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## **CSR**

# **CORPORATE SOCIAL RESPONSIBILITY AND THE ROLE OF THE LEGAL PROFESSION**

## **A GUIDE FOR EUROPEAN LAWYERS ADVISING ON CORPORATE SOCIAL RESPONSIBILITY ISSUES**

**UPDATE NO.1**

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## PREFACE TO THE FIRST EDITION

The Council of Bars and Law Societies of the European Union (CCBE) has issued this guidance to European lawyers advising corporations on Corporate Social Responsibility (CSR).

CSR is an instrument of positive change inside businesses. It sets the framework and defines the manner in which a business must operate to be able to meet the ethical, legal, commercial and public expectations that a society has of any company.<sup>1</sup> These guidelines serve as a starting point for the corporate lawyer in creating new legal solutions for his client.

This guide explains:

- why companies should be interested in CSR; and
- why lawyers should advise on CSR.

The guide also provides information on how to pursue this topic further and explains the current CSR initiatives at a European and world-wide level.

The CCBE recently established a CSR discussion group for drafting this guide. The CCBE would like to thank Claes Cronstedt, Claes Lundblad, Yvon Martinet, Mauro Pizzigati, Birgit Spiesshofer, Sune Skadegard Thorsen, Marco Vianello and Carita Wallgren for their participation in this discussion group.

The CCBE would appreciate any comments on the guide, and your feedback on this initiative.

For your comments or further information, please contact the CCBE at [ccbe@ccbe.org](mailto:ccbe@ccbe.org)

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<sup>1</sup> MCE Management Centre Europe

## **PREFACE TO THE SECOND EDITION**

The CCBE Working-Group on CSR decided to update its September 2003 guide on CSR. The update is due to, both the response of readers to the first edition of the guide, and secondly, the growing number of positive developments that have taken place in the field of CSR since the first edition.

Since September 2003, CSR has achieved greater prominence on International, European and National levels. In line with these developments, more and more companies are taking an active interest in CSR and companies today have a greater understanding of the need to incorporate CSR practices into their day to day decisions.

The updated guide, in addition to explaining recent developments, also highlights to a greater degree the reasons why lawyers should be involved in CSR. The task of explaining why more companies should be interested in CSR is also addressed in the update.

The CCBE would like to thank Claes Cronstedt, Birgit Spiesshofer, Sune Skadegard Thorsen and Marco Vianello for their continued participation in the CCBE discussion group on CSR and for drafting this guide.

The CCBE will continue its work and update the guide when necessary.

We hope that you find this update to be of interest.

CCBE  
April 2005

## I: UNDERSTANDING CORPORATE SOCIAL RESPONSIBILITY

*“Corporate social responsibility is now in every reasonable chief executives agenda, not always at the top, but it’s there”.*<sup>2</sup>

When Warren Buffett took over the chairmanship of Salomon Brothers after the bidding scandal on Wall Street in 1991, he told the assembled staff: *“Lose money for the firm, I will be very understanding; lose a shred of reputation for the firm, I will be ruthless”.*

Buffett and other successful representatives of the business world instinctively understand that values such as honesty, fairness and responsibility are necessary to be able to run a successful business. Many fortunes have been made, and are still being made, through unacceptable business methods. However, development with the global liberalisation of markets have been towards more transparency and corporate accountability. This makes it less attractive to conduct business that is contrary to the values of society.

Courts in a number of countries are using the standards of international conventions on companies, although the vast majority of these standards are not directly binding on companies. This is a trend that is spreading to other jurisdictions. Many companies are being subject to legal proceedings at home and abroad – even though the alleged violations have been committed by its operations in other countries. Today, social responsibility is becoming a serious matter for our corporate clients.

The US judiciary especially apply their legal regime in an extraterritorial way, and they judge the companies’ conduct with regard to international law.

Shell, BP, Nike, GAP, Coca-Cola, JP Morgan Chase, Polo Ralph Lauren – the list could be made longer – have had their reputations severely damaged in recent times because they have acted contrary to current values.

In an opinion poll published in 2002, 25,000 individuals from 23 countries were asked about companies’ roles in society. Eight out of ten employees in larger companies said that the more social responsibility the employer takes, the more motivated and loyal the employees become.

A majority of the questioned shareholders stated that they would consider selling their shares in a company that fails in respect of social responsibility, even if the earnings are good.<sup>3</sup>

The term CSR is used throughout the guidelines as covering corporate responsibilities in relation to the full triple bottom line.<sup>4</sup> This is in accordance with the use of the term by many actors in the field hereunder the European Union. However, the CCBE acknowledges that there is a trend towards using the term Corporate Responsibilities as the comprehensive description of social, environmental and economic responsibilities.

<sup>2</sup> Steve Hilton and Giles Gibbons, *Good Business*, p. 55.

<sup>3</sup> See [www.environicsinternational.com](http://www.environicsinternational.com)

<sup>4</sup> See part VI “The Triple Bottom Line”.

## II: CURRENT DEVELOPMENTS

*“Corporate Social Responsibility is something that companies operating internationally can’t ignore anymore”.*<sup>5</sup>

More and more companies adopt and implement rules for social responsibility because they know only too well how the market really works today. It is a matter of risk management, of creating an effective organisation and of creating a good market position.

At an International level, there have been developments in connection with the UN Convention on Corruption, Global Compact, Equator Principles and the International Criminal Court, to name but a few (more details on these initiatives can be found in the Annex’s).

At a European level, the European Commission is expected to publish a follow-up Communication to the conclusions of the European Multi Stakeholders Forum in early 2005.

At National levels, there are many developments which highlight the growing trend and widespread acceptance of the importance of CSR. This guide does not intend to provide an overview of national developments. The “European Lawyer” will be providing such an overview in a forthcoming publication in Spring 2005. The overview will inform the reader on the latest state of the art of CSR in European Member States, the European institutions and International developments. The International Bar Association (IBA) will also publish, in collaboration with Kluwer publishers, a book on CSR, gathering many worldwide views on the subject.

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<sup>5</sup> Doug Miller, CEO of Environment International, “CSR is here to stay”, CSR Magazine, October 2002.

### III: CORPORATE RISKS AND OPPORTUNITIES

*“The 21st century company will be different. Many of the world’s best-known companies are already redefining traditional perception of the will of the corporation. They are recognising that every customer is part of the community, and that social responsibility is not an optional activity.”*<sup>6</sup>

Companies are growing more and more aware of the need to consider CSR issues and to take account of CSR in their decision-making process. There are many risks and opportunities for companies in addressing or failing to address CSR.

The risks can be summarised as follows:

- Increased civil and criminal litigation against companies and management;<sup>7</sup>
- Loss of top talents;
- Loss of investors;
- Increased cost of capital;
- Decline in stock value;
- Loss of customers and business partners;
- Loss of public contracts and public procurement procedures e.g. World Bank, European Union, European Bank for Reconstruction and Development;
- Loss of business partners;
- Exposure to naming and shaming campaigns and blacklisting campaigns;
- Loss of brand value.

On the other hand, there are many opportunities available to companies who choose to implement CSR strategies and incorporate CSR into company policies:

- Enhanced corporate image and added brand value;
- Attract and retain top talents;
- Enhancing job satisfaction, loyalty and identification;
- Access to quality business partners;
- Obtaining the status of a “preferred partner”;
- Customer satisfaction and loyalty;
- Improving risk management;
- Lower insurance fees;
- Favourable access to capital markets;
- Attracting Socially Responsible Investment (SRI), which is mushrooming;<sup>8</sup>
- Establishing a good footing with public authorities and the general public;
- Creating a basic reference point and language for partnerships;
- Public relations opportunities;
- Contribution to the development of stable global markets.

