

**Legally Mandatory Corporate Social Responsibility:
Rationale and Implications with Specific Reference to South Africa**

By Hemlata Hunma (HNMHEM001)

Thesis in partial fulfillment of the Degree of

LLM

Faculty of Law

University of Cape Town

Date of submission: 16 September 2013

Supervisor: Jacqueline Yeats

Department: Commercial Law

Word Count: 17723 (text only, including footnotes)

Research dissertation presented for the approval of Senate in fulfillment of part of the requirements for the LLM in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of LLM dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Signature:

Date:

The copyright of this thesis vests in the author. No quotation from it or information derived from it is to be published without full acknowledgement of the source. The thesis is to be used for private study or non-commercial research purposes only.

Published by the University of Cape Town (UCT) in terms of the non-exclusive license granted to UCT by the author.

Plagiarism declaration form

1. I know that plagiarism is wrong. Plagiarism is to use another's work and pretend that it is one's own.
2. I have used the footnote convention for citation and referencing. Each contribution to, and quotation in, this dissertation from the work(s) of other people has been attributed, and has been cited and referenced.
3. This dissertation is my own work.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.
5. I acknowledge that copying someone else's assignment or essay, or part of it, is wrong, and declare that this is my own work.

Signature:

Date:

University of Cape Town

TABLE OF CONTENTS

PLAGIARISM DECLARATION FORM	2
CHAPTER 1: INTRODUCTION	5
1.1 BACKGROUND.....	5
1.2 NEED FOR STUDY	8
1.3 AIMS OF STUDY	8
1.4 RESEARCH DESIGN	9
1.5 THESIS OUTLINE	10
CHAPTER 2: CSR DEFINITIONS, PRINCIPLES AND FRAMEWORKS	11
2.1 THE DEVELOPMENT OF THE CONCEPT OF CSR	11
2.2 FRAMEWORKS	14
2.3 CORPORATE PHILANTHROPY AND THE DUTY TO DO GOOD.....	21
2.4 PRINCIPLES OF CSR.....	23
<i>Compliance with regulations</i>	23
<i>Ethics of corporate governance</i>	24
<i>Triple Bottom Line</i>	24
<i>Corporate citizenship</i>	25
<i>Sustainable development – innovation, fairness and collaboration</i>	25
<i>Social transformation</i>	26
<i>Enlightened Shareholder approach</i>	26
<i>Inclusive stakeholder approach</i>	27
2.5 RESEARCH ON MANDATORY CSR	27
CHAPTER 3: THE RATIONALE BEHIND MANDATORY CSR	29
3.1 LEGISLATIVE PROVISIONS ON MANDATORY CSR	29
3.1.1 Indonesia	29
3.1.2 Mauritius	32
3.1.3 India	35
3.2 POSSIBLE RATIONALE BEHIND MANDATORY CSR	38
3.2.1 Economic rationale	39
3.2.2 Ethics-based rationale	41
3.3. RATIONALE WITH SPECIFIC REFERENCE TO THE THREE CASE STUDIES	44
CHAPTER 4: A CASE FOR MANDATORY CSR IN SOUTH AFRICA	46
4.1 THE CSR FRAMEWORK IN SOUTH AFRICA	46
4.2 CONCERNS RELATING TO CSR IMPLEMENTATION IN SOUTH AFRICA	48
4.3 CONCLUSION	50
CHAPTER 5: IMPLICATIONS OF MAKING CSR MANDATORY IN SOUTH AFRICA	52
5.1 CONCEPTUAL IMPLICATIONS	52
5.2 IMPLICATIONS RELATING TO THE ECONOMIC RATIONALE FOR CSR	55
5.3 IMPLICATIONS RELATING TO THE ETHICS-BASED RATIONALE FOR CSR	55
5.4 IMPLICATIONS AT THE LEGISLATIVE LEVEL.....	58
5.5 IMPLICATIONS FOR SOUTH AFRICA.....	60
5.6 CONCLUSION	62
CHAPTER 6: CONCLUSION	64
6.1 RECOMMENDATIONS FOR FURTHER RESEARCH.....	65
BIBLIOGRAPHY	67

