing commitment’ used in this definition indicates that CSR is not a temporary issue that a company considers only in certain situations. Rather, it is a permanent issue that should be placed strategically within the policies and programs of companies. Business for Social Responsibility defines CSR in a more holistic way. This organisation refers to CSR as a tool for ‘achieving commercial success in ways that honour ethical values and respect people, communities, and the natural environment.’²¹ Thus, Business for Social Responsibility relates CSR to the idea of recognising and responding to a broader spectrum of stakeholder interests. The International Business Leaders Forum extends this idea and accepts it as a responsible business practice that could benefit business and society by maximising the positive impact business has on society while minimising the negative impact. In a similar fashion, a Green Paper published by the European Commission in 2001 defines CSR as ‘a concept whereby companies

¹⁵ Archie Carroll, ‘Corporate Social Responsibility: Evolution of a Definitional Construct’ (1999) 38(3) *Business and Society* 268, 269.

¹⁶ Ibid 280; Edward R Freeman and John McVea, ‘A Stakeholder Approach to Strategic Management’ (2001) *Blackwell Handbook of Strategic Management* 189.

¹⁷ Archie Carroll, above n 15, 288; Rob Gray, Dave Owen and Adams Carol, *Accounting and Accountability: Changes and Challenges in Corporate Social and Environmental Reporting* (1996).

¹⁸ Alexander Dahlsrud, ‘How Corporate Social Responsibility Is Defined: An Analysis of 37 Definitions’ (2008) 15(1) *Corporate Social Responsibility and Environmental Management* 1.

¹⁹ Phil Watts and Lord Holme, *Corporate Social Responsibility: Meeting Changing Expectations* (1999) 3.

²⁰ Ibid.

²¹ Allen White, ‘Business Brief: Intangibles and CSR’ (2006) *Business for Social Responsibility* 6, available at http://www.bsr.org/reports/BSR_AW_intangibles-CSR.pdf at 30 July 2010.

integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis.²² The World Economic Forum identifies the concerns for responsible business as follows:

... To do business in a manner that obeys the law, produces safe and cost-effective products and services, creates jobs and wealth, supports training and technology cooperation and reflects international standards and values in areas such as the environment, ethics, labour and human rights. To make every effort to enhance the positive multipliers of our activities and to minimise any negative impacts on people and the environment, everywhere we invest and operate. A key element of this is recognising that the frameworks we adopt for being a responsible business must move beyond philanthropy and be integrated into core business strategy and practice.²³

Given these definitions, CSR appears to be a managing element that starts at the company level by its performance in a socially responsible manner, where the trade-offs between the needs and requirements of different stakeholders are balanced and acceptable to all.²⁴ In a recent publication, rather than giving any conclusive definition of CSR, the Australian Parliamentary Joint Committee on Corporations and Financial Services examined the concept of CSR from the following standpoints: (a) considering, managing and balancing the economic, social, and environmental impacts of companies' activities; (b) assessing and managing risks, pursuing opportunities, and creating corporate value beyond the traditional core business; and (c) taking an 'enlightened self-interest' approach to consider the legitimate interests of the stakeholders in CG.²⁵

Michael Hopkins relates CSR 'with treating the stakeholders of the firm ethically or in a socially responsible manner.'²⁶ Here, the words 'ethically' and 'responsible' emphasise the notion that the treatment of stakeholders should be deemed acceptable in civilised society. According to Hopkins, this treatment of the stakeholder is an economic responsibility of companies.²⁷ Marsden perceives CSR as a core behavioural issue for companies. He states 'CSR is not an optional add-on nor is it an act of philanthropy. A socially responsible corporation is one that runs a

²² European Commission, *Green Paper: Promoting a European Framework for Corporate Social Responsibility* (2001) www.europa.eu.int at 5 July 2007.

²³ World Economic Forum, 'Global Corporate Citizen: The Leadership Challenge for CEOs and Boards' (2002) http://www.weforum.org/pdf/GCCI/GCC_CEOstatement.pdf at 21 February 2009.

²⁴ Ibid; the definition of the Commission of the European Communities mentioned in the text were made in 2001. However, the later definition made in 2002 speaks broadly of CSR, stating: 'Corporate responsibility is about companies having responsibilities and taking actions beyond their legal obligations and economic/business aims. These wider responsibilities cover a range of areas but as frequently summed up as social and environmental—where social means society broadly defined, rather than simply social policy issues. This can be summed up as the triple bottom line approach, that is, economic, social and environmental.'

²⁵ Australian Parliamentary Joint Committee on Corporations and Financial Services, *Inquiry into Corporate Responsibility and Triple-Bottom-Line reporting for incorporated entities in Australia* (2005). http://www.philanthropy.org.au/pdfs/advocacy/pa_jpicr_0905.pdf at 31 October 2013.

²⁶ Hopkins, above n 5, 1.

²⁷ Ibid.

profitable business that takes account of all the positive and negative environmental, social and economic effects it has on society.²⁸ Andersen defines CSR following a broader societal approach. He states that the broader meaning of CSR relates to the extension of 'the immediate interest from oneself to include one's fellow citizens and the society one is living in and is a part of today, acting with respect for the future generation and nature.'²⁹ While other scholars have studied CSR, to respect space constraints and retain the focus on the main theme of this study, only the works of these three recent and well-cited scholars are mentioned here.³⁰

All of the definitions outlined above confirm that there is no conclusive definition of CSR and that it can have different meanings to different people and different organisations as an ever-growing, multifaceted concept. Nevertheless, it may be said that the concept of CSR is consistent and converges on certain common characteristics and elements. More precisely, if CSR as defined above is examined from a practical and operational point of view, it converges on two points. CSR requires companies (a) to consider the social, environmental, and economic impacts of their operations and (b) to be responsive to the needs and expectations of their stakeholders.³¹ These two points are also embedded in the meaning of the three words (i.e., 'corporate', 'social', and 'responsibility') of the phrase 'corporate social responsibility'. The word 'corporate' generally denotes business operations, 'social' covers all the stakeholders of business operations, and the word 'responsibility' generally refers to the relationship between business corporations and the societies within which they act together. It also encompasses the innate responsibilities on both sides of this relationship. Accordingly, CSR is an integral element of business strategy: it is the way that a company should follow to deliver its products or services to the market; it is a way of maintaining the legitimacy of corporate actions in wider society by bringing stakeholder concerns to the foreground; and a way to emphasise business concern for social needs and actions that go beyond philanthropy. Next, the core principles of CSR are introduced.

²⁸ Chris Marsden, *The Role of Public Authorities in Corporate Social Responsibility* (2001) in Dahlsrud, above n 18, 9.

²⁹ K I Andersen, *The Project* (2003) in Dahlsrud, above n 18, 11.

³⁰ Some other prominent works are: Archie Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organisational Stakeholders' (1991) 34(4) *Business Horizons* 39; Archie Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38(3) *Business & Society* 268; John Conley and Cynthia Williams, 'Engage, Embed, and Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement' (2005) 31 *Journal of Corporation Law* 1; Tom Fox, 'Corporate Social Responsibility and Development: In Quest of an Agenda' (2004) *Development* 29; Andy Lockett, Jeremy Moon and Wayne Visser, 'Corporate Social Responsibility in Management Research: Focus, Nature, Aliance and Sources of Influence' (2006) 43(1) *Journal of Management Studies* 115; Moon and Vogel, above n 1; Karrin Buhmann, 'Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR' (2006) 6(2) *Corporate Governance* 188.

³¹ Christopher Tung, *The Legal Implications of CSR: Changing Landscape of Liability* (2006) at www.csr-asia.com/CGconference2006/ChrisTung.pdf at 20 November 2010.

2.2.1 Core Principles of Corporate Social Responsibility

The ‘triple bottom line’ introduced by Elkington is one of the best-known models to discuss the core of CSR.³² In this model, the concept of CSR emphasises three responsibilities of a company: social, economic and environmental. These responsibilities are necessary to ensure economic prosperity, environmental quality and social justice.³³ Carroll has identified four responsibilities which a company should accept to become socially responsible in a balanced way. According to him, a socially responsible company ‘encompasses the economic, legal, ethical and discretionary expectations that society has of organisations at a given point of time.’³⁴ Another strong argument in the recent CSR practice literature relates to stakeholder engagement in CSR performance. Freeman argues that companies have a responsibility to add their stakeholders to corporate activities. To him, stakeholder engagement is a vital way for companies to deal with their external environment effectively.³⁵ Considering these major sources of CSR practices, they may be grouped into four major categories: the societal, environmental, economic and stakeholder approaches.

Each of these approaches has different perspective in terms of definitions and boundaries of responsibility.³⁶ However, each of these approaches has their individual underlying principles. Briefly, the principle of the societal approach to CSR is that companies should contribute to building better societies and therefore they should incorporate social concerns into their core strategies as well as consider the full scope of their impact on societies. More particularly, this principle requires companies to implement fair wage policies, uphold human rights, fair trade and ethical issues, produce safe products and cooperate in the network of companies and communities.³⁷ The economic principle emphasises company efficiency in

³² John Elkington, ‘Partnerships from Cannibals with Forks: The Triple Bottom Line of 21st Century Business’ (1998) 8(1) *Environmental Quality Management* 37.

³³ Ibid; for a discussion on the implementation of these precepts in companies, see Grahame Thompson, ‘Global Corporate Citizenship: What Does it Mean?’ (2005) 9(2) *Competition and Change* 131, 133.

³⁴ Archie Carroll, ‘A Three-Dimensional Conceptual Model of Corporate Performance’ (1979) *Academy of Management Review* 497, 499–500.

³⁵ Freeman and John McVea, above n 16 189, 24.

³⁶ Van Marrewijk, above n 5, 95.

³⁷ Astrid Konrad et al., ‘Empirical Findings on Business–Society Relations in Europe’ (2006) 63 (1) *Journal of Business Ethics* 89, 91; Archie Carroll, ‘Corporate Social Responsibility’ (1999) 38 (3) *Business & Society* 268; E Garriga and D Mele, ‘Corporate Social Responsibility Theories: Mapping the Territory’ (2004) 53(1) *Journal of Business Ethics* 51; Carmen Valor, ‘Corporate Social Responsibility and Corporate Citizenship: towards Corporate Accountability’ (2005) 110 (2) *Business and Society Review* 191; Van Marrewijk, above n 5, 95; Marjo Siltaoja, ‘The Relationship Between Corporate Social Responsibility and Corporate Reputation from a Value-Laden Viewpoint: An Empirical Study in a Finnish Newspaper Context’ (University of Jyväskylä, 2006) 299.

producing goods without compromising social and environmental values.³⁸ This principle denotes that along with their responses to the financial expectations of their shareholders, companies should focus on the economic wellbeing of society as a whole.³⁹ The environmental principle, in short, states that the companies should not harm the environment in order to maximise their profits, and that companies should have a strong role in repairing environmental damage caused by their irresponsible use of natural resources.⁴⁰ Finally, the principle of the stakeholder approach to CSR practice holds companies responsible for considering the legitimate interest of their stakeholders.⁴¹ These principles are the drivers of the sources of different CSR practices and hence important factors for initiating any strategies for developing CSR practices.⁴² These principles are used broadly within different segments of government, business and the academic world. For this book, these principles are considered to be the cornerstone for the development of socially responsible corporate culture.