In addition to the risks and opportunities, a number of factors should be mentioned in order to highlight issues that companies should be aware of:

#### (1) Sphere of influence and complicity

The extent to which a company or its directors may assume liability for own acts or for complicity in government or third person activities needs to be clearly defined. The questions are being deliberated under the terms ‘sphere of influence’ and ‘complicity’ respectively.

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<sup>6</sup> Tony Blair, UK Prime Minister.

<sup>7</sup> Business and Human Rights, A Progress Report, p.18, Office of the UN High Commissioner for Human Rights, January 2000

<sup>8</sup> See for example survey by UK Social Investment Forum/Just Pensions that SRI investments in UK are up from £22.7bn in 1997 to £224.5BN in 2001

The 'sphere of influence', describes the relationship of a company to its workers, consumers, members of a local community, business partners and other stakeholders that may be influenced by company actions or omissions. A company has the power to influence its stakeholders to a certain degree. The degree of a company's influence varies according to the size of the company, the type of partnership, operation, issues at hand etc. In some situations, companies will have a substantial degree of influence over certain partners and can use this influence to promote important issues, such as the upholding of human rights. In other situations, the company is too small and distant to influence the stakeholders.

Having regard to complicity, this is another factor which companies must not ignore. A company must examine their potential complicity in wrongful acts. This complicity can be in the form of direct, indirect or silent complicity. It must be noted that, deciding on whether a company is complicit or has violated CSR responsibilities within its sphere of influence will depend on whether liability is attached or not with regard to the sphere of influence.

At present there are no clear international rules on the matter, but principles of tort and national and international criminal law may be applicable.

The Alien Tort Claims Act (ATCA), which was enacted by the very first U.S. Congress in 1789 as a tool to fight piracy on the high seas, permits non-U.S. citizens to sue for abuse of international law, even if such abuse was committed overseas. The Act states "the District Court shall have original jurisdiction of any civil action, for tort only, committed in violation of the law of nations or a treaty of the United States." The Act languished for two centuries, but in the beginning of the 1990s attorneys began to bring cases against U.S. and foreign corporations for violation of international law. About 25 such cases have since been filed. The trial courts have dismissed many of them, but some are working their way up the federal judiciary on appeal. The most successful cases have been brought by survivors of the Nazi Holocaust against foreign companies and banks that rejected their efforts at recovering their money after World War II. Because of reputation reasons, Swiss banks settled the claims by paying the plaintiffs more than USD 1 billion.

The ATCA was invoked in the UNOCAL case. In this case the UNOCAL Corporation (an oil and gas company based in California, with operations in 14 countries around the world) came under fire for human rights abuses associated with a gas pipeline project in Burma. UNOCAL is accused of being complicit with the Government in forced labour, rape and torture allegedly carried out by security forces guarding the \$1.2bn Yadana pipeline during its construction in the 1990s.

The act was also invoked in the case of Ken Saro-Wiwa, a Nigerian poet, writer, and leader of a minority ethnic group who was hanged by the Nigerian government. His commitment to non-violent protest of the environmental destruction allegedly created by Shell and the Nigerian government brought him and his cause world notoriety. Ken Saro-Wiwa had a deep suspicion of the oil multinational Shell, which he said was working hand-in-glove with the military. Shell is being accused of being complicit with the Nigerian government.

Multinational corporations consider ATCA as a serious threat when they operate in economic developing countries. Corporations doing business in China are warned of being sued for abetting China's denial of political rights. The Heritage Foundation, claims that companies that made weapons used in the Iraq war can be hauled into court under ATCA if such weapons inadvertently killed Iraqi citizens.

A recent Supreme Court decision defined the scope of the ATCA by holding that the ATCA "is a jurisdictional statute creating no new causes of action".<sup>9</sup> In addition the Supreme Court held that federal courts should be restrictive recognising a claim under the law of nations as an element of common law and thereby recognising a new cause of action.

The current Bush administration and business community are making efforts to restrict the scope of powers of the ATCA in order to reduce the risk of multinationals being sued when operating in developing countries.

<sup>9</sup> SOSA vs. Alvarez-Machain, 542 US (2004) p.3



## (2) Parent liability for subsidiaries (piercing the corporate veil)

It is acknowledged that the corporate environment has changed under the liberalisation of markets and global transparency. One aspect of the changing environment is the challenge faced by the courts in regard to the liability of parent companies for the acts and omissions of their subsidiaries.

Recently, there have been a number of legal actions in Britain, the United States, Canada and Australia against parent companies for actions by subsidiary companies operating in economically developing countries.

In a House of Lords ruling, South African miners afflicted by asbestos-related diseases were allowed to sue the British mining company Cape plc in the English courts. The case has potentially wide implications for multinational corporations based in this jurisdiction.<sup>10</sup> It means that English parent companies may be sued for negligence in the country where they are domiciled if the negligence has been caused by subsidiaries in other countries.<sup>11</sup>

## (3) Directors liability

A company should be aware that violations of laws and regulations can lead to directors being held personally liable for wrongful acts on the part of their company and employees. Such liability can be in the form of civil or criminal liability. Although there are different rules in different jurisdictions, the notion is emerging that neglect of CSR obligations may lead to directors' liability.

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<sup>10</sup> See: Lubbe and Others v Cape plc and related appeals, House of Lords, 27 July 2000, Times Law Report, at 31. See also: F. Gibb and M. Dynes, 'African asbestos miners win right to sue in Britain', The Times newspaper (UK) Friday July 21, 2000, p. 8.

<sup>11</sup> For an analysis of the implications of the Cape plc cases for English-based Multinational Enterprises (MNEs) with foreign subsidiaries, see 'Corporations in International Litigation: Problems of Jurisdiction and the United Kingdom Asbestos Cases', 2001, by P.T. Muchlinski in International & Comparative Law Quarterly, Vol.50, No.1.

## IV: WHY LAWYERS SHOULD ADVISE ON CORPORATE SOCIAL RESPONSIBILITY

*“The main purpose of the board of directors is to seek to ensure the prosperity of the company by collectively directing the company’s affairs, whilst meeting the appropriate expectations of its shareholders and relevant stakeholders”.*<sup>12</sup>

The task of advising on CSR issues has not always been seen as falling to the legal profession. This has resulted in CSR being an under-developed area for lawyers. However, as companies increase their commitment to CSR, they will start to demand from their legal advisers that they are conversant with the area and able to give advice. A company might be reluctant to take advice from a lawyer if the lawyer is not familiar with CSR policies and CSR implementation. Furthermore, companies involved in CSR impose CSR requirements on suppliers. Law firms are also considered suppliers of services and could be asked to comply with the clients code of conduct.

Even voluntary approaches to CSR have a legal context. Laws on misrepresentation or false advertising frame voluntary company reporting, for example. Voluntary approaches such as company codes of conduct can also shape the standards of care that are legally expected of businesses.