CHAPTER 1: INTRODUCTION

1.1 BACKGROUND

Over the last fifty years, there has been a significant shift in what is expected from companies in terms of their contribution to society. This contribution, which would have once been incidental to the *raison d'être* of the company, is now perceived as a 'responsibility' – a responsibility that has been defined across a wide spectrum ranging from accountability to obligation.¹

One end of the corporate social responsibility (hereinafter, 'CSR') spectrum is manifested in conduct that takes due account of the interests of the shareholders of the company. As such, the first responsibility of companies is to be profitable. In terms of Milton Friedman's agency theory, this is the only obligation owed by companies,

There is one and only one social responsibility of business - to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game.²

Consequently, Friedman equates CSR activities that would use the shareholder's capital for purposes other than the maximisation of profits, and therefore, of shareholder wealth, to 'approaching fraud.'³

The social responsibilities of companies are, however, expanded further under Freeman's stakeholder theory,⁴ which posits that companies ought to act fairly with due regard for a wider range of stakeholders who hold interests in, or are otherwise impacted by, the conduct of the company. This would include, but not be limited to, shareholders.

¹ M S Schwartz and A B Carroll 'Corporate Social Responsibility: A Three-Domain Approach' (2003) 13:4 *Business Ethics Quarterly* at page 504.

² M Friedman 'The Social Responsibility of Business is to Increase its Profits,' *The New York Times Magazine*, September 13, 1970 at page 6.

³ *Ibid* at page 5.

⁴ R E Freeman 'The Politics of Stakeholder Theory: Some Future Directions,' *Business Ethics Quarterly* 4:4 (1994), pp 409-421.

These other stakeholders include the company's employees, customers, suppliers, and its natural environment.

The idea of the company's accountability towards its various stakeholders is otherwise termed as the 'triple bottom line' approach, wherein a company is under a responsibility to tailor the focus of its policies and conduct towards three 'bottom lines': people, planet and profit.⁵ This duty, like the primary duty of a company to be profitable, is negative in nature. Companies are essentially deemed to be under an obligation to not frustrate, through their conduct, the interests of its stakeholders. This obligation would be met, for instance, through fair labour practices and environmentally-sound activities. This approach essentially imposes a negative duty on companies – the goal is to avoid doing harm to people, planet and profit. At the other end of the CSR continuum, lies what may be termed as a responsibility to engage in corporate philanthropy, which is a positive duty of company to use its resources to actively promote the welfare of society. This obligation is based on the notion of corporate citizenship, which applies principles of active citizenship and civic duties to companies.

The corporate governance policies of different countries are located at different points along this conceptual spectrum, based on a number of socio-political and economic factors. Generally, however, as far as the philanthropic manifestation of CSR is concerned, the understanding is that it is voluntary. Companies choose to engage in philanthropic CSR based on economic and ethical motivations. There is an economic rationale for companies to engage in CSR, based on the idea that socially responsible companies are more likely to succeed in the long term because of the positive image and goodwill that is generated in the process. CSR in these cases is an essential component of the companies' brand differentiation strategy. In addition to this, companies may wish to practise philanthropy for ethical reasons, because they feel duty-bound to use some of their resources for the betterment of society.

⁵ J Elkington 'Partnerships from Cannibals with Forks: The Triple Bottom line of 21st Century Business,' (2007) 8:1 *Environmental Quality Management*.

Thus, in most countries, philanthropic CSR exists as recommended practice – an extension of individual charity and good conduct. This is in line with the inherent nature of philanthropy and the flexible approach to compliance that most corporate governance guidelines encourage. Also, as one advances along the afore-mentioned CSR spectrum, the issue of regulating CSR becomes increasingly complex. It is relatively easy to ensure that the directors of a company use the shareholders' capital in a manner that is in the best interests of the company, inter alia through rules on financial disclosure, internal and external auditing. Similarly, laws regulating a company's relations with its other stakeholders may be enacted, for example, in the fields of labour law, consumer protection law and environmental law. When it comes to the philanthropic dimension of CSR, however, it may be less feasible to impose mandatory requirements, because active citizenship, in order to bring about sustainable social change, needs to emerge from a sense of genuine commitment to social issues.⁶ The question begs itself: can/ should such commitment be imposed?

