



Corporate social responsibility and informal law

How multi-national corporations are defining their own standards of conduct

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Abstract

Purpose – Aims to review the latest management developments across the globe and pinpoints practical implications from cutting-edge research and case studies.

Design/methodology/approach – This briefing is prepared by an independent writer who adds their own impartial comments and places the articles in context.

Findings – Multi-national corporations have often been stereotyped in the popular media and entertainment industries because of their perceived indifference to, and abuse of, basic human rights and corruption. However, as Karin Buhmann points out in her article, “Corporate social responsibility: what role for law? Some aspects of law and CSR”, the reality is much different. Buhmann examines the motivations and driving forces behind corporate social responsibility (CSR), articulating in the process how corporations are held to internal and external standards of practice where the law does not necessarily regulate their behavior.

Practical implications – Provides strategic insights and practical thinking that have influenced some of the world’s leading organizations.

Originality/value – The briefing saves busy executives and researchers hours of reading time by selecting only the very best, most pertinent information and presenting it in a condensed and easy-to-digest format.

Keywords Corporate social responsibility, International organizations, Corporate governance, International law

Paper type Viewpoint

Multi-national corporations have often been stereotyped in the popular media and entertainment industries because of their perceived indifference to, and abuse of, basic human rights and corruption. However, as Karin Buhmann points out in her article, “Corporate social responsibility: what role for law? Some aspects of law and CSR”, the reality is much different. Buhmann examines the motivations and driving forces behind corporate social responsibility (CSR), articulating in the process how corporations are held to internal and external standards of practice where the law does not necessarily regulate their behavior.

CSR is becoming an increasingly important factor in international corporate growth, and there are many and varied reasons behind this. CSR can take different forms according to the regional, political and socio-economic conditions in which the corporation is attempting to operate. And although domestic and international laws do influence a corporation’s conduct, CSR is generally defined as “doing more than what is required by law.” In other words, CSR does not lie within the remit of a company’s legal obligations.

Importance of CSR

CSR is of relevance to a broader section of people than just stakeholders. It has political significance for governments of poorer and developing countries. Corporate conduct which is informed by CSR can, for example, contribute to the integration of foreign workers, to general education and training, employees’ retirement conditions and health



benefits. CSR can also help governments address social and economic development needs in developing countries; it can help fight corruption and contribute to the implementation of human rights. Under these criteria, CSR can contribute in a major way to the welfare of their employees, and set examples for competing employers.

However, as stated above, CSR is not directly addressed, or even required, by law. Instead, it is informed by certain standards, or “norms”, of corporate conduct, which are rather informed than dictated by law. Despite this, the last decade has seen a huge improvement on a global scale regarding the social conscience of corporations. The reasons for this include a proliferation of media and NGO exposés on violations of corporate behavior in regards to human rights, environmental principles and labor laws. These exposés have resulted in increased expectations from stakeholders and consumer groups; combined with guidelines provided by the law, corporations have taken great strides towards improving their image and their social contribution throughout the world.

Informal law

As Buhmann states, the responsibility for the implementation of behavioral conventions of companies resides with individual states, in accordance with their own modalities and legal requirements. However, conventions (or guidelines to dictate CSR conduct) have been drafted through agreements between collections of state governments, and organizations of employers and employees. In addition to this collective approach to corporate governance, governments are beginning to introduce legislation that requires companies to report of CSR issues. For example, the EU Commission has publicized documents encouraging CSR action, to be dictated by standards authored by the ILO and OECD.

Such literature and guidelines can best be described as “informal law”. Informal law is “a set of normative ideas and patterns of behavior and action that are not based on a sharp distinction between law and morals, or between law and fact.” As such, informal law is not enforceable, and is not dictated by a central state or national authority; instead, its sanctions consist of a more moral or practical character. Informal law can become so entrenched in the conduct and expectations of companies that they can later obtain the status of formal, or actual, law. CSR, at present, is dictated largely by such informal law, a self-regulating form of governance and social conduct which can be reached through collective agreements or international guidelines.

Reasons and motivations behind CSR

Increasingly in the commercial world, internal values such as decency in operation are becoming as important as external expectations. They can be defined and fuelled by external socio- or geo-political events. Buhmann cites the example of Danish companies who are recruiting employees that might otherwise find it difficult to get employment; this includes the recruitment of, for example, immigrants, refugees and disabled people. Such operations help the company to achieve a profile of decency within communities, and can have the advantage of attracting goodwill from governments in their efforts to integrate migrant workers or refugees who would otherwise have to be supported out of public funds.

A number of reasons combine to explain why companies and corporations are beginning to place greater emphasis on CSR. Stakeholder expectations, for example, are setting standards, or norms, for corporate conduct: as these norms begin to inform and shape companies’ CSR, so their actions begin inspire further stakeholder investment. External influences include international law, which is beginning to catch up to the regulation of CSR issues, particularly in developing countries with regard to

human rights and labor laws. In all cases, however, companies wish to avoid any potential accusations of acting with impropriety or social irresponsibility, particularly in states with poor human rights records.

Governance

As corporations continue to regulate themselves in CSR issues, international human rights law attempts to catch up. Guidelines such as the draft of Norms on Responsibilities of Transactional Corporations and Other Business Enterprises with Regard to Human Rights (Commission of Human Rights, 2003), and UN documentation provide corporations with standards of best and expected practice. Such legislative initiatives in the international arena are being accepted by various actors as CSR legislation.

The European Commission has also drafted CSR guidelines and legislation. Between 2001 and 2002, Belgium, Germany, the UK and Sweden all passed legislation demanding pension institutions to report how social, ethical and environmental issues are addressed in investment portfolios. In addition, the Danish Act on Annual Accounts was amended in 2001, introducing a requirement that certain types of companies report on their own understanding of the impact of their activities on the external environments in which they operate, and on any measures to prevent or minimize environmental damage. Finally, the UN is taking initiatives which may lead to more binding regulation through international law, with "formally legally binding effect for corporations". This is to be achieved through partnerships between member states, the private sector and civil organizations, with the aim of development and the eradication of poverty.

As yet, breach of CSR issues is not punishable under the law, as corporations are not held to any legal obligations. EU and UN declarations are being produced, but as Buhmann succinctly points out, "In international law, declarations are not legally binding, but may be seen as morally and politically guiding." Instead, companies are regulated by their own desire to appeal to stakeholders, who ultimately hold them to account in the only way they can: potential investment. Any negative judgments on the actions of corporations may have a negative impact in terms of loss of image, market share and stakeholder investment. In the end, this leads corporations to regulate themselves on the international stage, creating in the process a basis of informal law by which they continue to operate.

Comment

This review is of "Corporate social responsibility: what role for law? Some aspects of law and CSR," by Buhmann (2006) (Department of Social Sciences, Roskilde University, Denmark). It is an extensive examination of the relationship between CSR and the law, describing how the law applies at present, and those initiatives which are being taken by international governing bodies to regulate CSR issues. It is a dense and scholarly essay, written for a largely academic audience but accessible for wider reading.

Reference

Buhmann, K. (2006), "Corporate social responsibility: what role for law? Some aspects of law and CSR", *Corporate Governance*, Vol. 6 No. 2, pp. 188-202, ISSN 1472-0701.

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