The following are some of the reasons for why lawyers should be involved in CSR:

### (a) Access to boardrooms

CSR should be, and is already, part of company policies and integrated into Corporate Governance strategies and decision-making. In this regard, the lawyer has a number of boardroom responsibilities:

- The lawyer should make the company management aware that CSR is an issue that needs board attention and proper management; and
- As lawyers are specialist advisers to corporations this will reflect on their responsibilities when acting as member of, or secretary to, the Board of Directors. CSR must be considered as an area where negligence may very well result in losses of a considerable size for the involved company. If the issues leading to the loss were treated during a board meeting, and the lawyer did not respond adequately, due to ignorance, this may very well lead to liability.

The lawyer also has a number of advising opportunities that might take place, as the case may be, together with other experts. These advising opportunities can be divided into long-term and short-term assignments.

For longer term assignments:<sup>13</sup>

- Analyse strengths, weaknesses, opportunities and threats (SWOT-analysis) of a given company in relation to CSR;
- Design CSR policies;
- Design a strategy for the company to address CSR adequately;
- Integrate CSR under existing risk management and compliance programmes;
- Design and implement concrete projects under CSR;
- Create CSR screening systems for investments;
- Develop a framework for supply chain management systems;
- Develop a framework for CSR as part of Quality Management;
- Implement in-house training on CSR;
- Integrate CSR into existing risks and quality management schemes and compliance programmes.

For short-term assignments:

<sup>12</sup> Institute of Directors, Standards for the Board, 1999.

<sup>13</sup> It is recommended that longer-term tasks be performed in co-operation with either in-house or external competencies in organisation, management – including crisis management, communication, human resources, training etc. depending on the objectives of the client.

- Consider the 'what, why and how' of a CSR approach - its challenges, dilemmas and opportunities;
- Undertake CSR assessments of affiliates, branches, investment opportunities, suppliers, licensees or other partners;
- Undertake CSR assessments as part of due diligence;
- Respond to media or NGO criticism;
- Provide assurance statements on CSR reporting in relation to scope, relevance and compliance with international standards;
- Undertake assessment of concrete CSR projects;
- Network with other companies and/or associations;
- Coordinate and supervise the CSR work of the company;
- Assess the legal implications of CSR reporting and advertising.

In *Kasky v. Nike*, Nike was sued under Californian State Law for false advertising. Kasky claimed that information on Nike's social performance was false and did not reflect the poor working conditions in its foreign factories. Nike defended itself based on the First amendment of the US Constitution on freedom of speech, but the Court ruled, in the first instance, against Nike to find that the company statements should be classified as "commercial speech" (and not political). Thus Nike's statements would be subject to the stricter standard of truth required by advertising law. In June 2003 the U.S. Supreme Court dismissed on technical grounds the action in which Nike was seeking to reaffirm the First Amendment right to free and open debate. Although the U.S. Supreme Court issued no formal decision, a majority of the Court expressly rejected the central holding of the California Supreme Court that Nike's speech could be restricted as purely "commercial." The case was subsequently settled with Nike paying \$1.5 million as a donation to the Fair Labor Association in Washington, D.C.

This case illustrates that companies' statements can be challenged for misrepresentation, and the need for a lawyer to be involved in CSR.

#### (b) Legal professional privilege and CSR

In the implementation of CSR policies, their supervision and auditing, lawyers have a special and unique role to play due to legal professional privilege. Although the legal basis, the content and the structure of the attorney-client privilege may vary from country to country, there is a common thread and goal applicable throughout all Member States, i.e. that correspondence, documentation and information entrusted by the client to the attorney or otherwise gathered in the course of the client relationship by the attorney shall be treated as confidential and shall in general be protected against discovery.

A CSR policy is only credible when the company supervises and audits its implementation in its day-to-day business. So far at least in Europe no "safe-harbour-rules" apply, i.e. there is no legal regime in place which would guarantee a company undertaking a CSR audit not to be held liable by the competent authorities or a public prosecutor on the basis of information or documentation generated in the course of such audit. Thus a company voluntarily undertaking a CSR audit might suffer a disadvantage compared to its competitors which do not undertake such an effort. As long as no "safe-harbour rules" exist in order to encourage companies to examine honestly and carefully their operations, the attorney-client privilege, applied in accordance with the national rules and regulations, can help to encourage enterprises to undertake assessments and audits, and to generate eventually (detrimental) information. Such information may lead to (silent) remediation measures and thereby enhance CSR compliance and good corporate and social governance.

## V: CSR STANDARDS

*"A global human society based on poverty for many and prosperity for a few, characterised by islands of wealth, surrounded by a sea of poverty, is unsustainable".<sup>14</sup>*

Many companies have established codes of conduct and policies integrating CSR principles into their business practices. According to the OECD, in 2000 there were 296 different codes of conduct.<sup>15</sup> These codes reflect the growing pressure being placed on companies by NGOs, shareholders and socially responsible investment funds.

There are five basic types of codes:

- Company codes - e.g. Shell, Philips, Levi Strauss;
- Trade association codes - e.g. ICC, British Toy and Hobby Association, Bangladesh Garments Headquarters and Expatriates Association, Kenya Flower Council Code;
- Multi-stakeholder codes - e.g. AccountAbility 1000, good corporation.com, Project Sigma UK, Ethical Trading initiatives UK, Apparel Industry Partnership USA, Social Accountability 8000;
- Intergovernmental codes - e.g., OECD Guidelines on TNCs, EU Code of Conduct;
- World codes - e.g. ICFTU Code of Conduct Covering Labour Bodies, Principles in Global Corporate Responsibility, the ILO Declaration and Conventions, UN Draft Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.<sup>16</sup>

In general, codes of conduct should:

- Be applied at every level of the organisation;
- Be based on universally agreed standards;
- Be included in training for local management, workers and communities on implementation;
- Have emphasis on gradual improvements to standards, and to the code itself;
- Include ongoing verification, which should be developed and performed carefully following defined standards and rules;
- Enable benchmarking.

Based on these principles, each company should tailor its own code adapted to its specific environment and resources, to ensure acceptance and compliance with it. This code of conduct can take the form of a manual governing the day to day business of the company. It is the natural role of the lawyer to be involved in the drafting of such documents.

The first generation of codes were developed by individual companies. Starting with the 'credo' of Johnson & Johnson in the 1940's and Levi Strauss & Co., Starbucks Coffee Co., Shell and BP Amoco all following suit. The late 1990's displayed codes like SA8000 (the Council on Economic Priorities), the Fair Labour Association (US) and the Ethical Trading Initiative (UK), which were developed based on consensus from a range of stakeholders. Codes defined by single stakeholders including the Workers Rights Consortium and Clean Clothes Campaign also appeared, along with various trade or business associations like the Norwegian Confederation of Businesses' checklist for human rights practices, the Global Sullivan Principles and the Caux Principles for Business.

Finally, international organisations have begun to issue codes or standards to enhance corporate social responsibility. The OECD Guidelines for Multinational Enterprises (revised in 2000), the ILO 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977) and the United Nations Global Compact are very important initiatives. The Global Compact officially co-operates with the multi-stakeholder Global Reporting Initiative (GRI). Notably, the UN Sub-Commission for Human Rights have drafted guidelines in the form of Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights.

<sup>14</sup> President Thabo Mbeki of South Africa, *The New York Times*, 26 August 2002.

<sup>15</sup> OECD Codes of Conduct. An expanded review of their contents, working party of the committee 2000.

<sup>16</sup> Ralhp Jenkins, *Corporate Codes of Conduct: Self regulation in a global economy, business and society programme*, 2001 UN Research Institute in Social Development.