Defining a paradigm is problematic; defining CSR is complex and contingent on situational factors. In its second generation, although CSR should have a universal definition, this has not yet been satisfactorily achieved. Despite this, CSR has defined its principles, which are now acknowledged by standardisation regimes, global business societies, civil societies and nation states. The broad understanding of CSR is that companies should be committed to ‘contribute to sustainable economic development—working with employees, their families, the local community and society at large to improve the quality of life, in way that [is] also good for business.’⁴³

³⁸ Elkington, above n 32; Maureen Rogers and Roberta Ryan, ‘The Triple Bottom Line for Sustainable Community Development’ (2001) 6(3) *Local Environment* 279; Elisa Juholin, ‘For Business or the Good of All? A Finnish Approach to Corporate Social Responsibility’ (2004) 4 (3) *Corporate Governance* 20.

³⁹ A Konrad et al., above n 37, 89, 93.

⁴⁰ Rodney McAdam and Denis Leonard, ‘Corporate Social Responsibility in a Total Quality Management Context: Opportunities for Sustainable Growth’ (2003) 3(4) *Corporate Governance* 36; Drek Matten and Jeremy Moon, ‘Pan-European Approach. A Conceptual Framework for Understanding CSR’ (2007) *Corporate Ethics and Corporate Governance* 179.

⁴¹ Edward Freeman and Ramakrishna Velamuri, ‘A New Approach to CSR: Company Stakeholder Responsibility’ Institute for Corporate Ethics Bridging Paper <http://www.corporate-ethics.org/pdf/csr.pdf> at 12 December 2011; Dima Jamali, ‘A Stakeholder Approach to Corporate Social Responsibility: A Fresh Perspective into Theory and Practice’ (2008) 82(1) *Journal of Business Ethics* 213.

⁴² Duane Windsor, ‘The Future of Corporate Social Responsibility’ (2001) 9(3) *International Journal of Organizational Analysis* 225; Jamali, above 215.

⁴³ Halina Ward, *Public Sector Roles in Strengthening Corporate Social Responsibility: Taking Stock* (2004) 3.

2.3 Convergence of CSR and Corporate Governance*

There is an evolving interplay between CG and CSR.⁴⁴ Both these mechanisms hold economic and legal features. These may be altered through socio-economic processes in which competition within the product market is the most powerful force.⁴⁵ CG and CSR are complementary and are closely linked with market forces. Their objectives are not concurrent; they may act as tools for attaining each other's goals, though their setups as corporate frameworks are different. CSR operates in a free-form manner, whereas CG issues operate within well-defined and accepted structures.⁴⁶

CG is an umbrella term.⁴⁷ In its narrower sense, it describes the formal system of accountability of corporate directors to the owners of companies. In a broader sense, the concept includes the entire network of formal and informal relationships involving the corporate sector and the consequences of these relationships for society in general. These two senses are not concurrent; rather, they are complementary. CG has been described as the ways in which suppliers of finance to corporations assure themselves of obtaining a return on their investment.⁴⁸ However, it could also implicate 'the whole set of legal, cultural, and institutional arrangements that determine what publicly traded corporations can do, who controls them, how that control is exercised, and how the risks and returns from the activities they undertake are allocated'.⁴⁹ Taking these senses together, CG is no longer merely about maximising stock value; rather, it concerns the 'relationships among the many players involved (the stakeholders) and the goals for which the corporation is governed.'⁵⁰

*The core of this section has been published as a chapter of a book on corporate social responsibility and corporate governance. For details, see Mia Mahmudur Rahim 'Corporate Governance as Social Responsibility: A Meta-regulation Approach to Incorporate CSR in Corporate Governance' in Sabri Boubaker and Duc Khuong Nguyen (eds), *Board of Directors and Corporate Social Responsibility*, Palgrave Macmillan (UK).

⁴⁴ Lawrence E Mitchell, 'The Board as a Path toward Corporate Social Responsibility' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell, *The New Corporate Accountability: Corporate Social Responsibility and the Law* (2007) 279.

⁴⁵ Andrei Shleifer and Robert Vishny, 'A Survey of Corporate Governance' (1997) 52 (2) *Journal of Finance* 737, 3.

⁴⁶ Lawrence E Mitchell in McBarnet, Voiculescu and Campbell, above n 44, 279.

⁴⁷ For details of CG see Shleifer and Vishny, above n 45; Shann Turnbull, 'Corporate Governance: its Scope, Concerns and theories' (1997) 5(4) *Corporate Governance* 180; Oliver Hart, 'Corporate Governance: Some Theory and Implications' (1995) 105(430) *Economic Journal* 678; Marco Becht, Patrick Bolton and Alisa Roell, 'Corporate Governance and Control' (2003) 1 *Handbook of the Economics of Finance* 1; Catherine Daily, Dan Dalton and Albert Cannella Jr, 'Corporate Governance: Decades of Dialogue and Data' (2003) 28(3) *Academy of Management Review* 371; Lucian Bebchuk, Alma Cohen and A Ferrell, 'What Matters in Corporate Governance?' (2009) 22 (2) *Review of Financial Studies* 783.

⁴⁸ Shleifer and Vishny, above n 45, 737.

⁴⁹ Margaret Blair, *Ownership and Control: Rethinking Corporate Governance for the Twenty-First Century* (1995) 3.

⁵⁰ Corporate Governance, http://en.wikipedia.org/wiki/Corporate_governance at 3 February 2011.

In the usual CG framework, the roles, rights and responsibilities of corporate directors are vital. In particular, the board of directors is the most appropriate body to allow and design policies to enable corporate management to fulfil their responsibilities to society.⁵¹ In most cases, this board is the sole body that communicates corporate performance to corporate owners. Moreover, with the beginning of the modern CSR era,⁵² its role in CG has vastly extended; Eisenberg described this as the ‘board as manager’.⁵³ Chapter 3 of this book discusses this in greater detail.

In the marketplace, CG is an old actor, whereas CSR is comparatively new. It is worth noting that the sophistication of consumers in the 1960s, the environmental movement of the 1970s and the increasing interest in the social impacts of business in the 1990s have all helped CSR reach the heart of CG.⁵⁴ The list of key issues associated with this timeline is by no means comprehensive. However, it is aimed at highlighting some key initiatives over the last few decades that have contributed to the movement of CSR from the margins to the mainstream of the policy agenda.⁵⁵ In almost every instance, these events did not specifically actuate CSR initiatives; rather, these instances set the global scene for the intersection between CSR and CG. Several of these events have been important drivers of this intersection: the global social urge to include the previously excluded social costs of production and the hidden costs incurred by the environment as a result of business activities with the corporate balance sheet; the lack of confidence in the institutions of the market economy⁵⁶; and the demand for ensuring sustainable development. Kakabadse et al. identify ‘consumerism’ and ‘corporate scandals’ as the current most important drivers underpinning this development.⁵⁷ These two factors are, indeed, closely related to market competition, and hence, they act as strong drivers for CG and CSR to develop the required framework by which a company can demonstrate its responsibility to society through its performance.

To CG, this intersection largely contributes by reconciling the tension between CG’s engagement with shareholder and stakeholder interest; it has become attuned to constituency concerns in CG. To CSR, this intersection establishes CSR as:

[a] business strategy to make the ultimate goals of corporations more achievable as well as more transparent, demonstrate responsibility towards communities and the environment, and take the interests of groups such as employees and consumers into account when making long-term business decisions.⁵⁸

⁵¹ Mitchell, above n 46, 280.

⁵² For details of the corporate Board of Directors reform and the beginning of modern corporate social responsibility, see Mitchell, above n 46, 284–288.

⁵³ Melvin Eisenberg, ‘The Modernisation of Corporate Law: An Essay for Bill Cary’ (1982) 37 *University of Miami Law Review* 187, 209–10.

⁵⁴ Bagi, Krabalo and Narani, above n 10.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Kakabadse, above n 1, 279; for a detailed study on this issue, see Maurice Thevenet, ‘Viewpoint: Global Responsibility and Individual Exemplarity’ (2003) 3(3) *Corporate Governance* 114.

⁵⁸ Amir Gill, ‘Corporate Governance as Social Responsibility: A Research Agenda’ (2008) 26 *Berkeley Journal of International Law* 452,463; ‘Just Good Business’, *Economist* 17 January 2008.

This convergence has incited arguments between the pro-regulation and the pro-business schools regarding the way in which a corporation ought to act in a socially responsible fashion.⁵⁹ To the pro-regulation advocates, an option that is commonly advanced is that the regulation of corporate directors' duties ought to be modified to incorporate an obligation for directors to consider social responsibilities at the core of corporate strategies.⁶⁰ Pro-business advocates fervently disagree with this notion and argue that burdening corporate directors with this type of liability may significantly disrupt the administration of CG laws as well as damn the socio-political compact.⁶¹ They suggest, however, that the elected legislature is responsible for ensuring that corporations act in a socially responsible manner and that directors are responsible for ensuring that companies operating for long-term profit maximisation comply with regulatory constraints.⁶² To them, the consequence of this is that the legislature is responsible to the electorate, whilst directors respond purely to competitive pressures. A detailed discussion on this point can be found in Chap. 4 of this book.

The potential convergence of CSR and CG, however, fuses the arguments of these two schools. It paves the way for CG to be driven by ethical norms and the need for accountability, and it enables CSR to adapt prevailing business practices. 'Where there were once two separate sets of mechanisms, one dealing with 'hard core' corporate decision-making and the other with 'soft', people-friendly business strategies, scholars now point to a more hybridised, synbooked body of laws and norms regulating corporate practices.'⁶³ This has affected the modes of corporate regulation: 'Hierarchical command-and-control' regulation⁶⁴ is being replaced by a mixture of public and private, state and market, traditional and self-regulation institutions that are based on collaboration among the state, business corporations, and NGOs.'⁶⁵

⁵⁹ See also Leon Gettler, 'The Blurred Lines of Being Responsible', *The Age* 22 November 2006.

⁶⁰ Devid Levi-Faur and Hanna Comaneshter, 'The Risks of Regulation and the Regulation of Risks: The Governance of Nanotechnology' (2007) *New Global Frontiers in Regulation: The Age of Nanotechnology* 149.

⁶¹ Michael Greve, 'Business, the States, and Federalism's Political Economy' (2001) 25 *Harvard Journal of Law and Public Policy* 895; John W Cioffi, 'The Corporation and Comparative Capitalisms: Corporate Governance Reform and the Regulatory Politics of Structural Change in the United States and Germany.'