In at least two jurisdictions, Mauritius and Indonesia, there are laws that require companies to allocate a percentage of their profits to philanthropic projects.⁷ Meanwhile, in other developing countries, such as South Africa, where corporate philanthropy is entirely voluntary, there are concerns that companies are not committed enough to community development through CSR projects.⁸ Motivated by similar concerns, India recently introduced a Bill which, if enacted into law, would also make CSR mandatory for companies to contribute towards CSR projects.⁹ It is against the backdrop of this emerging trend that this study is pitched.

⁶ B Crick 'A Note On What Is And What Is Not Active Citizenship' (2002). Available: http://archive.excellencegateway.org.uk/media/post16/files/033_BernardCrick_WHAT_IS_CITIZENSHIP.pdf

⁷ Income Tax Act of 1995 (Mauritius); Limited Liability Company Law Number 40 of 2007 (Indonesia).

⁸ D Fig 'Manufacturing amnesia: Corporate Social Responsibility in South Africa' (2005) 81:3 *International Affairs* at pp 604-5.

⁹ The Companies Bill, 2012, Bill No. 121-C of 2011.

1.2 NEED FOR STUDY

There is a need to study the possible implications of laws that make CSR spending mandatory. Making CSR mandatory gives rise to issues, both at the conceptual and practical levels. This study examines these issues, in an attempt to evaluate both the soundness and the effectiveness of laws that make CSR mandatory. Understanding the implications of such legislation may be informative for countries where CSR spending is not required by law, such as South Africa. More broadly, then, an evaluation of such legislation would be instrumental to investigating whether, assuming that companies do need to contribute more to society, laws mandating CSR are a viable solution.

Given the needs of developing countries, the idea of the public and private sector partnering towards the alleviation of social problems, may seem appealing. If nothing else, such a partnership would reduce the burden on the resources of the state. However, it would be too simplistic to stop at this level of analysis, as CSR is not likely to address the concerns of developing countries in a sustainable manner. There is a need for a deeper evaluation of the issue. An important dimension of such an evaluation is an understanding of the company's perspective. Laws set rules, but the motivations with which those rules are followed, if at all, will invariably differ, and this will have an impact on the effectiveness of the application of the laws relating to CSR.

1.3 AIMS OF STUDY

The aim of the study is to investigate whether or not mandatory CSR offers an appropriate solution for dealing with social issues in South Africa. As such the key research questions of this study are as follows:

1. How does the concept of mandatory CSR relate to traditional views on the role of the company and to corporate governance principles?

2. What do existing legislations of three developing countries, Indonesia, Mauritius and India on mandatory CSR reveal about the rationale behind making CSR mandatory for companies?
3. What may be the rationale behind shifting from voluntary compliance CSR approach to mandatory CSR for South Africa?
4. What are the possible implications of making CSR mandatory for companies in South Africa?
 - a. If mandatory CSR is a disguised form of taxation, what light can theories on taxation and tax avoidance/evasion behaviour shed on the possible implications of mandatory CSR?
 - b. How much social responsibility can companies reasonably be expected to shoulder? Can this be reconciled with the notion of mandatory CSR? What could placing a more onerous responsibility on companies mean for the various stakeholders involved?

1.4 RESEARCH DESIGN

The study involves the critical review of documents (legislative provisions, codes of corporate governance and academic articles) from three countries namely, Indonesia, Mauritius and India, in order to investigate whether mandatory CSR would be an appropriate measure to address social concerns in South Africa.

Sample of study: For the purpose of this study, the three developing countries, Indonesia, Mauritius and India were selected because they are among the very few countries which have introduced laws that make CSR mandatory. An attempt is made to analyse documents of these countries to identify and suggest measures for South Africa.

1.5 THESIS OUTLINE

Chapter 2 reviews relevant literature and introduces the core CSR principles, in light of different theoretical and normative perspectives on CSR and philanthropy, and codes of corporate governance in different jurisdictions.