## VI: THE TRIPLE BOTTOM LINE

Sustainable development for business is operationalised by the triple bottom line, popularly described by the three Ps; *People, Planet, Profit*. In short companies seek to find sustainable solutions for their relationship with *human beings* (hereunder in the relationship with employees, suppliers, customers, local communities and other stakeholders), the *external environment* (including biodiversity and animal welfare) and the *economy* (including the economy of the community).

The following boxes present indicative lists of areas under the triple bottom line reflecting present developments. The areas mentioned are not intended to be exhaustive, but merely to give a brief overview of current developments.

### **Social Responsibility (People)**

- Labour rights: Slave, forced or compulsory labour; child labour; freedom of association/collective bargaining; non-discrimination/equal opportunities; rest, leisure and holidays; minimum wages; health and safety;
- Right to work: Protection against unjustified dismissals and technical/vocational guidance and training
- Right to life
- Development rights: Right to education; to health; to adequate food and fair distribution of food; to clothing; to housing; to social security; to enjoy technological development;
- Right to hold opinions & freedom of expression, thought, conscience and religion
- Right to a family life
- Right to privacy, e.g. surveillance, personal information, drug testing
- Minority rights to culture, religious practise & language and cultural rights (indigenous peoples)
- Right to peaceful assembly
- Right to take part in political life
- Informed consent to medical / biological trials
- Moral & material interests form inventions.

### **Environmental Responsibility (Planet)**

- UN Convention on Bio-Diversity: in-situ and ex-situ conservation, impact on diversity, use of genetic material, technology transfer;
- The Precautionary Principle (In doubt about negative environmental impact of a given action – abstain);
- Use and handling of GMOs (Genetically Modified Organisms);
- Air emissions and impact on global warming (greenhouse gases);
- Impact on the ozone layer (Montreal Protocol Annexes);
- Prohibition of use of certain materials and substances, hereunder safe handling/transport of dangerous substances;
- Distance to residential neighbourhoods for production sites;
- Soil, ground water and surface water contamination;
- Treatment and reduction of waste water;
- Water consumption and leakage;
- 'Eco-efficiency', consumption of raw materials, and consumption of energy;
- Export of waste and re-use of material;
- Subsidising of environmental projects (e. g. protection of the rainforest etc.).
- Animal welfare.

### **Economic Responsibility (Profit):**

- Financial profit, economic growth and asset creation;
- Business ethics, corruption and bribery, conflict of interest;
- Direct and indirect economic impact on communities through spending power (suppliers, consumers, investors, tax payments and investments), and geographic economic impact;
- Economic impact through business process: outsourcing, knowledge, innovation, social investments in employees and consumers;
- Monetary support for political parties, lobbying, and other 'political' activities;
- External economic impact from pollution, internalisation of externalities, value of consuming products;
- Stock exchange behaviour, including insider trading;
- Economic regulation, tax incentives, redistribution;
- State contracts and State Subsidies;
- Intellectual property rights, hereunder patents, pricing and the impact on economic and societal development potential;
- Anti-trust & competition, including market impact and 'alliances';
- Board and executive remuneration and role of accountants;
- Donations;
- Taxes, including 'transfer pricing'.

In practice it is not possible to describe each bottom line quite as simple as illustrated. Grey zones exist between the lines. For example, corruption and bribery will belong to the 'economic'-bottom line as having an immediate impact on the economy of the community, notwithstanding that the practice has human rights implications as well in the form of discrimination and non-equal access to law.<sup>17</sup> The 'environmental'-bottom line describes the impact on the external environment, notwithstanding that the environment has great impact on the right to health of people. Consequently, most reporting strives towards a holistic approach embracing all three bottom lines in one report.

The figure below mentions some of the existing management tools in relation to the three bottom lines.

Economic responsibility	Environmental responsibility	Social responsibility
IAS (International Accounting Standards)	ISO 14000 series	ISO 18000
ISO 9000 series	E-MAS	SA 8000
	Life Cycle Assessments	AA 1000s
	Business in the Environment's Index	ETI Base Code
		ILO standards
		Caux Principles
		Sigma
		Amnesty International Human Rights guidelines for Business
Global Reporting Initiative (for reporting)		
Balanced Business Scorecard		
Compliance Programmes		
Dow Jones Sustainability Index		
FTSE4good Index		
EFQM Business Excellence model		
PricewaterhouseCoopers Reputation Assurance framework		
London Benchmarking Group		
OECD Governance Principles		

Finally, as a prerequisite, any company is expected to comply with international, regional, national and local laws and regulations *directly applicable* to the corporation.

Compliance to such regulation will in most societies fulfil several of the areas mentioned in the boxes above, but in many cases a company may not be able to prove CSR only by demonstrating legal compliance. Beyond this compliance, there is another area that we might describe as Corporate Social Opportunity, which is motivated by competitive advantages i.e. economic incentives.<sup>18</sup>

<sup>17</sup> A few human rights are not of immediate concern for business and should remain the overriding obligation of the state structure. These rights are found in the International Covenant on Civil and Political Rights (ICCPR): Art 9 – 10: the rights to freedom and personal safety (arrest and detention), Art 11: prohibition against imprisonment for non-fulfilment of a contractual obligation, Art 12: the right to liberty of movement and freedom to choose residence, Art 13: the right to seek asylum, Art 14 – 15: the right to a fair trial and prohibition against retroactive punishment, Art 16: the right to recognition as a person before the law, Art 20: prohibition against inciting war and against hate speech, and Art 26: equality before the law. However, business should be conversant in relation to all the rights as the State's performance in these areas may have an impact on business opportunities and certainly has an impact on possible complicity in Human Rights violations and on the public's perception of the legitimacy of the company to conduct business in a certain territory. In a few incidences the company may even be directly involved when selling goods and providing services to the violating government or, with the pace of privatisation, taking over the government function as such.

<sup>18</sup> See Corporate Risks and Opportunities under III

## VII: CONCLUSION

*“CSR may have entered our national vocabulary but it has not taken root in our consciousness”.*<sup>19</sup>

CSR has increased in recent years as a result of the recognition of the essential contribution of business to social, environmental and Human Rights progress, and because of pressure from consumers, investors, employers, governments, NGOs and public opinion.

A growing number of businesses already have CSR as a priority in their agendas. It is the lawyers' role to assist their clients in positioning their business successfully in this new legal landscape.

Having regard to the importance of CSR, the CCBE recommends that due consideration is given on the need for lawyers to be aware of CSR issues and on the need for professional training in CSR in order that lawyers can understand its importance.

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<sup>19</sup> Ella Joseph, centre-left think-tank IPPR, The Observer, 2 February 2003.

## ANNEX I: CSR AND THE EUROPEAN EXPERIENCE

*“CSR can play an important role in advancing sustainable development. Many businesses have already recognized that CSR can be profitable and CSR schemes have mushroomed. (...) CSR is no longer just a job for marketing departments”<sup>20</sup>*

### European initiatives (non-exhaustive) -

#### 1. Manifesto of Enterprises against social exclusion

At the EU level, the debate on CSR dates back to 1995 when a group of EU companies and Jacques Delors, then President of the European Commission, launched this Manifesto.