⁶² Corporations and Markets Advisory Committee, 'The Social Responsibility of Corporations' (Corporations and Market Advisory Committee, 2006) 111; Chris Durden and Richard Pech, 'The Increasing Cost of Corporate Governance: Decision Speed-Bumps for Managers' (2006) 6(1) *Corporate Governance* 84.



⁶³ Gill, above n 58, 463.

⁶⁴ Orly Lobel, 'Interlocking Regulatory and Industrial Relations: The Governance of Workplace Safety' (2005) 57 *Administrative Law Review* 1071.

⁶⁵ Gill, above n 58, 464; for details on compliance management, financial regulation and administration at the corporate company level, see Orly Lobel, 'The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought' (2004) 89 *Minnesota Law Review* 263.

This convergence has gradually extended the narrower meaning of CG. It adds the agency focus to corporate ethics and accountability, and it relies on the ‘business judgment’ of CG to ensure this accountability.⁶⁶ Jamali et al. has nicely summarised this relationship in the chart mentioned below.

Links between CG and CSR (Modified version of the chart presented in Dima Jamali et al., ‘Corporate Governance and Corporate Social Responsibility Synergies and Interrelationship’ (2008) 16(5) *Corporate Governance* 443, 446)

CG		CSR
Broader CG conception: Entails due regard to all stakeholders and ensuring that companies are answerable to all their key stakeholders		Stakeholder approach to CSR: Companies are the crux of a complex web of stakeholder relationships and have an obligation or responsibility to these different stakeholders
Narrow CG conception: Ensuring accountability, compliance, and transparency		Internal dimension of CSR: Companies should accord due diligence to their responsibility to internal stakeholders, addressing issues relating to skills and education, workplace safety, working conditions, human rights, equity/equal opportunity, and labor rights

It finds ‘corporate self-regulation’ as its dominant expression in the field of corporate conduct. On the ground, by adding issues such as human rights, workers’ rights and environmental protection to ‘self-regulation’, CG has gained the opportunity to develop stakeholder engagement programs that could increase their competitiveness and to launch a marketing campaign that could emphasise their humanistic, democratic values as ‘corporate citizens’.

In strong economies, corporate self-regulation has gradually absorbed the ethos of this convergence. In these economies, for instance, many companies have appropriate measures to internalise the costs externalised to the environment due to their business operations.⁶⁷ These initiatives are not driven by laws; rather, they are driven by the corporate conscience to reduce costs as well as to contribute to environmental development. Wal-Mart has recently taken initiatives to ‘green’ its

⁶⁶ Lawrence Mitchell and Mitchell Diamond, *Corporations, a Contemporary Approach* (2004); Jamali et al. has examined the relationship between CG and CSR and find three basis for this relationship, namely: ‘(1) CG as a pillar for CSR; (2) CSR as an attribute of CG and (3) CG and CSR as coexisting components of the same continuum.’ In this continuum, as Bhimani and Soonawalla described, the poor CG and misleading financial statements are one side of the corporate coin—the other side being poor CSR. For details see Dima Jamali, Asem M Safieddine and Myriam Rabbath, ‘Corporate Governance and Corporate Social Responsibility Synergies and Interrelationship’ (2008) 16 (5) *Corporate Governance* 443, 447; Alnoor Bhimani and Kazbi Soonawalla, ‘From Conformance to Performance: The Corporate Responsibilities Continuum’ (2005) 24 *Journal of Accounting and Public Policy* 165–74.

⁶⁷ David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (2005) 14–46.

stores to reduce its energy and labour use.⁶⁸ Between 2003 and 2008, Gap Inc. cut its greenhouse gas emissions by 20 % and eliminated child labour from its suppliers.⁶⁹ 3M's 3P program—'Pollution Prevention Pay'—helped the company discover enormous savings that it had previously overlooked.⁷⁰ John Deere's recent foray into renewable energy is another prime example. Other than selling tractors, it provides financial support and consultation to help farmers harvest using wind energy.⁷¹ This may seem an odd fit, but the venture has become a source of value innovation as well as a way to meet social responsibilities; it is helping farmers to survive and creating a new revenue stream for the company. A detailed discussion on how the governments of strong and developing economies are incorporating these principles into their companies is presented at the end of this chapter.

2.3.1 Impact of Corporate Social Responsibility and Corporate Governance Convergence on Corporate Regulation*

There are different regulatory systems in the corporate regulation landscape.⁷² Amongst these systems, public regulation, self-regulation and co-regulation are

⁶⁸ Mary Pflum, 'Wal-Mart Commits to Going Green', *ABC News* 14 September 2007; Julie Schmit, 'Going Greener: Wal-Mart Plans New Solar Power initiative', *USA today* 19 September 2010.

⁶⁹ Sean Gregory, 'Transparency: A Good Fit', *Time* 10 September 2009.

⁷⁰ CSRPedia, *3P Pollution Prevention Pays, a CSR Program by 3M Co* (19 May) <http://www.csrpedia.com/programs/3p-pollution-prevention-pays-229> at 19 May 2011.

⁷¹ Daniel C Esty and Andrew S Winston, 'Green-to-Gold-Plays' (2009) <http://www.positivearticles.com/Article/Green-to-Gold-Plays/47943> at 19 May 2011.

*For a detailed discussion on the impact of this convergence on the scope of small- and medium-sized companies as they try to enter into the global market as first tier suppliers, see Mia Mahmudur Rahim 'Convergence of CSR and Corporate Governance and its Impact on SMEs' Access to Global Market as First-Tier Supplier: Evidence from Bangladesh' (2013) 14 (1) *Journal of Asia-Pacific Business* 58–83.

⁷² Defining regulation is difficult as this term is employed for a myriad of discursive, theoretical, and analytical purposes. Moreover, it is highly contested. For this study, regulation is defined for any process or set of processes, as Colin Scott states, by which 'norms are established, the behaviour of those subject to the norms monitored or fed back into the regime, and for which there are mechanisms for holding the behaviour of regulated actors within the acceptable limits of the regime'. This definition relates to the principles of 'new governance' and the 'new regulatory state' where one of the objectives of regulation is to capture the plurality of interests and sources of control around issues, problems and institutions. For details, see Colin Scott, 'Analysing Regulatory Space: Fragmented Resources and institutional Design' (2001) 283; Colin Scott, *Regulation in the Age of Governance: The Rise of the Post-Regulatory State, the Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance* (2004); Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self Regulation in a "Post-Regulatory" World' (2002) 54 *Current Legal Problems* 103; Neil Gunningham, 'The New Collaborative

prominent. Public regulation denotes the traditional form of regulation where public authorities set the relevant legislation or other forms of binding actions for the purpose of achieving public policy aims. In this system, legislation is adopted to set the necessary rules, monitor compliance and impose sanctions to aid in enforcing these actions. This form of regulatory system also details the structures, tasks and means for the involvement of private citizens and organisations in the implementation of its rules. Nevertheless, the responsibility for implementing these rules remains with the state.⁷³

Self-regulation is the opposite of public regulation. As Julia Black defines, self-regulation is 'the situation of a group of persons or bodies, acting together, performing a regulatory function in respect of themselves and others who accept their authority'.⁷⁴ In this regulatory system, social groups such as producers, providers and so on create their own regulatory system in order to reach their objectives. In this system, private parties take the responsibility for monitoring compliance, and public authorities usually do not interfere in the regulatees' self-monitoring strategies. When considering the implementation phase, this regulatory system can be divided into two levels: self-regulation at the macro level and self-regulation at the micro level. At the macro level, self-regulation may have technical and qualitative standards related to codes of conduct that define good and bad practices in internal regulation.⁷⁵ These standards may be provided by a self-regulatory organisation created by the parties concerned.⁷⁶ At this level, the rule-making power (the regulator) is separated from the rule-applying power (the regulatee). At the micro level, the regulatee is solely responsible for both the rules and the implementation strategies. Here, the key feature of this mode of regulation is that the regulator and regulatee are identical, and therefore the regulatee enjoys the scope of framing their own internal strategies to reflect the public policy goal and the norms of the code of conduct in a given circumstance.

In its widest sense, the term co-regulation means 'cooperative forms of regulation that are designed to achieve public authority objectives—the cooperation being performed by public authority and civil society.'⁷⁷ In its narrowest sense, it means that the regulator and the regulatee are linked by a regulatory scheme designed to reach a public policy goal as well as to fulfil the interests of the regulatee. A co-regulatory scheme combines elements of self-regulation, self-monitoring and traditional public regulation strategies. Hence, in co-regulation, there can be many different forms of regulatory strategies depending on the combination of public

Environmental Governance: The Localisation of Regulation' (2009) 36(1) *Journal of Law and Society* 145; David Levi-Faur, 'Regulation and Regulatory Governance' (Hebrew University, 2010) 8–9.

⁷³ Carmen Palzer and Alexander Scheuer, 'Self-Regulation, Co-Regulation, Public Regulation' (2003) *Promote or Protect* 165.

⁷⁴ Julia Black, 'Constitutionalising Self Regulation' (1996) 59(1) *Modern Law Review* 24, 27.

⁷⁵ Carmen Palzer and Alexander Scheuer, above n 73.

⁷⁶ *Ibid* 166.

⁷⁷ *Ibid* 170.

authority and private sector elements. Nonetheless, in this regulatory system, generally the public authority lays down the legal basis so that the system can begin to function, and the private parties develop the rules that describe its functioning.

The impact of the convergence of CSR and CG has mostly been reflected by the development of self-regulatory (micro-level) regimes in the business environment. Corporate self-regulation is an increasingly important part of business regulation.⁷⁸ Advocates of this convergence believe that corporate self-regulation that contains the principles of CSR offers opportunities to companies for greater market access, cost savings, productivity and innovation, as well as broader social benefits such as education and community development.⁷⁹ At the level of the individual company, the notion of corporate self-regulation is usually enshrined either through its own code of conduct or through its incorporation of a multi-stake holder initiative or guidelines prepared by another social or commercial organisation.

Corporate Self-Regulation

In the age of globalisation, the authority and power of the nation-state has faced a dramatic decline. Non-state actors and transnational bodies are increasingly becoming engaged in constructing regulatory schemes and devices for businesses.⁸⁰ Corporate self-regulation, as motivated by international agencies, social groups, and business-related entities, has gained considerable interest due to its emergence as a complement to (if not a substitute for) formal governmental regulation.⁸¹

There is no single conception of self-regulation. Self-regulation refers to any mechanism whereby a subject exercises control over itself to maintain the stability of its function. From the corporate regulation perspective, the broader meaning of this concept is that it is a 'part of the process of homeostasis by which a system regulates its internal environment to maintain a stable, constant condition by means of multiple equilibrium adjustment, by interrelated regulatory mechanisms.'⁸² Its narrower meaning implies that self-regulation is the rules of business and the rights

⁷⁸ John Clark, *Worlds Apart: Civil Society and the Battle for Ethical Globalisation* (2003); Hutter and O'Mahony, above n 3, 3.