Chapter 3 describes the legislative frameworks within which Indonesia, Mauritius and India impose mandatory CSR, and based on these legal provisions and other studies on CSR in general, it discusses the rationale behind making CSR mandatory for companies.

Chapter 4 reflects on the specific circumstances and needs of South Africa as a developing country, and discusses whether mandatory CSR may be applied to South Africa as a way of addressing its concerns. This discussion is further developed by a consideration of the extent to which companies may reasonably be expected to partake in CSR activities, through the prism of different theoretical perspectives on the purpose of a company, as well as broader sociological theories.

Chapter 5 investigates the possible implications of laws that make CSR mandatory for South Africa.

Chapter 6 concludes the discussion and suggests directions for further research.

CHAPTER 2: CSR DEFINITIONS, PRINCIPLES AND FRAMEWORKS

The first part of this chapter offers a background into CSR, exploring how the concept has evolved over time, and the different ways in which it may be manifested. It then presents some frameworks that have been proposed to conceptualise CSR more comprehensively, before narrowing down to the preferred heuristic, Schwartz and Carroll's intersecting circles of ethical, legal and economic dimensions, and applying it to corporate philanthropy. The form of CSR which constitutes the focus of this study, philanthropic CSR, is then delved into, and in an attempt to understand the underlying spirit behind this practice, the chapter briefly explores its philanthropic roots.

In subsequent chapters, this theoretical backdrop will inform the discussion around the rationale behind mandatory CSR and the main research question, which is whether making CSR mandatory could be a sound and/or feasible solution to address the CSR-related concerns of South Africa.

2.1 THE DEVELOPMENT OF THE CONCEPT OF CSR

CSR was practised long before the term was coined. Carroll's comprehensive outline of the development of the concept traces the emergence of CSR theories, back to the early 1950s, in the writings of Bowen, whom Carroll designates as 'the father of CSR.'¹⁰ Bowen wrote of the 'businessman's social responsibilities' which entailed taking business decisions that were in line with societal values and expectations.¹¹ The justification for placing such responsibilities on companies was the idea of 'social consciousness,' an awareness of the significant impact that a company's decisions have on the lives of citizens. A few years later, in 1960, in the writings of Davis, the notion of a

¹⁰ A B Carroll 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) 38: 268 *Business Society* at page 270.

¹¹ Ibid.

balance between social responsibilities and social power emerged. The idea, as summarised by Carroll was that

the social responsibilities of businessmen need to be commensurate with their social power... [and] the avoidance of social responsibility leads to gradual erosion of social power.¹²

Both Davis and Bowen founded the responsibility on the extent of the influence that companies' conduct had on society. Their conceptualisation of CSR was essentially derived from the powerful role of companies in society. As Davis wrote, in a subsequent paper (1967),

The substance of social responsibility arises from concern for the ethical consequences of one's acts as they might affect the interests of others.¹³

Frederick (1960), to some extent, reversed this justification, by considering the fact that in order to exist, companies required resources from society, both economic and human. Therefore, on this basis, companies were expected to act responsibly towards society and also to promote the welfare of society, as a way of 'giving back to society.' As he put it,

the economy's means of production should be employed in such a way that production and distribution should enhance total socio-economic welfare.¹⁴

In Frederick's writings, one can perceive the beginnings of the concept of corporate citizenship, the idea that companies are under a responsibility to not just consider the interests and expectations of society, but 'a willingness to see that [its] resources are used for broad social ends.'¹⁵ The allusion to the idea of citizenship was even more prominent in the way McGuire (1963) conceptualised CSR,

the corporation must take an interest in politics, in the welfare of the community, in education, in the "happiness" of its employees, and, in fact, in the whole social world about it. Therefore, business must act "justly," as a proper citizen should.¹⁶

¹² Ibid at page 271.

¹³ Ibid at page 272.

¹⁴ Ibid at page 271.

¹⁵ Ibid.

¹⁶ Ibid at page 272.

This indicates a clear attempt to extend the notions of citizenship from the individual to the corporation.