#### 2. EU Lisbon Summit, March 2000

The Manifesto led to the creation of a European Business Network promoting business-to-business dialogue and exchange of best practices on CSR-related issues. However, it was with the European Summit in Lisbon in March 2000 that CSR was put at the top of the EU political agenda. For the first time, EU heads of state made a special appeal to companies' sense of responsibility to help in achieving the new EU strategic goal of becoming the most competitive and inclusive economy in the world by 2010.

#### 3. European Council Resolution, December 2001

The Council Resolution on follow-up of the Commission Green Paper recognised that CSR can contribute to reaching the objectives laid down by the European Council in Lisbon, Nice and Göteborg for the EU to become the most competitive and dynamic knowledge-based economy in the world, fostering social integration and sustainable development.

The Council of Ministers (Employment and Social Policy Council) also adopted a Resolution on CSR in December 2002.

This Resolution:

Calls upon the Commission and the organisations represented in the Multi-Stakeholder Forum :

- to continue to ensure the transparency and efficiency of the work of the Multi-Stakeholder Forum through regular reporting on their work;
- to make sure that the views of all relevant actors at European, national, regional and local level will be channelled into the work of the Multi-Stakeholder Forum;
- to make sure that any outcome of the work in the Multi-Stakeholder Forum, operating on the basis of consensus, takes fully into account and respects the above-mentioned principles of CSR;
- to ensure that the Multi-Stakeholder Forum addresses the gender dimension in its work; and
- to continue to put an emphasis on how CSR can contribute to the objectives of the European Union as laid down particularly at the European Councils in Lisbon, Nice and Göteborg.

Calls upon the Commission :

- to take into account, when developing a European strategy on CSR, the goals and commitments agreed at the World Summit on Sustainable Development in Johannesburg; and
- to increase awareness about the valuable involvement of all those concerned, including social partners and civil society organisations, in practices of CSR at all levels.
- Calls upon the Member States, while bearing in mind the principles of CSR outlined above :

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<sup>20</sup> European Commission: Corporate Social Responsibility: new Commission strategy to promote business contribution to sustainable development, IP/02/985, 2 July 2002.



- to promote CSR at national level in parallel with the development of a strategy at Community level, in particular by making companies aware of its benefits and highlighting the potential results from constructive co-operation between governments, business and other sectors of society;
- to continue to promote the dialogue with social partners and civil dialogue;
- to promote transparency of CSR practices and tools;
- to exchange information and experiences regarding their policies;
- to integrate CSR into national policies; and
- to integrate, where appropriate, CSR principles into their own management.

Calls upon future Presidencies :

- to continue to stimulate the debate on CSR and maintain the involvement of the Council in the Multi-Stakeholder Forum.

#### 4. European Parliament's Code of Conduct, December 1998 and 2002

In 1998, the European Parliament published a European Code of Conduct regarding the activities of Trans-National Corporations (TNCs) operating in developing countries.<sup>21</sup> The European Parliament passed a first resolution to promote the accountability of European-based TNCs by supporting initiatives in the field of codes of conduct. In the resolution, the European Parliament states its support for voluntary codes of conduct as a substitute for international regulation. Furthermore, the European Parliament calls upon the European Commission and Council to come to terms with the subject of a "European Monitoring Platform" and proposes to organise hearings on the subject.

In May 2002, the European Parliament voted for new legislation to require companies to publicly report annually on their social and environmental performance, to make board members personally responsible for these practices, and to establish legal jurisdiction against European companies' abuses in developing countries.<sup>22</sup> The package is part of a new EU Framework for CSR and represents a major step towards establishing international regulation for TNCs. The Parliament also voted to:

- Set up a European CSR Forum to give rights to stakeholders, such as consumer and activist groups, to oversee policies alongside business and trade unions;
- Set up a European Social Label to endorse products where there is respect for human and trade union rights;
- Introduce the wider social and environmental impact of companies' performance in European negotiations between employers and trade unions;
- Make all EU financial assistance to business subject to compliance with basic standards, including setting up a blacklist against companies guilty of corruption;
- Mobilise the European Unions trade and development programmes to tackle abuses by companies in developing countries.

#### 5. European Commission

The EU published a Green Paper in July 2001.<sup>23</sup> It covers a wide range of topics, including responsible actions during corporate restructuring, promoting of "work/life balance" and corporate codes of conduct and social rights. It is intended to function as a "launch-pad for debate"; encouraging companies to take the "triple-bottom-line" approach. The Green Paper consists of 2 sections. The internal section focuses on CSR practice involving employees and relates to issues such as, investing in human capital, health and safety, and managing change. The external section focuses on CSR on a more wide range of stakeholders, including local communities and international communities, business

<sup>21</sup>European Parliament: European criteria for companies operating in developing countries LDCs: towards a European code of conduct, INI/1998/2075.

<sup>22</sup> From 2003, French corporations will have to demonstrate their commitment to CSR by giving detailed accounts of their social and environmental reporting. *The Guardian*, 26 September 2002.

<sup>23</sup> Brussels COM (2001) 416 Final. Commission of the European Community-  
[http://europa.eu.int/comm/employment\\_social/soc-dial/csr/greenpaper\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/greenpaper_en.pdf)

partners and Human Rights. The consultation process aimed to develop a new framework for the promotion of CSR based on European values.

In July 2002, the European Commission published a new strategy to promote business contribution to sustainable development.<sup>24</sup> The policy paper calls for a new social and environmental role for business and sets up a 'European Multi-Stakeholder Forum' to exchange best practices, establish principles for codes of conduct, and seek consensus on objective evaluation methods and validation tools, such as 'social labels'. The Commission's strategy is designed to:

- Promote the business case for CSR in order to make it attractive to more companies, in particular Small and Medium Enterprises;
- Promote external evaluation and benchmarking of companies' social and environmental performance in order to make CSR credible;
- Manage a European Multi-Stakeholder Forum in order to focus discussion on CSR;
- Ensure that EU policies are CSR-friendly.

The European Commission is expected to publish a follow-up Communication to the conclusions of the European Multi Stakeholders Forum in early 2005.

#### 6. Council Resolution, February 2003<sup>25</sup>

This Resolution calls upon Member States to promote CSR at a national level; to continue to promote the dialogue with social partners and civil society; to promote transparency of CSR practices; to exchange information and experiences and to integrate CSR into national policies and into their own management.

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<sup>24</sup> See [http://europa.eu.int/comm/employment\\_social/soc-dial/csr/csr2002\\_en.pdf](http://europa.eu.int/comm/employment_social/soc-dial/csr/csr2002_en.pdf)

<sup>25</sup> OJ. 2003/C 39/2.