⁷⁹ Orlay Lobel, *Crowding Out or Ratcheting Up?: Fair Trade Systems, Regulation, and New Governance*, Fair Trade, Corporate Accountability and Beyond: Experiments in Globalising Justice (2010) 313.

⁸⁰ John W Cioffi, 'Governing Globalisation? The State, Law, and Structural Change in Corporate Governance' (2000) 27(4) *Journal of Law and Society* 572.

⁸¹ Christine Parker, *The Open Corporation: Effective Self-regulation and Democracy* (2002); Neil Gunningham and Joseph Rees, 'Industry Self-Regulation: An Institutional Perspective' (1997) 19 (4) *Law and Policy* 363.

⁸² See <http://iit.ches.ua.edu/systems/homeostasis.html> at 14 April 2007, mentioned in Elizabeth Spencer, 'Reconceiving the Regulation of the Franchise Sector' (2008) 8 *Macquarie Law Journal* 103, 106.

of practice set and enforced by a profession guild. This narrower meaning has been extended, and now this concept is no longer confined to professional organisations.⁸³ It is widely applied in financial regulation and in many other sectors. It is now the *plat du jour* in studies of regulation in many economies and an important element of the new learning.⁸⁴ Neil Gunningham and Peter Grabosky define this concept as: '[S]elf-regulation is not a precise concept but, for present purposes, it may be defined as a process whereby an organised group regulates the behaviour of its members.'⁸⁵ Julia Black relates this concept to the concept of 'decentered' regulation.⁸⁶ She identifies four basic forms of self-regulation: (1) mandated self-regulation; (2) sanctioned self-regulation; (3) coerced self-regulation and (4) voluntary self-regulation.⁸⁷ In broad terms, mandated self-regulation denotes the mandates provided by the state to a collective group to formulate and enforce norms within a framework defined by the government. In sanctioned self-regulation, a group formulates its own rules, which are then subjected to government approval. In coerced self-regulation, 'the industry itself formulates and imposes regulation, but in response to threats by the government that if it omits to do so the government will impose statutory regulation instead'.⁸⁸ In voluntary self-regulation, the state is not involved in the regulatory strategies of the regulatees; instead, the regulatees take the initiative in the formation and operation of their regulatory system.⁸⁹ All these modes of self-regulation serve different objectives in internal regulation and contribute to increased ownership and responsibility at the same time; they help to develop internal regulatory mechanisms capable of minimising the cost of compliance.

Within this panorama, a highly visible and frequently debated form of self-regulation is the corporate code of conduct. In contrast to private business codes that deal with transactional and contractual aspects of commerce, codes of conduct address corporate ethics, moral guidelines, and key CSR issues like human rights, labour, the environment, and sustainable development.⁹⁰ Throughout the 1990s,

⁸³ Anthony Ogus, *Regulation: Legal form and Economic Theory* (1994) 107.

⁸⁴ Iain Ramsay, 'Regulatory Capitalism and the "New Learning" in Regulation' (2006) 28 *Sydney Law Review* 9.

⁸⁵ Neil Gunningham, Peter Grabosky and D Sinclair, *Smart Regulation: Designing Environmental Policy* (1998) 50.

⁸⁶ Julia Black, 'Decentring Regulation: Understanding the Role of Regulation and Self Regulation in a "Post-Regulatory" world' (2002) 54 *Current Legal Problems* 103, 118.

⁸⁷ Ibid.

⁸⁸ Marc Hertogh and Pauline Westerman, *Self-Regulation and the Future of the Regulatory State Manuscript: International and Interdisciplinary Perspectives* (2009) 19.

⁸⁹ Black, above n 74, 27; for details, see Marc Hertogh and Pauline Westerman, above.

⁹⁰ Eddy Wymeersch, 'Corporate Governance Codes and their Implementation' (Gent University, 2006).

these codes were adopted by large companies, particularly those with a strong presence in developing economies with weak state-based regulatory systems.⁹¹

These codes are the main self-regulatory instrument for companies; they address corporate conduct with respect to their external social, environmental, human rights and economic factors. Hence, these codes are largely focused on sectors where brand reputation and export orientation are vital. Codes relating to labour issues usually align with the footwear, garment, sporting goods, toy and retail sectors, while those related to environmental aspects are likely to be present in the oil, chemical, forestry and mining industries.⁹² Sources suggest that the world's larger multinational companies and buyers have taken the lead in adopting such codes, which can perform as dependable sources⁹³ and alternative means of regulation.⁹⁴

The principles (similar to a code of conduct) of Fish4Ever are worth mentioning at this point. Fish4Ever, a famous brand of seafood products with a target of fulfilling 90 % of its turnover with organic and/or sustainable products, has a clear policy that restricts it from selling any fish species declared as endangered by the International Union for the Conservation of Nature and other reputed NGOs.⁹⁵ According to these principles, it does not trade with any supplier that does not respect workers rights or does not ensure fair pay and treatment for their workers. For example, when sourcing skipjack tuna, they consciously look for suppliers who support sustainability and use ethical practices to ensure their product quality and processing efficiency.⁹⁶

Adidas Group, the owner of the Adidas and Reebok brands, has more than 1,120 independent factories (on 31 December 2009) in 68 economies, and has responded to this convergence through its standards, guidelines and principles to deal with their social, ethical, and environmental issues.⁹⁷ For instance, the 'Workplace Standard' settled by Adidas mainly sets forth the group's position on a number of challenging labour issues faced by workers. These issues include working hours,

⁹¹ Harry Arthurs, *Private Ordering and Workers' Rights in the Global Economy: Corporate Codes of Conduct as a Regime of Labour Market Regulation*, *Labour Law in an Era of Globalisation: Transformative Practice and Possibilities* (2005) 471.

⁹² United Nations Research Institute for Social Development, *Corporate Social Responsibility and Business Regulations: How should Transnational Corporations be Regulated to Minimise Malpractice and Improve their Social, Environmental and Human Rights Record in Developing Economies?* (2004) www.unrisd.org at 29 June 2010.

⁹³ Hu Xiaoyong, *Corporate Codes of Conduct and Labour Related Corporate Social Responsibility: Analysing the Self Regulatory Mechanisms of Multinational Enterprises and their Impacts to Developing Countries* (2006) The Japan Institute for Labour Policy and Training <http://www.jil.go.jp/profile/documents/Hu.pdf> at 23 July 2010.

⁹⁴ Levis Julian, 'Adoption of Corporate Social Responsibility Codes by Multinational Companies' (2006) 17(1) *Journals of Asian Economics* 50, 51.

⁹⁵ <http://www.fish-4-ever.com/content/view/131/100/> at 24 July 2010.

⁹⁶ Ibid.

⁹⁷ Adidas Group, *Supply Chain* http://www.adidas-group.com/en/sustainability/suppliers_and_workers/default.aspx at 25 July 2010.

fair wages, freedom of association, child labour etc.⁹⁸ This group prepares guidelines and training programs for its suppliers to minimise their business operations' impact on the environment. These guidelines emphasise the suppliers' responsibility to adopt the group's mandatory environmental management systems. By imposing this system in their supplier's companies Adidas is attempting to tackle pollution and to ensure that its products are environmentally safe.

Gap Inc., one of the most popular brands as well as the largest retailer of garments in the world, has identified six factors in garment suppliers that influence their selection criteria for the suppliers they choose. These factors are: (a) efficient process and operation practices; (b) good supervisory and management skills; (c) a full assessment of capacity and capability; (d) adequate modern technology and equipment; (e) respect for workers rights; (f) an adequate understanding of labour laws and standards. This buyer is less interested in suppliers that do not comply with these requirements. This has been reflected in Gap Inc.'s statement that 'poor factory working conditions are simply unacceptable.'⁹⁹

Two major critiques have risen in regard to codes of conduct. The first of these concerns the legal pluralism and free market ideology underlying self-regulation.¹⁰⁰ It has been argued that since codes of conduct are based on the principles of legal pluralism and free market ideology, economic players in the private sphere use this form of self-regulation to fulfil their own interests. This mode of regulation creates a tendency to view private ordering systems as pursuing their own policies rather than public policy goals.¹⁰¹ The second critique contends that codes of conduct have almost always failed to improve corporate behaviour worldwide, and thus are hypocritical in their purpose.¹⁰² Indeed, many agree that these codes, even when supported by a strong monitoring system, might not generate ground-level change, unless accompanied by fitting changes in business culture and decision-making.¹⁰³

In response, advocates of codes of conduct propose arguments that the analysis of these codes' potential for engendering change requires more complex doctrinal and empirical understanding.¹⁰⁴ They argue that the new institutional economic approach has gradually supported the integration of CSR and business cases since CSR not only represents costs for the company but also results in various advantages. To reap the benefits of these advantages, companies depend upon

⁹⁸ Ibid.

⁹⁹ http://www.gapinc.com/GapincSubSites/csr/Goals/SupplyChain/SC_Factory_Working_Conditions.shtml at 21 July 2010.

¹⁰⁰ Adelle Blackett, 'Global Governance, Legal Pluralism and the Decentered State: A Labour Law Critique of Codes of Corporate Conduct' (2000) 8 *Indiana Journal of Global Legal Studies* 401.

¹⁰¹ Carmen Palzer and Alexander Scheuer, above n 73.

¹⁰² Richard Locke and Monica Romis, 'Beyond Corporate Codes of Conduct: Work Organisation and Labour Standards in Two Mexican Garment Factories' (2006).

¹⁰³ *Progressive Corporate Law* (1995).

¹⁰⁴ Peer Zumbansen, 'The Parallel Worlds of Corporate Governance and Labour Law' (2006) 13 (1) *Indiana Journal of Global Legal Studies* 261.

their codes of conduct. They argue that corporate codes of conduct can positively affect sales, purchasing and recruitment of new staff.¹⁰⁵ Moreover, these codes of conduct can aid CG to secure their company's reputation, create innovation and increase motivation among their employees, leading to the increased sustainability of their company. Hence, CG creates a corporate code of conduct not just as a nominal part of their strategic communications.¹⁰⁶

Another recent trend in self-regulation that has drawn attention is its feature of non-financial reporting. First published in the 1990s in response to a series of environmental disasters, non-financial corporate reports are now increasingly covering a much wider range of corporate policies.¹⁰⁷ This trend seeks to not only inform the public of existing CSR policies implemented by the reporting firm but also to provide incentives for companies to ensure transparency and create channels for dialogue with their stakeholders.¹⁰⁸ In other words, besides corporate disclosure, the advantage of non-financial reporting is that it encourages CG to consider and incorporate better mechanisms for long-term accountability to their constituencies.¹⁰⁹ Nevertheless, such reporting is still largely a voluntary concept, despite recent attempts to mandate it. Some companies have chosen to incorporate CG and CSR issues into their annual financial reporting, creating what has become known as 'integrated reports'.¹¹⁰

Both the codes of conduct and non-financial reporting trends exemplify how corporate self-regulation serves as a significant medium for connecting governance with responsibility. Through various strategies and instruments, self-regulation has subjected businesses to a mix of supervisory principles that reflects the convergence of CG and CSR. External stakeholders have an important role in the supervision of corporate self-regulation and corporate codes of conduct. This has helped the development of a 'standardisation regime'. Large companies depend on this regime to ensure that their suppliers are fulfilling, or are able to fulfil, CSR practices following a set of international standards commonly known as the multi-stakeholder codes. These codes allow divergent CSR practices to be bundled into 'generic management systems standards' for business corporations.¹¹¹ The convergence of CSR and CG at the macro level plays an important role in this

¹⁰⁵ Stephen Tomsen, 'Encouraging Public Private Partnerships in the Utilities Sector' (NEPAD/OECD, 2005).