The 1970s saw the emergence of models of CSR that acknowledged its multi-dimensional nature. Johnson (1971) outlined four approaches to CSR that differed in the extent to which importance was given to the interests of society and other stakeholders, over the shareholders' interests and the goal of profit maximisation.¹⁷ In the same year, the Centre for Economic Development, basing its justification of CSR, like Bowen and Davis did, on society's expectations from companies, provided a three-tiered definition of CSR, represented as three concentric circles,

The inner circle includes the clear-cut basic responsibilities for the efficient execution of the economic function—products, jobs and economic growth.

The intermediate circle encompasses responsibility to exercise this economic function with a sensitive awareness of changing social values and priorities: for example, with respect to environmental conservation; hiring and relations with employees; and more rigorous expectations of customers for information, fair treatment, and protection from injury.

The outer circle outlines newly emerging and still amorphous responsibilities that business should assume to become more broadly involved in actively improving the social environment. (For example, poverty and urban blight).¹⁸

For the purposes of this study, the responsibilities to be found in the 'outer circle' are of particular interest. These would be fall under what Sethi (1975) termed as companies' 'social responsiveness.'¹⁹ He distinguished this from companies' social obligation which entails abiding by market forces and laws, and companies' social responsibility which is the aligning of corporate behavior with society's values and expectations. Social responsiveness, on the other hand, is 'the adaptation of corporate behavior to society's needs.'²⁰

¹⁷ Ibid at page 273.

¹⁸ Ibid at page 275.

¹⁹ Ibid at page 279.

²⁰ Ibid.

In the 1980s, Carroll notes, more empirical research on CSR was conducted, on, inter alia, the profitability of socially responsible companies.²¹ It was also during this time that alternative themes began to emerge, such as ‘corporate social performance’, ‘stakeholder theory’ and ‘business ethics theory’, continuing to evolve into different ‘thematic frameworks’ through the 1990s.²² What is of significance here is that some companies began to see their responsibility as extending beyond profit-maximisation and began to consider society as an important stakeholder in their business. This can be seen Epstein’s (1987) definition of CSR as

relat[ing] primarily to achieving outcomes ... which (by some normative standard) have beneficial rather than adverse effects on pertinent corporate stakeholders. The normative correctness of the products of corporate action has been the main focus of corporate social responsibility.²³

Here, as Carroll observes, social responsibility, responsiveness and business ethics begin to intersect in CSR, and subsequently, corporate citizenship also became integrated in the concept of CSR.

2.2 FRAMEWORKS

As described previously, CSR can be manifested in different forms such as compliance with laws, concern for the 3Ps (people, planet, profit) as per the triple bottom line approach, and corporate philanthropy that consists of companies investing in improving the social and natural environments.

In order to classify the different forms of CSR, Carroll proposed in 1991 a multi-dimensional model, represented by a pyramid and consisting of the economic, legal, ethical and philanthropic dimensions.²⁴ The four responsibilities, each morally infused, are seen as existing in a cumulative fashion and all add up to constitute the concept of corporate social responsibility.