## 7. Other initiatives to promote CSR in Europe

- SustainAbility UK<sup>26</sup> - an independent management consultancy to promote the business case for sustainable development with the mission to help create a more sustainable world by encouraging the adoption of practices, which are socially responsible, environmentally sound and economically viable all of which satisfy the triple-bottom line of sustainable development.
- UK Ethical Trading Initiative (ETI) 1998<sup>27</sup> - focuses on managing an organisation's supply chain in a socially responsible manner. ETI seeks to encourage a shared approach to the sourcing of goods and services that leads to a raised standard of living for workers around the world.
- CSR Europe<sup>28</sup> - helps companies to share their knowledge and experience on CSR. It is a business-driven membership network whose mission is to encourage companies to advance in ways that stimulate job growth, increase employability and prevent social exclusion thereby contributing to a sustainable economy and a more just society. CSR Europe's Resource Centre includes a 'best practice' database, a publications list, links to related organisations and details of CSR Europe's programs.
- Copenhagen Centre (TCC)<sup>29</sup> - promotes voluntary partnerships between business, government and civil society in order to provide opportunities for the less privileged to be self-supporting, active and productive citizens. TCC aims to become a 'European house for CSR', providing forums to facilitate the continuing debate.
- European Academy of Business in Society<sup>30</sup> - in July 2002, leading European business schools and more than 60 major multinational companies teamed up to launch a large research and teaching project on the business case of CSR
- Small and medium sized enterprises (SMEs) and CSR - CSR is not just the business of TNCs. According to a recent survey 50% of Europe's SMEs are already involved in CSR ranging from 32% in France to 83% in Finland.<sup>31</sup> According to another survey 41% have an environmental policy, 28% make charitable donations, 15% consider ethical issues when outsourcing and 13% have a diversity policy.<sup>32</sup>

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<sup>26</sup> See <http://www.sustainability.com>

<sup>27</sup> See <http://www.somo.nl/monitoring/project/fo-3-1.htm>

<sup>28</sup> See <http://www.csreurope.org>

<sup>29</sup> See <http://www.copenhagencentre.org/main>

<sup>30</sup> See <http://www.csreurope.org/whatwedo/default.asp?pageid=306>

<sup>31</sup> Observatory of the European SMEs, "European SMEs and Social environmental responsibility".

<sup>32</sup> Grant Thornton, "European Business Survey 2002".

## ANNEX II: WORLD-WIDE INITIATIVES ON CSR AND HUMAN RIGHTS (NON-EXHAUSTIVE)

*"We are not asking corporations to do something different from their normal business; we are asking them to do this normal business differently".<sup>33</sup>*

### The global eight

*"It is our goal to be better contributors to the betterment of society through our products and services and through the manner in which we provide them to the markets. Balancing the expectations of corporate responsibility is a challenge, but through this balancing process we hope and expect that we will enhance the public respect for our company".<sup>34</sup>*

Among CSR initiatives, eight of them are the most prominent:

#### 1. The ILO's Tripartite Declaration of Principles 1977<sup>35</sup>

The ILO adopted a Tripartite Declaration of Principles concerning TNCs and Social Policy in 1977. The Declaration was updated in 2000 in the light of the 1998 ILO Declaration of Fundamental Principles and Rights at Work. The Declaration's value lies both in its comprehensive content, which covers all aspects of social policy from industrial relations to training and employment, and in the fact that it is addressed to a wide range of key economic actors and workers' organisations.

#### 2. The Global Reporting Principles (GRI), 2000<sup>36</sup>

The Global Reporting Initiative (GRI) was established in late 1997 with the mission of developing globally applicable guidelines for reporting on the economic, environmental, and social performance, initially for corporations and eventually for any business, governmental, or non-governmental organisation. The GRI's goals are to:

- Elevate sustainability reporting practises world-wide to a level equivalent to financial reporting;
- Design, disseminate, and promote standardised reporting practises, core measurements, and customised sector-specific measurements;
- Ensure a permanent and effective institutional host to support such reporting practises world-wide.

#### 3. The Global Compact 2000 ("GC")<sup>37</sup>

*"Let us choose to unite the power of markets with the authority of universal ideals. Let us choose to reconcile the creative forces of private entrepreneurship with the needs of the disadvantaged and the requirements of future generations".<sup>38</sup>*

- A. The GC, an initiative to promote CSR - the GC was announced by the UN Secretary-General at the World Economic Forum in Davos in 1999 and formally launched in 2000 as one measure to respond to the challenges of globalisation. The GC is an initiative intended to promote CSR and citizenship in the new global marketplace. It brings companies together with UN organisations, international labour organisations, NGOs and other parties to foster partnerships and to build a more inclusive and equitable global marketplace. It aims, in the words of Kofi Annan, to contribute to the emergence of "shared values and principles, which give a human face to the global market".

<sup>33</sup> Kofi Annan, UN Secretary-General, on the role of corporations in environment.

<sup>34</sup> Tom Gottschalk, Executive Vice-President, Law & Public Policy and General Counsel, General Motors.

<sup>35</sup> See <http://www.ilo.org>

<sup>36</sup> See <http://www.globalreporting.org>

<sup>37</sup> See <http://www.unglobalcompact.org>

<sup>38</sup> Kofi Annan, UN Secretary-General.

The GC, a voluntary initiative - The 1200 companies engaged in the GC are diverse and represent different industries and geographic regions. The overall mission is to bring about a more stable and inclusive global economy. Corporate leaders participating in the GC agree that globalisation, which only a few years ago was seen by many as an inevitable and unstoppable economic trend, is in fact highly fragile and may have an uncertain future. Indeed, rising concerns about the effects of globalisation on the developing world – be they related to the concentration of economic power, income inequalities or societal disruption – suggest that, in its present form, globalisation is not sustainable. The GC was created to help organisations to redefine their strategies and courses of action so that all people can share the benefits of globalisation, not just a fortunate few.

The GC is not a regulatory instrument, a legally binding code of conduct or a forum for policing management policies and practices. Neither is it a “safe-harbour” allowing companies to sign-on without demonstrating real involvement and results. The GC is a voluntary initiative that seeks to provide a global framework to promote sustainable growth and good citizenship through committed and creative corporate leadership.

B. The GC's 10 Principles<sup>39</sup>

Companies that sign the UN Global Compact commit to support and advance the Global Compact's 10 Principles on human rights, labour, the environment and anti-corruption. These principles are based on internationally accepted principles to improve global society.

**Human rights**

- Business should support and respect the protection of internationally proclaimed Human Rights;
- Make sure they are not complicit in Human Rights abuses.

**Labour Standards**

- Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced and compulsory labour;
- The effective abolition of child labour.

**Environment**

- Eliminate discrimination in respect of employment and occupation;
- Business should support a precautionary approach to environmental challenges;
- Undertake initiatives to promote greater environmental responsibility;
- Encourage the development and diffusion of environmentally friendly technologies.

**Anti-corruption**

- Businesses should work against all forms of corruption, including extortion and bribery.

4. The OECD Guidelines for TNCs, 2000<sup>40</sup>

The OECD Guidelines are a set of recommendations addressed by governments to TNCs operating in or from adhering countries. Although non-binding, they are supported by OECD countries from which most TNCs originate. Their aim is to help TNCs operate in harmony with government policies and societal expectations. In keeping with the notion of CSR and to promote the contribution of business to social development and the promotion of basic workers' rights, the Guidelines provide voluntary principles for responsible business conduct in fields such as employment, industrial relations, Human

<sup>39</sup> The tenth principle on anti-corruption was included in June 2004

<sup>40</sup> See <http://www.oecd.org>

Rights, environment, competition, information disclosure and taxation, combating bribery, and consumer protection.

5. The ICC Guidebook on Responsible Business Conduct, February 2002<sup>41</sup>

The Group on Business in Society has developed the ICC Guidebook on Responsible Business Conduct. Its main purpose is to make practical suggestions to companies on how to approach CSR issues in order to help position individual company principles within the existing framework of generic business principles, government codes of conduct and new initiatives, as well as broader social values. The Guidebook's secondary purpose is to explain to those outside business how companies are addressing CSR issues. Reinforcing the positive role of business society through the encouragement of CSR and good corporate citizenship constitutes one of the ICC's strategic priorities.