¹⁰⁶ Blowfield and Frynas, above n 7, 512; for the factors that relate corporate codes of conduct to the business case see Fox, above n 30, 31.

¹⁰⁷ Ans Kolk, 'Sustainability, Accountability and Corporate Governance: Exploring Multinationals' Reporting Practices' (2008) 17(1) *Business Strategy and the Environment* 1.

¹⁰⁸ David Hess, 'Social Reporting and New Governance Regulation: The Prospects of Achieving Corporate Accountability through Transparency' (2007) 17 *Business Ethics Quarterly* 455, 458.

¹⁰⁹ See, John Elkington, *The Triple Bottom Line for 21st-Century Business*, The Earthscan Reader in Business and Sustainable Development (2001).

¹¹⁰ Kolk, above n 107.

¹¹¹ Antonia Gawel, *Corporate Social Responsibility: Standards and Objectives Driving Corporate Initiatives* (2006).

development; this convergence has driven companies to create commercial value for a standardisation regime.

Development of a Standardisation of CSR Practices

Standardisation means the process of reaching a standard. A standard can be defined as a limited set of solutions to actual and potential matching problems; it is a means by which a party can balance its need to fulfil a given requirement. A standard may also be considered as solutions that intend or expect repeated or continuous use for a certain period. Standards Australia defines a standard as a 'published document which set out specifications and procedures designed to ensure that a material, product, method or service is fit for its purpose and consistently performs the way it was intended to.'¹¹² Therefore, in the narrow sense, a standard is a set of criteria that is meant to check the requirements and expectations of organisations. In a broader sense, particularly while dealing with CSR issues, standard refers to CSR norms, rules, agreement, guidelines and codes directed towards benefits for the party or parties involved.¹¹³ The term 'regime' in the standardisation regime denotes an agreement that creates and facilitates cooperative behaviour within a particular issue area.¹¹⁴ This term 'partly overlaps with the term governance structure, which refers to the way an actor network or organisation governs a particular field of interest.'¹¹⁵ Combining the meanings of these terms, standardisation regime denotes an agreement based on the principles that guide the standards of activities.¹¹⁶

The impact of this regime no longer remains only within business management. Rather, it has extended to areas such as consumer safety, environmental degradation, ethical operations and a myriad of others, all of which serve to raise the quality of everyday life.¹¹⁷ Against the background of the less proscriptive role of national governments, these institutions help companies to manage the pressures from

¹¹² Standards Office of Spatial Data Management, Australian Government <http://www.osdm.gov.au/Metadata/Standards/default.aspx> at 18 April 2011.

¹¹³ M Mueller, V G dos Santos and S Seuring, 'The Contribution of Environmental and Social Standards towards Ensuring Legitimacy in Supply Chain Governance' (2009) 89(4) *Journal of Business Ethics* 509.

¹¹⁴ Paul J DiMaggio and Walter W Powell, 'The New Institutionalism in Organisational Analysis' (1994) 6.

¹¹⁵ Tineke M Egyedi, 'Judicio-Standardisation Regime: Exploring the Grounds for IPR Paralysis' (2000) (Version 1.0, Draft, 06/11/00) *Information and Communication Technology Section, Faculty of Technology, Policy and Management, Delft University of Technology* http://administration.ewi.tudelft.nl/live/binaries/0b330c26-def4-45e3-a367-43b61bf0ae45/doc/Egyedi_judiciostandards_ITS.pdf at 13 July 2011. For details see Schneider V and Werle Schneider, 'Co-Evolution and Development Constraints: The Development of Large Technical Systems in Evolutionary Perspective' (1995).

¹¹⁶ Ibid.

¹¹⁷ Lockett, Moon and Visser, above n 30.

society to account for the adverse consequences of their activities as profit-seeking corporations. Hence, these initiatives have become part of global economic, social and legal systems¹¹⁸ as these can facilitate their coordination. Henk J Vries termed standardisation functions as a ‘lubricant for modern industrial society’ as these initiatives can facilitate contact, cooperation and trade throughout the world.¹¹⁹

Amongst the sources of CSR standardisation, multi-stake holder initiative or codes are prominent. These codes are the product of concerted initiatives among corporate stakeholders such as companies, trade unions and other worker’s associations, government agencies, NGOs and academics.¹²⁰ These initiatives are not only standardising CSR but also developing their management, and thus CSR, though voluntary, has taken the form of a quasi-binding responsibility.¹²¹ They have developed monitoring and verification mechanisms, and their institutional application in the global supply chains helps to promote ethical business in a broader context. These initiatives help to evaluate companies’ CSR performances in other ways; they have gained the necessary acknowledgement from corporate and civil societies, and support from government and international organisations. The organisations that are creating and nourishing these initiatives have gradually created norms for standardising sets of CSR practices for companies. The increasing acceptance of multi-stakeholder codes by companies, and civil society organisations’ affiliation with these codes have further developed a standardisation regime that can help companies to demonstrate their efforts towards fulfilling their social, economic, environmental and ethical responsibilities. The development of CSR standardisation has also allowed the establishment of many organisations specialising in diverse initiatives to facilitate entrepreneurs’ ability to do business in a more socially acceptable way. These organisations have detailed different social, ethical and environmental standards to evaluate corporate performance in society, as well as to enumerate the social responsibilities of companies.¹²²

¹¹⁸ Standards Australia, *Standards and Standardisation* (2002).

¹¹⁹ Henk Vries, *Standards for the Nation. Analysis of National Standardisation Organisations* (1999); Nils Brunsson and Bengt Jacobsson, *A World of Standards* (2000).

¹²⁰ *Ibid.*

¹²¹ Peter Utting, ‘Rethinking Business Regulation: From Self-regulation to Social Control’ (1020–8216, UN Research institute for Social Development, 2005).

¹²² ISO Standard Series, SA8000, AA1000, ETI Base Code are some examples of prominent initiatives for standardising CSR practices. Like these initiatives, there are many other that have contributed to the development of a number of codes on particular CSR issues and monitoring and verification procedures. The Workplace Code of Conduct and Principles for Monitoring of the Fair Labour association has developed internal and independent monitoring procedures to promote labour standards in the workplace in the USA and worldwide apparel industries. Similarly, the Clean Clothes Campaign has adopted a code of conduct with a view to improve working environments in the global suppliers’ factory premises, including garment and sportswear industries. The Global Reporting initiative has provided a framework for reporting on the basis of triple bottom lines, which refers to companies’ social, economic and environmental impacts. In addition, under the auspices of the United Nations Global Compact, learning and networking

The convergence of CSR and CG has helped to develop the standardisation regime. Most global companies have acknowledged this development. They exclusively consider certain of these initiatives to measure their suppliers' performance. Some of them weed out suppliers from their chains on the results of performance tests based on these initiatives. Using these initiatives they select strategic suppliers to (a) reduce their transaction costs; (b) increase their profitability; (c) reduce costs as a result of a reduced need to switch suppliers; and (d) increase their competitiveness in the marketplace through improved relationships with consumers.¹²³

2.4 Trends in the Implementation of CSR Principles in Different Economies

The core principles of CSR are being integrated into the core policy objectives of different economies and global companies and are also moving beyond their individual business initiatives. For the global companies of Europe, the EU Commission's Green Paper on Promoting a Framework for CSR¹²⁴ and the European Code of Conduct Regarding the Activities of Transnational Corporations Operating in Developing Economies are two instruments that guide them when integrating CSR principles in their core policies.

This integration can also be seen from individual states' perspectives; states are also accepting these issues in their socio-economic strategies and thus are establishing these issues within national economies. For instance, in the UK, for the last 10 years there has been a post of CSR Minister to encourage greater social responsibility in UK companies.¹²⁵ Belgium passed the *Occupational Pension Law*

processes have been developed for the promotion of CSR practices on the basis of ten principles declared by the Compact. For details, see Hu Xiaoyong, above n 93.

¹²³ Mark Goyder and Peter Desmond, *Is Ethical Sourcing Simply a Question of Good Supply Chain Management?* Visions of Ethical Sourcing (2000) 28; T Mason, 'Getting Your Suppliers on the Team' (1996) 4 *Logistics Focus* 10.

¹²⁴ The European Commission Green Paper: Promoting a European Framework for Corporate Social Responsibility (2001) www.europa.eu.int at 15 September 2008. For a detailed discussion on this Green Paper see Jonathon Lux, Sune Skadegard Thorsen and Annemarie Meisling, *The European Initiatives, Corporate Social Responsibility: The Corporate Governance of the 21st Century* (2005) 283.

¹²⁵ Tony Blair's government created the post of CSR Minister in the UK for the first time to promote CSR and responsible business practices in the UK. Since then, there have been seven CSR Ministers, although the new coalition government in the UK has not yet appointed anyone to this post. For details, visit <http://www.fabianpattberg.com/2010/06/csr-minister-post-disappears-devaluation-uk-leadership-responsible-business-practice/> at 22 March 2011. For a study on the UK's CSR initiatives in the oil and gas industry, see Cynthia A Williams, 'Civil Society Initiatives and Soft Law in the Oil and Gas Industry' (2004) 36 *New York Journal of International Law and Politics* 457.

2003 (Belgium)¹²⁶ that requires pension fund managers to disclose the extent to which they consider ethical, social, and environmental criteria in their investment policies in their annual reports. In the same fashion, the *Occupational Pension Schemes (Investment) Regulation 1996* (UK) requires that the trustees of occupational pension funds disclose the social, environmental or ethical considerations they have made in the selection, retention and realisation of their investments.¹²⁷ This has been further amplified with the legislative directions to trustees according to the *Trustee Act 2000* (UK). This Act requires the trustees of investments to ensure that they have applied ‘relevant ethical considerations as to the kinds of investments that are appropriate for the trust to make.’¹²⁸ The *Companies Act of 2006* (UK) has introduced specific reporting requirements on environmental and social issues.¹²⁹ It provides a comprehensive guideline with potential implications for a variety of CSR actors. It makes a crucial triumvirate of directors’ duties, business risk management, and corporate reporting more explicitly long-term, relational, and stakeholder-sensitive in their structure, content, and implementation.¹³⁰ In Germany, since 2001, certified private and occupational pension schemes have been required to report whether they consider ethical, ecological, and social aspects in their investment policies.¹³¹ Denmark is the first country in the

¹²⁶ For details on the use of CSR notions through this legislation, see Karin Buhmann, ‘Corporate Social Responsibility: What Role for Law? Some aspects of Law and CSR’ (2006) 6(2) *Corporate Governance* 180, 189; see also Lux, Thorsen and Meisling, above n 124, 294.