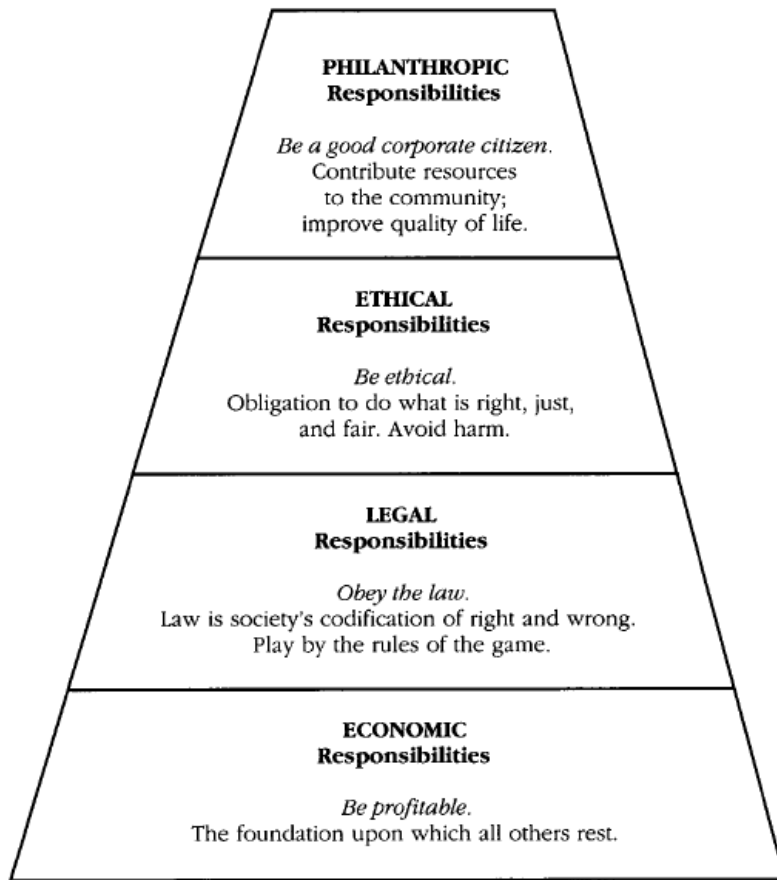
²¹ Ibid at page 286.

²² Ibid at page 288.

²³ Ibid.

²⁴ A B Carroll ‘The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders’ (1991) *Business Horizons* (July –August 1991).

The Pyramid of Corporate Social Responsibility



Source: Archie B. Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) *Business Horizons* (July – August 1991) at page 42.

It is noteworthy that the economic responsibility – that of being profitable – is also included as a social responsibility of companies. Carroll's reason for this, was that

All other business responsibilities are predicated upon the economic responsibility of the firm, because without it the others become moot considerations.²⁵

The next level represents the legal component of CSR, which is the responsibility to comply with laws, which Carroll explains should 'appropriately [be] seen as coexisting

²⁵ Ibid at page 41.

with economic responsibilities as fundamental precepts of the free enterprise system.²⁶ In other words, just as a company's responsibility to be profitable is connected with its *raison d'être*, so too must it follow the ground rules set out in laws in order to be able to operate as a company. Carroll compares these two components in a table, as may be seen below:

Economic and Legal Components of Corporate Social Responsibility

Economic Components (Responsibilities)	Legal Components (Responsibilities)
1. It is important to perform in a manner consistent with maximizing earnings per share.	1. It is important to perform in a manner consistent with expectations of government and law.
2. It is important to be committed to being as profitable as possible.	2. It is important to comply with various federal, state, and local regulations.
3. It is important to maintain a strong competitive position.	3. It is important to be a law-abiding corporate citizen.
4. It is important to maintain a high level of operating efficiency.	4. It is important that a successful firm be defined as one that fulfills its legal obligations.
5. It is important that a successful firm be defined as one that is consistently profitable.	5. It is important to provide goods and services that at least meet minimal legal requirements.

Source: Archie B. Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) *Business Horizons* (July – August 1991) at page 40.

The next two levels of the pyramid, composed of the ethical and philanthropic responsibilities of companies, are similarly described by Carroll thus:

²⁶ Ibid.

Ethical and Philanthropic Components of Corporate Social Responsibility

Ethical Components (Responsibilities)	Philanthropic Components (Responsibilities)
1. It is important to perform in a manner consistent with expectations of societal mores and ethical norms.	1. It is important to perform in a manner consistent with the philanthropic and charitable expectations of society.
2. It is important to recognize and respect new or evolving ethical/moral norms adopted by society.	2. It is important to assist the fine and performing arts.
3. It is important to prevent ethical norms from being compromised in order to achieve corporate goals.	3. It is important that managers and employees participate in voluntary and charitable activities within their local communities.
4. It is important that good corporate citizenship be defined as doing what is expected morally or ethically.	4. It is important to provide assistance to private and public educational institutions.
5. It is important to recognize that corporate integrity and ethical behavior go beyond mere compliance with laws and regulations.	5. It is important to assist voluntarily those projects that enhance a community's "quality of life."

Source: Archie B. Carroll, 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) *Business Horizons* (July – August 1991) at page 41.