6. UN Draft Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights<sup>42</sup>

The UN Draft Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (the Norms) are intended as assistance to companies in framing the human rights responsibilities for business. The Norms shall be seen as an attempt to assemble the plethora of international human rights instruments in a single legible document.

The UN Commission for Human Rights has asked the office of the UN High Commissioner for Human Rights to prepare a report for the session in April-May 2005 to outline the possibilities to strengthen human rights responsibilities for business. The Norms and other standards will feed into the work.

The Norms propose the first set of comprehensive international human rights standards applying *specifically* to business ("transnational corporations and other business enterprises"). The Norms, and the accompanying detailed interpretative Commentary, constitute an authoritative business related interpretation of the Universal Declaration of Human Rights of 1948 and subsequent human rights conventions.

The Norms contain both suggestions in relation to defining *duty holders*, the substance of corporate responsibilities and suggestions for the creation of a process to hold companies responsible for not meeting their responsibilities.

7. Social Accountability (SA) 8000<sup>43</sup>

The Council on Economic Priorities Accreditation Agency has established SA 8000, a standard for assessing labour conditions in global manufacturing operations. SA 8000 addresses issues including prison labour, wages, child labour, and health and safety and relies on certified monitors to verify factory compliance with the standard.

8. Global Sullivan Principles<sup>44</sup>

Aimed at promoting equal opportunity in South Africa and developed a set of Principles in 1999 to guide the global behaviour of TNCs on labour, ethics, and environmental practices.

9. UN Convention on Corruption

The UN Convention is the first legally binding global convention against corruption. In October 2004, 111 states had signed the Convention, which will enter into force when ratified by 30 states (at present 8 States have ratified the Convention). With the new Convention, the UN is in line with other international organizations, like the OECD, the EU and the European Council in the fight against corruption.

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<sup>41</sup> See <http://www.oecd.org>

<sup>42</sup> See <http://www.un.org>

<sup>43</sup> See <http://www.sa-intl.org>

<sup>44</sup> See <http://globalsullivanprinciples.org>

The Convention's key elements relate to prevention, criminalization, extra-territoriality international co-operation and asset recovery. The Convention breaks new ground regarding the prevention of corruption by requiring the establishment of anti-corruption bodies and by encouraging states to enhance transparency in the financing of election campaigns and political parties. It also calls for countries to actively promote the involvement of Non-Governmental Organisations (NGOs) and community-based groups, as well as other elements of civil society, to raise public awareness of corruption.

The Convention will affect not only the public sector, but also the private sector and all companies that do business in signatory countries. The national authorities shall cooperate with entities in the private sector to ensure the effective implementation of the Convention.

The Convention contains both mandatory and optional provisions. Companies operating internationally and wishing to incorporate internal safeguards against corruption will have to be aware of how the different governments have implemented the provisions of the Convention.

#### 10. International Criminal Court (ICC)

The International Criminal Court was established in July 2002. This is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The Chief Prosecutor from the newly established International Criminal Court (ICC) has announced that he intends to pursue individuals from multinational companies to court, when the prosecution can establish that companies participated in violations that form part of the remit of the ICC, i.e. gross human rights violations, crimes against humanity and genocide.

The issue is disputed as to whether corporate complicity in such crimes can lead to personal criminal liability for the company representatives, but it could be interpreted as possible with reference to Article 25 and Article 28 (b) of the Rome Statute of the ICC<sup>45</sup>. The Rome Statute also provides for reparations to victims under Article 75.

#### 11. Equator principles

A high profile initiative was launched in autumn 2002 named the "Equator Principles".<sup>46</sup> The participating financial institutions proclaim that "In adopting these principles, we seek to ensure that the projects we finance are developed in a manner that is socially responsible and reflect sound environmental management practices".

To date 28 major financial institutions has signed up to the principles ([ABN AMRO Bank, N.V.](#), [Banco Bradesco](#), [Banco Itaú](#), [Banco Itaú BBA](#), [Bank of America](#), [Barclays plc](#), [BBVA](#), [Calyon](#), [CIBC](#), [Citigroup](#), [Credit Suisse Group](#), [Dexia Group](#), [Dresdner Bank](#), [EKF](#), [HSBC Group](#), [HVB Group](#), [ING Group](#), [KBC](#), [MCC](#), [Mizuho Corporate Bank](#), [Rabobank Group](#), [Royal Bank of Canada](#), [Standard Chartered Bank](#), [The Royal Bank of Scotland](#), [Unibanco](#), [WestLB AG](#), [Westpac Banking Corporation](#))

The principles require that the participating institutions make impact assessments on projects to be financed.

The Equator Principles have a general reference to international laws and reflect in specific some human rights considerations such as:

- Protection of human health
- Use of dangerous substances
- Major hazards
- Occupational health and safety
- Fire prevention and life safety

<sup>45</sup> The statute can be accessed at the following website address: <http://www.un.org/law/icc/statute/rome.htm>

<sup>46</sup> [www.equator-principles.com](http://www.equator-principles.com)

- Land acquisition and land use
- Involuntary resettlement
- Impacts on indigenous peoples and communities

These principles are all contained under the general application of international law (human rights).

The trend is definitely that financial institutions, including the the major international institutions such as the International Monetary Fund, European Bank of Reconstruction and Development and the World Bank, are approaching Social Responsible Investments from an angle of mainstreaming – whether it relates to procurement or assessment of impact from projects to be financed.

#### 12. International Organization for Standardization (ISO)

The International Organization for Standardization (ISO) will develop an international standard for addressing the social responsibility of organisations worldwide. The objective is to produce "a guidance document, written in plain language which is understandable and usable by non-specialists" and not intended for use in certification.

#### 13. Alien Tort Claims Act<sup>47</sup>

The Alien Tort Claims Act (ATCA) has been used more frequently in recent times despite existing since 1789. The ACTA has been recently applied to corporate wrongdoings, allowing foreign victims of human rights abuses to sue perpetrators who are present in the United States. The ATCA also allows actions for violations of international norms that are "specific, universal, and obligatory." The ATCA can be used against both the actual perpetrators of the wrongs and the state actors who bear indirect responsibility. This would include superiors who order wrongful conduct, as well as those who have effective command and authority over the principle perpetrator. A growing number of cases have focused on the role of multinational companies in violations of international human rights laws. These cases generally argue that corporations should be held liable when they knowingly facilitate the commission of crimes that violate customary international norms.

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<sup>47</sup> See also page 8



## **ANNEX III: OTHER INITIATIVES WHICH PROMOTE CSR AND HUMAN RIGHTS (NON-EXHAUSTIVE)**

There are a number of other initiatives which promote CSR and Human Rights:

### 1. Principles for Global CSR

The Principles for Global CSR were developed by the US-based Interfaith Centre on CSR, the Canadian-based Ecumenical Council for CSR and the UK-based Taskforce on the Churches and CSR. These principles are based on international covenants regarding the rights of indigenous persons, employees and women.

### 2. Declaration of Principles on Human Rights and the Environment 1994

The Declaration was prepared by a group of experts on Human Rights and environmental protection convened by the UN. It was the first international instrument that addressed the linkage between Human Rights and the environment and demonstrates that accepted environmental and Human Rights principles embody the right of everyone to a secure, healthy and ecologically sound environment.