¹²⁷ Act No. 3172 of 1996. This legislation came into effect in July 2000. It requires that the annual statement of investment principles comments on the ‘extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investment.’ For more details, see Occupational Pension Schemes (Investment) Regulations 1996, available at <http://www.legislation.gov.uk/ukxi/1996/3127/contents/made> at 9 August 2011. Perhaps as a result of this Act, as of 2001, 89 % of the top 100 companies in the UK included health, safety, environmental and social information in their financial reports and 49 % of them published a separate report with this information. For details, see KPMG International Survey of Corporate Sustainability Reporting 2002.

¹²⁸ For details, see the Trustee Act 2000, c. 29, section 4(3)(a).

¹²⁹ Alessia Di Pascale, ‘The EU Voluntary Approach to Corporate Social Responsibility in Comparison with Regulatory Initiatives Across the World’ (Fondazione Eni Enrico Mattei, 2007), available at <http://core-conferences.net/attach/CSR2007-016.pdf> 27 March 2011.

¹³⁰ Bryan Horrigan, ‘21st Century Corporate Social Responsibility Trends-An Emerging Comparative Body of Law and Regulation of Corporate Responsibility, Governance, and Sustainability’ (2007) 4 *Macquarie University Journal of Business Law* 85, 104.

¹³¹ With the reform of the state pension system in Germany and with some reforms in its legislation, this country has imposed new reporting duties for the companies and investments depending on pension funds. For instance, the Old-Age Provision Act (Germany) states that ‘The provider must declare in writing, whether and how ecological, ethical and social needs have been considered in the investment of pension contributions’. The *Certification Act* (Germany) requires that companies using pension funds must maintain certification from the environmental authorities. According to Section 115(4) of the Supervision of insurance Undertakings *Insurance Supervision Act 1992* (Germany), the ‘pension fund trustee must inform its beneficiaries in writing as to whether and how ecological, ethical and social needs have been considered in the investment of pension contributions’.

world to introduce a law on mandatory public environmental reporting. This country enacted legal provisions that made the announcement of environmental performance to the public and the maintenance of environmental accounts mandatory for companies.¹³² In the Netherlands, under a statutory scheme formed by an extension of the *Environmental Management Act* in April 1997 and the *Environmental Reporting Decree* effective from 1999, certain categories of industries (currently approximately 250) are required to produce two environmental reports, one for the public and another for the authorities.¹³³ The *Accounting Act 1999* (Norway) requires all companies to include environmental information in their annual financial reports, and simultaneously, the Norwegian Environmental Department has developed its own standard for environmental reporting.¹³⁴ Likewise, according to Section 1013D (1)1 of the *Corporations Act 2001(Cth)*, all financial products with an investment component, including pension funds and mutual funds, must include disclosure of 'the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment.'¹³⁵

The enactment of the *Social Label Law 2002* (Belgium) is a notable instance of incorporating CSR ethos in business regulations through law. For this legislation, companies and the subsidiaries of foreign corporations operating in Belgium have been under obligation to produce a report on their social performance over a 3-year period since 1996. However, this legislation does not require companies to comply with eight fundamental ILO conventions¹³⁶ to follow its requirements.

In 2001, France passed the *New Economic Regulations 2000* (France). It requires listed companies to disclose their impact on social and environmental issues in their annual reports and accounts.¹³⁷ Another piece of legislation, the *National Pension*

¹³² Tine Herreborg Jorgensen and Jette Egelund Holgaard, 'Environmental Reporting: Experiences from Denmark' (Department of Development and Planning, 2004) 6. Available at http://www.plan.aau.dk/digitalassets/5/5479_workingpaper62004.pdf at 27 March 2011.

¹³³ Eva Hoffmann, 'Environmental Reporting and Sustainability Reporting in Europe: An Overview of Mandatory Reporting Schemes in the Netherlands and France' (University of Maastricht, 2003). Available at http://enviroscope.iges.or.jp/modules/envirolib/upload/118/attach/BE2_3025.pdf at 27 March 2011.

¹³⁴ Alessia Di Pascale, 'The EU Voluntary Approach to Corporate Social Responsibility in Comparison with Regulatory initiatives Across the World' in *The Potential of CSR to Support the Implementation of the EU Sustainability Strategy* (2007). Available at <http://core-conferences.net/attach/CSR2007-016.pdf> at 27 March 2011.

¹³⁵ Section 1013D (1) 1 of the *Financial Services Reform Act 2001(Cth)*. Act No. 122 of 2001.

¹³⁶ The ILO eight fundamental conventions include the Freedom of association and Protection of the Right to organise Convention (87) 1948, the Right to Organise and Collective Bargaining Convention (98) 1949, the forced Labour Convention (29) 1929, the Abolition of Forced Labour Convention (105) 1957, the Equal Remuneration Convention (29) 1951, the Discrimination (Employment and Occupation) Convention (111) 1958, Minimum Age Convention (138) 1973, and the Worst form of Child Labour Convention (182) 1999.

¹³⁷ Francesco Perrini, Stefano Pogutz and Antonio Tencati, *Developing Corporate Social Responsibility: A European Perspective* (2006) 39.

Reserve Fund Act 2001 (France), requires the disclosure of social, environmental, and ethical issues used for investment. The *Law on Social Modernisation 2002* (France) is designed to encourage employers to look beyond academic excellence and recognise the skills, knowledge, and experience people develop by working in different contexts, including voluntary social work.¹³⁸

The ‘Our Common Concern Campaign’, initiated by the Danish Minister of Social Affairs¹³⁹; the Swedish ‘Partnership for Global Responsibility’,¹⁴⁰ initiated by a group of Swedish ministers; the French government-supported organisation ‘The French Study Centre for CSR’ and the International Business Leaders Forum¹⁴¹ of the UK are a few more quasi-legal initiatives for the promotion of CSR at the national level.

In this regard, the role of the European Parliament is prominent. In addition to a code of conduct based on the ethos of CSR, it has adopted a series of resolutions to facilitate the development of the incorporation of CSR principles in its member economies. In 2002, this parliament called for new legislation to require companies’ triple-bottom-line reporting on their social and environmental performances and suggested steps for the effective implementation of CSR issues.¹⁴² It took another resolution in 2007 in order to set up a European Alliance for Corporate Social Responsibility in partnership with several corporate

¹³⁸ Ariane Antal and andre Sobczak, ‘Corporate Social Responsibility in France’ (2007) 46 (1) *Business and Society* 9, 15.

¹³⁹ Lux, Thorsen and Meisling, above n 124, 279–292.

¹⁴⁰ Lux, Thorsen and Meisling, above n 124, 295.

¹⁴¹ The international Business Leaders forum was formerly known as the Prince of Wales Business Leaders forum. It has programs in more than 30 economies with a view to promoting responsible business for the benefit of business and society. It helps companies to attain social, economic and environmentally sustainable strategies for their overall development. Like the international Business Leaders forum, Business in the Community-Business Impact and the Ethical Trading initiative are two active organisations devoted to developing CSR principles in companies. Business in the Community is a unique movement of over 800 of the UK’s largest corporations that are committed to improving their positive impact on society. The Ethical Trading initiative’s emphasis is more on the alliance of companies, trade unions and NGOs whose goal is to promote the use of widely-endorsed standards in relation to the working conditions in the global supply and production chains. For details on these organisations, visit <http://www.iblf.org/>, <http://www.bitc.ie/> and <http://www.ethicaltrade.org> at 27 March 2011.

¹⁴² European Parliament, *Resolution on the Commission Green Paper on Promoting a European Framework for Corporate Social Responsibility* (2002) www.europarl.europa.eu/ at 15 September 2008; the international Chamber of Commerce Business Charter for Sustainable Development has developed 16 principles that are also reconfirmed by the ‘triple-bottom-line’ reporting system. The major principles relate to establishing environmental management as one of the highest corporate priorities; integrating a management system; using environmentally sound products and operational designs; minimising waste and reducing the life cycle impacts of products. See the *International Chamber of Commerce Business Charter for Sustainable Development* (1991) at [www.http://www.bsddglobal.com/tools/principles_icc.asp](http://www.bsddglobal.com/tools/principles_icc.asp) at 30 September 2008.

networks.¹⁴³ In addition to these resolutions, the council of the EU passed a resolution with a call to all member states to promote CSR at the national level.¹⁴⁴

Since the focus for CSR incorporation in the USA is driven by a context in which minimal legislative control on business is preferable, this country emphasises developing specialised organisations to assist companies to incorporate CSR principles into their business strategies.¹⁴⁵ For instance, the Occupational Safety and Health Administration, Equal Employment Opportunity Commission, Consumer Product Safety Commission and the Environmental Protection Agency¹⁴⁶ are dedicated to maintaining standards for responsible corporate business practices that establish thresholds for CSR behaviour in daily business operations. The better known contributions of this process are the development of industry-specific and sector-wise regulation, such as in pollution control, working conditions, and consumer protection.¹⁴⁷ The US Model Business Principles is a voluntary guideline for companies, and the aim of this instrument is to provide a benchmark for developing self-regulated responsibility at the company level. It is based on the ILO Tripartite Declaration of Principles concerning multinational companies and social policy and the OECD Guidelines for Multinational Companies.¹⁴⁸ Corporate societies have begun incorporating these principles into their self-regulatory mechanisms. For instance, the USA automobile makers require their suppliers to adopt environmental management systems as a requirement for doing business.¹⁴⁹ Similarly, the

¹⁴³ European Parliament Resolution of 13 March 2007 *Corporate Social Responsibility: a New Partnership* (2006/2133(INI)) www.europarl.europa.eu/sides/getDoc.do?Type=TA&Reference=p6-TA-2007-0062&language=EN at 30 September 2008.

¹⁴⁴ Council of Bars and Law Societies of Europe, 'Corporate Social Responsibility and the Role of the Legal Profession: A Guide for European Lawyers advising on Corporate Social Responsibility issues' (Council of Bars and Law Societies of Europe, 2008) Available at http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_CSR_guidelinespd11221_057092.pdf at 27 March 2011.

¹⁴⁵ For a general idea on how the USA uses legislation compared to the EU, see Joan C Williams, *The interaction of Courts and Legislatures in Creating Family-Responsive Workplaces, Working Time for Working Families: Europe and the United States* (2005).

¹⁴⁶ Roberto Gutierrez and Audra Jones, 'Effects of Corporate Social Responsibility in Latin American Communities: a Comparison of Experiences' (2004) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1018680 at 27 March 2011.