### 3. World Business Council for Sustainable Development<sup>48</sup>

The World Business Council for Sustainable Development is a coalition of 125 TNCs committed to the environment and to the principles of economic growth and sustainable development. It develops co-operation between business, government and other organisations concerned with the environment and sustainable development, encourages high standards of environmental management in business and business leadership, undertakes policy development to create a framework for business, shares best practice and has developed a global network.

### 4. International Business Leaders Forum (IBLF)<sup>49</sup>

The International Business Leaders Forum (IBLF) is an organisation that promotes international leadership in responsible business practices, to benefit business and society. It operates in over 60 countries and works with leaders in business, civil society and the public sector in transition economies in order to achieve social, economic and environmentally sustained development. The IBLF encourages continuous improvement in responsible business practices, develops geographic or issue-based partnerships, contributes to an enabling environment and provides the conditions for these partnerships to flourish.

### 5. Aarhus Convention - UN ECE<sup>50</sup>

The Aarhus Convention is a new kind of environmental agreement. It links environmental rights and Human Rights, and establishes that sustainable development can be achieved only through the involvement of all stakeholders. It focuses on interactions between the public and governmental authorities in a democratic context and it is forging a new process for public participation in the negotiation and implementation of international agreements.

### 6. Apparel Industry Partnership (AIP) 1996<sup>51</sup>

The Apparel Industry Partnership (AIP) was initiated in 1996 to take steps to protect workers worldwide and to give the public the information it needs to make informed purchasing decisions. AIP is comprised of apparel and footwear companies, a university, Human Rights groups, labour-religious

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<sup>48</sup> See <http://www.wbcsd.ch>

<sup>49</sup> See <http://www.iblf.org>

<sup>50</sup> See <http://europa.eu.int/comm/environment/aarhus/>

<sup>51</sup> See <http://ur.rutgers.edu/news/ACLA/flap9.html>

organisations and consumer advocates. AIP released a historic agreement establishing a workplace Code of Conduct and Principles of Monitoring.

7. Voluntary principles on security and Human Rights 2000<sup>52</sup>

Some governments, companies in the extractive and energy sectors (BP, Shell, Chevron, Texaco, Conoco, Freeport, McMoran, Rio Tinto), and NGOs (Human Rights Watch, Amnesty International, International Alert, Lawyers Committee for Human Rights) have developed a set of Voluntary Principles to guide companies in maintaining the safety and security of their operations within an operation framework that ensures respect for Human Rights and fundamental freedoms. These Principles are designed to provide practical guidance that will strengthen Human Rights safeguards in company security arrangements in the extractive sector. They address three areas: engagement with private security, engagement with public security, risk assessment supporting security arrangements consistent with Human Rights.

8. Institute of Social and Ethical Accountability (ISEA)<sup>53</sup>

The Institute of Social and Ethical Accountability (ISEA) combines the terms “social” and “ethical” to refer to “the systems and individual behaviour with an organisation and to the impact of an organisation’s activity on stakeholders”. Its new international standard, AccountAbility 1000, has at its core the importance of stakeholder engagement in the social and ethical accounting process.

9. New Partnership for Africa’s Development (NEPAD)<sup>54</sup>

The New Partnership for Africa’s Development (NEPAD) was established in 2001 in Nigeria and is comprised of 15 African countries. The organisation is modelled after the Marshall Plan, a programme of development that successfully re-built Europe after World War II. NEPAD hopes to ensure political and economic stability in return for increased foreign investment, as well as better access to trade and debt relief.

10. International Alert<sup>55</sup>

International Alert is an NGO committed to the peaceful transformation of violent conflict. Its Business and Conflict programme is designed to address the twin problems of the corporate sectors potential for negative impact on conflict and the insufficient understanding amongst governments, multi-lateral institutions, NGOs and the corporations themselves of the role business can play in addressing the structural causes of conflict.

11. Other organisations

In the last years, Human Rights organisations (Amnesty International, Human Rights Watch, Lawyers’ Committee on Human Rights), labour organisations (International Confederation of Free Trade Unions), corporate accountability organisations (Global Exchange, Clean Clothes Campaign, Global Witness), anticorruption organisations (Transparency International), religious, shareholder, student and environmental organisations have committed greater resources and attention to corporate action on Human Rights. In April 2004, the Business Leaders Initiative on Human Rights (BLIHR) has produced its first report which looks at building understanding about human rights issues for business. This first report signals the beginning of a three- year initiative by a group of international businesses.

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<sup>52</sup> See <http://www.state.gov/g/drl/rls/2931.htm>

<sup>53</sup> See <http://www.accountability.org.uk/>

<sup>54</sup> See <http://www.nepad.org/>

<sup>55</sup> See <http://www.international-alert.org/>

## ANNEXE IV: WHERE CAN I FIND MORE INFORMATION - WEBSITES OF INTEREST

There is an abundance of information available on CSR. The CCBE would suggest that as a starting point lawyers could consult the following documents and websites:

<http://www.csreurope.org> – CSR Europe is a business-driven membership network. Its mission is to help companies achieve profitability sustainable growth and human progress by placing corporate social responsibility in the mainstream of business practice.

<http://www.csrwire.com> - CSRwire seeks to promote the growth of corporate responsibility and sustainability through solutions-based information and positive examples of corporate practices.

<http://www.bsr.org> - Business for Social Responsibility (BSR) is a global organisation that helps member companies achieve success in ways that respect ethical values, people, communities and the environment.

<http://www.business-humanrights.org> - Business & Human Rights Resource Centre is a charity promoting greater awareness and informed discussion of important policy issues.

<http://www.unglobalcompact.org> - the Global Compact seeks to advance responsible corporate citizenship so that business can be part of the solution to the challenges of globalisation.

<http://www.ilo.org> – This is the website of the International Labour Organisation.

<http://www.hrw.org> - Human Rights Watch is dedicated to protecting the human rights of people around the world.

<http://www.goodmoney.com> – This website provides information on Social, Ethical and Environmental Investing and Consuming & Corporate Accountability.

<http://www.inform.umd.edu/crge/resources/interest.htm> – This is an association of academic units and individual faculty on the University of Maryland Campus whose mission is to promote, advance, and conduct, research, scholarship, and faculty development that examines the intersections of race, gender, and ethnicity with other dimensions of difference.

<http://eumc.eu.int> - The primary task of the European Monitoring Centre on Racism and Xenophobia (EUMC) is to provide the Community and its Member States with objective, reliable and comparable information and data on racism, xenophobia, islamophobia and anti-Semitism at the European level in order to help the EU and its Member States to establish measures or formulate courses actions against racism and xenophobia.

<http://www.socialinvest.org> - The Social Investment Forum site offers information, contacts and resources on socially responsible investing.

<http://www.idealswork.com> - This website is committed to make socially and environmentally responsible behaviour essential to the success of any business.

<http://www.ethicalcorp.com> - Ethical Corporation's mission is to provide balanced, informed, unbiased, useful original content on the issues in and around corporate social, environmental and financial responsibility through publishing and learning events.

<http://www.bitc.org.uk> - Business in the Community is a unique movement of 700 member companies committed to continually improving their positive impact on society.

<http://www.csrcampaign.org> - The European Business Campaign on Corporate Social Responsibility has set itself the goal of mobilising 500,000 business people and partners to integrate CSR into their core business by 2005.

<http://www.international-alert.org> - International Alert is an NGO committed to the peaceful transformation of violent conflict.