¹⁴⁷ For instance, some of these legislations are the *Community Reinvestment Act 1977* (USA), the *Federal Water Pollution Control Act 1948* (USA), the *Clean Air Act (Amendments) 1977* (USA), the *Occupational Safety and Health Act 1970* (USA), the *Equal Employment Opportunity Act 1972* (USA), the *Consumer Product Safety Act 1972* (USA), the *foreign Corrupt Practices Act 1977* (USA) and the *Public Company Accounting Reform and Investor Protection Act 200* (USA).

¹⁴⁸ See United States Department of Commerce, *US Model Business Principles* (1995) www.state.gov/www/global/human_rights/business_principles.html at 28 March 2011.

¹⁴⁹ Press Release, Ford Motor Company, 'Ford Becomes First U.S. Automaker to Require Suppliers to Achieve ISO 14001 Certification' (Sep. 21, 1999); Press Release, General Motors Corporations, 'General Motors Sets New Level of Environmental Performance for Suppliers' (Sep. 21, 1999).

American Forest and Paper Association requires its members to adopt a set of management practices directed toward sustainable forestry.¹⁵⁰ Other important organisations working for the development of the incorporation of CSR principles in the corporate self-regulated responsibility system are the Center for Corporate Ethics, a division of the Institute for Global Ethics, and the Fair Labor Association. Both organisations are active in implementing CSR in and around the USA. The Center for Corporate Ethics is focused on the ethical culture needs of businesses in and outside the USA. The Fair Labor Association addresses labour rights standards in USA and worldwide apparel industries.

Some notable federal activities indirectly insist that companies incorporate CSR principles into their self-regulatory mechanisms. For instance, through the Department of State's Award for Corporate Excellence, the government endorses CSR by providing awards to companies, and a Department of Commerce program facilitates CSR by providing training on corporate stewardship.¹⁵¹ Some organs of the government provide partnership with corporations on specific projects related to their core mission.¹⁵² These programs indirectly help endorse, facilitate, partner, or mandate the core principles of CSR in the USA business's global corporate responsibility efforts. Another important USA initiative to develop CSR implementation is the advancing notion of social responsibility in large investments. Indeed, the notion of socially responsible investments has evolved in this country and is widely acknowledged by its financial service industries. Socially responsible investment can be defined as the process of integrating personal values and social concerns into investment decision-making.¹⁵³ This is a very important tool for promoting CSR. This investing activity found its modern roots in the 1960s and has expanded dramatically up to the present day.¹⁵⁴

¹⁵⁰ Errol Meidinger, 'The New Environmental Law: forest Certification' (2003) 10 *Buffalo Environmental Law Journal* 211, 239; Jennifer Nash, *Industry Codes of Practice: Emergence and Evolution, New Tools for Environmental Protection: Education, Information and Voluntary Measures* (2002) 237.

¹⁵¹ United States Government Accountability office (Report to Congressional requesters), *Numerous Federal Activities Complement U.S. Business's Global Corporate Social Responsibility Efforts* (2005) www.gao.gov/fraudnet/fraudnet.htm at 24 April 2008.

¹⁵² For example, the US Agency for international Development provided a partnership with one USA Company working in post-war Angola to reconstruct the country's business sector and workforce. Other agencies, such as the Overseas Private investment Corporation, mandate CSR by requiring companies to fulfil CSR-related objectives to obtain their services.

¹⁵³ Steve Schueth, 'Socially Responsible Investing in the United States' (2003) 43(3) *Journal of Business Ethics* 189, 194.

¹⁵⁴ Ibid; the amount of investment increased greatly in the 1980s to African Black people as millions of people, churches, universities, cities and states used this investment strategy to press the White government of South Africa to abstain from the racist apartheid system. Socially responsible investment was involved in the wake of the Bhopal, Chernobyl and Exxon Valdez incidents, and is currently involved in efforts to combat global warming and ozone depletion. By and large, environmental issues have come to the forefront of companies' socially responsible investment agendas.

At the policy level, Japan follows a mixed-policy strategy to develop CSR practices. Its CSR initiatives encourage private companies to adopt CSR issues in their business policies, and at the same time, they emphasise enabling instruments to encourage private actors to continue to develop their CSR-oriented strategies. Japan introduced to CSR implementation during its post-war reconstruction period by the adoption of the resolution ‘Awareness and Practice of the Social Responsibility of Business’.¹⁵⁵ This resolution states that businesses should not simply pursue corporate profit, but must seek harmony between the economy and society, combining factors of production and services, and that social responsibility is a better way to pursue this goal.¹⁵⁶ In this country, the impact of this resolution can be traced back to the adoption of the three corporate principles; namely, *Shoki Hoko* (corporate responsibility to society), *Shoji Komei* (integrity and fairness), and *Ritsugyo Boeki* (international understanding through trade).¹⁵⁷

In parallel to the initiatives of the private sector, the Japanese government has undertaken efforts to achieve CSR under the auspices of different ministries, including the Cabinet Office, the Ministry of Agriculture, Forestry, and Fisheries; the Ministry of Health, Labour, and Welfare; and the Ministry of Environment. The Cabinet Office issued the ‘Corporate Code of Conduct’ in 2002 to build consumer confidence in businesses and set guidelines to promote the establishment and implementation of corporate codes of conduct.¹⁵⁸ In a sequel to this, the Ministry of Agriculture, Forestry, and Fisheries established a study group to promote transparency between consumers and producers in 2004. It proposed the promotion of corporate management with an emphasis on social responsibility related to food safety and security.¹⁵⁹ The Ministry of Health, Labour, and Welfare established the Research Council on CSR in Labour and suggested that consideration should be given to employees based on changes in their social conditions.¹⁶⁰ The Ministry of Environment in 2005 also established a Research Council on Social Responsibility and proposed an ideal model for a sustainable environment and economy.¹⁶¹

The Japanese public sector has also developed partnership activities for the advancement of CSR. In collaboration with the Japanese Standards Association, the Ministry of Economy, Trade, and Industry has launched a working group to develop CSR standards in Japan. This group is now working to present their views to international organisations such as the International Standards Organization. In

¹⁵⁵ Masahiko Kawamura, ‘The Evolution of Corporate Social Responsibility in Japan (Part 1)—Parallels with the History of Corporate Reform’ (NLI Research institute, 2004).

¹⁵⁶ Ibid.

¹⁵⁷ James Brumm, *The Japanese Perspective*, Corporate Social Responsibility: The Corporate Governance of the 21st Century (2005) 337, 341.

¹⁵⁸ Asian Productivity Organisation, Policies to Promote Corporate Social Responsibility (Report of the Asian Productivity Organisation top Management forum, 2006) www.apo-tokyo.org at 21 December 2008.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Japan, the government, the Japanese Business Federation, and eight companies (including Sony, Ricoh, Fuji Xerox, Asahi Beer, IBM Japan, NEC, Mitsubishi, and Panasonic) are working hand-in-hand to promote CSR. Lastly, in 2004, they released a joint report on the CSR agenda in Japan.¹⁶²

Beyond these institutional developments at both the government and corporate levels, as a developed Asian economy, Japan has been an active participant in different intergovernmental initiatives for the promotion of CSR. It has already endorsed the OECD Declaration and is one of its 30 member economies. Hence, a National Contact Point has been established in Japan within its Ministry of Foreign Affairs to monitor the implementation and efficacy of the guidelines and to promote awareness of them. In addition, in 1994, the Caux Principles for Business were issued and sponsored by the Caux Roundtable, comprised of senior business leaders from Europe, Japan, and North America.¹⁶³ These Caux Principles include a set of seven general principles available for business decision-making on CSR.¹⁶⁴

With this mixed strategy, CSR integration in Japanese corporations has increased remarkably in recent years.¹⁶⁵ The practice of CSR principles, social and environmental reporting, and socially responsible investments illustrate its competitive status with other strong economies in the world. A survey conducted by the Japan Productivity Centre for Socio-Economic Development in 2005 revealed that almost 80 % of listed Japanese companies were already implementing CSR activities.¹⁶⁶ Regarding CSR reporting, in the fiscal year 2004, Japan had the highest number of companies (66) that published their reports based on the Global Reporting Initiative.¹⁶⁷ According to the KPMG International Survey Report of 2005, 80 % of Japanese national companies published their social responsibility

¹⁶² Brumm, above n 157, 45.

¹⁶³ Djordjija Petkoski, *Corporate Social Responsibility Diamond—Main Elements of CSR* (2005) World Bank Institute <http://www.worldbank.org/wbi/governance/corporatics.htm> at 3 October 2007.

¹⁶⁴ The Caux Principles are the responsibility of business towards its stakeholders, the economic and social impact of business, business behaviour beyond the letter of the law, respect for rules, support for multilateral trade, respect for the environment; and avoidance of illicit operations; see the Caux Round Table: Principles for Business (1994) at <http://www.cauxroundtable.org/index.cfm?menuid=8> at 27 March.

¹⁶⁵ This regulatory strategy can be termed co-regulation where the private and public sectors are involved in a joint initiative to reach a common goal. In co-regulation, the public sector assists the private sector to reach a public policy goal. For further details on this regulatory system, see *Law Concerning the Promotion of Business Activities with Environmental Consideration by Specified Corporations, etc., by Facilitating Access to Environmental Information and Other Measures* as an instance of co-regulation in Japan to facilitate acceptance of environmental responsibilities in companies, in Brumm, above n 157; Kawamura, above n 155.

¹⁶⁶ Asian Productivity Organisation, 'Management Forum: Corporate Social Responsibility' (Asian Productivity Organisation, 2006). Available at http://www.apo-tokyo.org/00e-books/IS-17_CorpSocialResp/IS-17_CorpSocialResp.pdf at 27 March 2011.

¹⁶⁷ Kanji Tanimoto and Kenji Suzuki, 'Corporate Social Responsibility in Japan: Analysing the Participating Companies in Global Reporting Initiative' (Working Paper 208, European Institute of Japanese Studies, March 2005) 4.

reports.¹⁶⁸ Likewise, 83 % of Japanese multinationals published their corporate responsibility reports.¹⁶⁹ Japanese national companies topped the list of strong economies. These companies all maintain a separate CSR department or taskforce, and have already developed a code of conduct in the light of internationally recognised CSR standards applicable both in and outside of Japan.¹⁷⁰

Developing and less-strong economies are also incorporating the principles of CSR within their regulatory frameworks. For instance, in Thailand, alongside the legislative initiative for labour issues, the passage of the *Tambon Administration Organization (TAO) Act 1994* (Thailand), the New Thai Constitution of 1997, and the *National Decentralization Act 1999* (Thailand) are evidenced as landmark public sector efforts to enhance power sharing between the public, private, and civil society sectors and increase community–business partnership.¹⁷¹ In Vietnam, the Vietnam Agenda 21 can be viewed as formulating a sustainability strategy in a broader way, although it still may be termed a crosscutting subject.¹⁷² In Malaysia, the Bursa Malaysia CSR Framework provides a set of guidelines for Malaysian public listed companies to help them in the practice of CSR. This framework focuses on four areas within or CSR practice: the environment, the community, the workplace, and the marketplace. It has been accepted by the Government of Malaysia, as articulated in the Prime Minister’s budget speeches in 2006 and 2007 and includes a directive for public-limited companies to disclose their CSR activities.¹⁷³ The King Report on Governance for South Africa 2009 suggested that the company related legislation should have some provisions to encourage the directors for constructive stakeholder management strategies in companies.¹⁷⁴ The new Companies Act 2008 of this country mandates that certain companies have to constitute ‘social and ethics committees’ so that they can manage their social responsibility and stakeholder issues in a better way.¹⁷⁵ Among other developing

¹⁶⁸ KPMG, International Survey of Corporate Responsibility Reporting (2005). Available at http://www.kpmg.com.au/Portals/0/KPMG%20Survey%202005_3.pdf at 27 March 2011.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Wolfgang Frank, *Partnership for Successful CSR Activities in Thailand: The Nike Village Development Project* (2004) Population and Community Development association (PDA) <http://www.pda.or.th/downloads/CSR-ThailandFinalRevision-WF0811.pdf> at 28 March 2011.

¹⁷² GTZ, *The CSR Navigator: Public Policies in Africa, the Americas, Asia and Europe* (2006) <http://www.gtz.de/en/presse/21396.htm> at 28 March 2011.

¹⁷³ See Stephen Frost, *Comparative Overview of CSR in Asia: Issues and Challenges* (2008) CSR Asia, Hong Kong http://www.adbi.org/files/session1_01_stephen_frost.pdf at 28 March 2011.

¹⁷⁴ “King III- Shareholder management and ADR” (2012) http://www.deloitte.com/view/en_ZA/za/services/audit/deloitteaudit/kingiii/0514e1a6b1c53210VgnVCM100000ba42f00aRCRD.htm

¹⁷⁵ For a study on the perspective of such an inclusion into the Companies Act 2008 of South Africa, see Flores-Araoz, “Corporate social Responsibility in South Africa: More than a Nice Intention” (2012) <http://www.consultancyafrica.com/index.php?>; Hamann and Acutt, “How Should Civil Society (and the Government) Respond to Corporate Social Responsibility? A Critique of Business Motivations and the Potential for Partnership” (2003) 20 (2) *Development Southern Africa* 255.

economies, Brazil, Argentina, Mexico, Poland, Slovenia, Hungary, South Africa, India, and China have advanced remarkably in their institutional frameworks and public framing for implementing the core principles of CSR.

With the *Extractive Industries Transparency Initiative (NEITI) Act 2007* (Nigeria), Nigeria became the first country that provides statutory backing to regulate transparency in extractive industries operating in a country.¹⁷⁶ In Ghana, the Ghana Extractive Industries Transparency Initiative has the same function. In 2006, Ghana launched the Ghana Business Code, a joint effort of the Association of Ghana Industries, Ghana Employers Association and the Ghana National Chamber of Commerce and Industry. The aim of this effort is to introduce and expand the practice of CSR in companies operating in this country.¹⁷⁷ Recently, the Socialist Republic of Vietnam passed the *Enterprise Law 2005* (Vietnam) with CSR at its core.¹⁷⁸ Article 74 of the *Limited Liabilities Companies Act 2007* (Indonesia) is another instance a developing country incorporating CSR tenets in corporate regulation.¹⁷⁹

In his analytical study on the companies of four regions (i.e., Asia, Latin America, Africa, and Central and Eastern Europe), Jeremy Baskin concluded that on occasion, with respect to certain CSR issues, companies in the developing economies are more advanced than those in the developed economies.¹⁸⁰ This observation is supported by a web-based study conducted by Chaplet and Moon in 2005. They assessed the CSR practice status of seven Asian economies: India, South Korea, Thailand, Singapore, Malaysia, the Philippines, and Indonesia. In this study, variation in CSR trends were identified using quantitative and qualitative indicators of five aspects of regional CSR practices: the penetration of CSR among the companies in each country, the extent of CSR reporting within these companies, the waves of CSR reflected in national profiles, their underlying CSR issues, and the modes of CSR developed in these economies.¹⁸¹ This study revealed that the companies of India and South Korea were well positioned in terms of CSR reporting.¹⁸²

¹⁷⁶ For details of this Act, visit <http://eiti.org/Nigeria> at 22 March 2011.

¹⁷⁷ For details, see Kwesi Amponsah-Tawiah and Kwasi Dartey-Baah, 'Corporate Social Responsibility in Ghana' (2011) 2(17) *International Journal of Business and Social Science* 107.

¹⁷⁸ A translated copy of this law can be found at <http://www.khucongngheip.com.vn/vbqp/en/companylaw2005.pdf> at 22 March 2011.

¹⁷⁹ This Article has four sub-sections. Sub-section 1 states '[c]ompanies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility'. For this Act, visit <http://www.scribd.com/doc/31592880/Indonesian-Company-Law-No-40-Year-2007> at 22 March 2011.

¹⁸⁰ Michael Hopkins, *Corporate Social Responsibility and International Development: Is Business the Solution?* (2007) 174.

¹⁸¹ Ibid.

¹⁸² Ibid. There are many reasons for the development of CSR reporting practices in South Korean and Indian companies. For South Korea, these include a national rise in sensitive consumerism and the need to raise the business impact of this country's companies on the world-wide market. For

The above discussion demonstrates that companies in the strong economies use a mix of different strategies to incorporate CSR principles in their self-regulatory mechanisms. Strategies based on legal regulation are not foremost in this mix; rather, in these economies regulation-based strategy is meant to assist the non-legal drivers of CSR. This mixture of strategies encourages various business stakeholders to reach an economically optimal level of investment in firm-specific human and physical capital. The use of these mixed strategies in weak economies may not be possible. One of the reasons for this is the lack of non-legal drivers in these economies. Moreover, due to insensitive consumers, a lack of organisation in civil groups, inadequate private institutions monitor corporate performances, and corrupt public organisations, companies do not incorporate the ethos of CSR in their policies. In this flux, it is difficult to determine the most appropriate policy to create a nexus between CSR and corporate self-regulation in the weak economies. The remainder of this book deals with this difficult task.

2.5 Conclusion

The basis of corporate responsibility has transitioned from why companies must be socially responsible to how they can become socially responsible. CSR is now a major component of new business and CG models for long-term sustainability. It has converged with the new trend of CG and contributed to the shifting of the traditional notion of CG to a vehicle for pushing corporate management to consider broader social issues. CSR defines corporate responsibilities to society as follows: firstly, that companies have a responsibility for their impact on society and the natural environment, which on occasion goes beyond legal compliance and the liability of individuals; secondly, that companies have a responsibility for the behaviour of others with whom they do business; and thirdly, that business needs to manage its relationship with wider society, whether for reasons of commercial viability or to add value to society.¹⁸³

With the rise of sensitive consumerism, as well as increasing competition for market share, this convergence has made companies more attuned to public, environmental and social needs. Global companies have integrated the ethos of this convergence into their core policy objectives. They tend to ensure that CSR practices are implemented within their supply chains; a demonstrated commitment to CSR helps global companies to secure their long-term profits, brand images and managerial efficiencies.¹⁸⁴ They have developed self-regulation to reflect their

India, the pressures of multinational buyers on suppliers in the global supply chain, and civil society activism have been the major factors.

¹⁸³ Blowfield and Frynas, above n 7, 504.

¹⁸⁴ This concept may be described by a number of terms, such as 'corporate citizenship', 'The Ethical Corporation', 'corporate governance', 'corporate sustainability', 'social responsible investment', 'corporate accountability' etc. Regardless of the terminology, the core principles

corporate responsibilities to the society and environment and helped the development of standardisation regime. This standardisation regime creates different codes of conduct, networks and auditing strategies to measure corporate self-regulation performance on CSR issues.

At the national level, CSR has attracted considerable attention. Most of the strong economies have adopted CSR principles within their corporate regulatory mechanisms. They have used different strategies and employed different actors to encourage this incorporation of CSR principles in corporate regulation. Though their regulatory strategies are not identical, their goals for relating CSR to public policies amplify their political affiliation for CSR practices in companies; the role of government in these economies is to facilitate the private sector. In these economies, laws and regulations for incorporating the ethos of this convergence are not authoritative. Rather, they are advisory and focused on bringing a broader perspective to the necessity of environmental responsibility in corporate self-regulation. Broadly speaking, incorporation of CSR notions in corporate self-regulation in these economies appears to focus on ‘process-oriented regulation’ where system-based strategies, enforced self-regulation, management-based strategies, meta-regulation approaches, and principle-based strategies coexist to ensure greater flexibility for the regulators where an objective needs to be incorporated in the era of deregulation.¹⁸⁵

From the perspective of the weak economies, as has been discussed in the case of Bangladesh, it is unclear how the ethos of CSR might be incorporated into the fabric of the socio-economic and environmental regulation of these economies. In these economies, public interest advocacy groups to oversee this convergence are absent, civil groups are not organised, the media does not have a specific focus on corporate issues, and the corruption rate in general is high. Hence, the incorporation of CSR principles in corporate regulation has not been noteworthy. However, certain weak economies have attempted to add CSR notions into their corporate regulation, although these attempts are too preliminary to show any trends, and as yet have not been followed by any substantive policy, suitable strategy or long-term goals. The impact of these drawbacks, particularly in Bangladesh, has been discussed in the previous chapter of this book. The remaining chapters will assess the theoretical

are the same. In this article, the term ‘CSR’ is used not because it carries any special meaning, but simply to be consistent.

¹⁸⁵ Peter May, ‘Compliance Motivations: Perspectives of Farmers, Homebuilders, and Marine Facilities’ (2005) 27(2) *Law and Policy* 317; Soeren Winter and Peter J May, ‘Motivation for Compliance with Environmental Regulations’ (2001) 20(4) *Journal of Policy Analysis and Management* 675; Bridget M Hutter, ‘The Role of Non-State Actors in Regulation’ (Centre for Analysis of Risk and Regulation, 2006)14; Neil Gunningham, Peter Grabosky and Daren Sinclair, *Smart Regulation: Designing Environmental Policy* (1998); Malcolm Sparrow, *the Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance* (2000); Vijaya Nagarajan, ‘From “Command-and-Control” to “Open Method Coordination”: Theorising the Practice of Regulatory Agencies’ 8 *Macquarie Law Journal* 6; for a big-picture view of changing regulatory scholarship, see Carol Harlow, ‘Law and Public Administration: Convergence and Symbiosis’ (2005) 71(2) *International Review of Administrative Sciences* 279.

basis of CSR implementation in corporate self-regulation through law; discuss the normative basis of the regulatory strategy for this implementation; conceptualise a meta-regulation approach of law as a suitable regulatory strategy to instil CSR principles in corporate self-regulation through laws in weak economies in general and, finally, assess the scope of this regulatory strategy through three major Bangladeshi laws related to corporate regulation.

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Rahim, M.M.

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