It is noteworthy that the area of philanthropic responsibilities, which the present study focuses on, is described as voluntary and discretionary in nature. In fact, an important distinction that Carroll makes between ethical and philanthropic responsibilities is that while the former are 'expected' from companies, philanthropic responsibilities are only 'desired,'

The distinguishing feature between philanthropic and ethical responsibilities is that the former are not expected in an ethical or moral sense. Communities desire firms to contribute their money, facilities, and employee time to humanitarian programs

or purposes, but they do not regard the firms as unethical if they do not provide the desired level.²⁷

As Carroll recognizes, there are tensions between the different components, in that, on the one hand, companies have a responsibility to be profitable for the benefit of their shareholders, and on the other hand, being philanthropic may reduce the companies' short-term profitability. However, he explains,

A CSR or stakeholder perspective would recognize these tensions as organizational realities, but focus on the total pyramid as a unified whole and how the firm might engage in decisions, actions, and programs that simultaneously fulfill all its component parts.²⁸

In 2003, Schwartz and Carroll re-visited the pyramid heuristic and suggested a new framework for understanding CSR captured in their Venn diagram model. As Carroll and Schwartz explain, 'the pyramid framework suggests a hierarchy of CSR domains.'²⁹ This would be a misinterpretation as Carroll intended the different manifestations of CSR to co-exist and add up to simultaneously define what CSR entails. Second, a disadvantage of the pyramid framework, recognized by Carroll and Schwartz, was that it presented the different components of CSR as discrete, when in fact, these different motivations underlying CSR often overlap.³⁰

The new Venn diagram heuristic therefore conceptualizes the different responsibilities as non-hierarchical and provided for the possibility of overlaps in the three motivations underlying CSR, namely economic, legal and ethical - as seen in the diagram below.

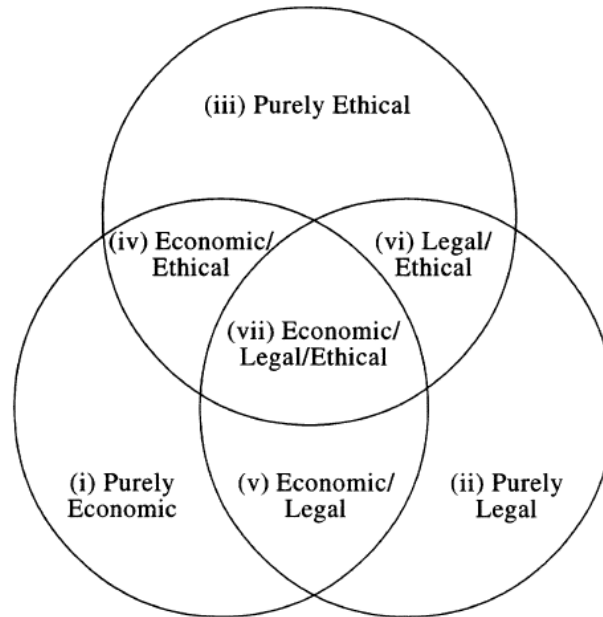
²⁷ Ibid at page 42.

²⁸ Ibid at pages 42-43.

²⁹ M S Schwartz and A B Carroll, 'Corporate Social Responsibility: A Three-Domain Approach' (2003) 13:4 at page 505.

³⁰ Ibid.

The Three-Domain Model of Corporate Social Responsibility



Source: Mark S. Schwartz and Archie B. Carroll, 'Corporate Social Responsibility: A Three-Domain Approach' (2003) 13:4 at page 509.

The three circles represent three different kinds of activities that may be undertaken by companies. Economic activities would constitute 'any activity that is pursued with improving profits and/or share value in mind.'³¹ This would include activities that are both directly, and indirectly, motivated by economic considerations. Thus, even corporate philanthropy that is undertaken as a business strategy which is expected to result in long-term financial success, would be, in part,

The legal activities would comprise those activities which are undertaken as a response to the law. Legal motivations may be further sub-divided, as the table below shows:

³¹ Ibid at page 508.

Type of Legal Motive	Typical Corporate/Managerial Response
Passive Compliance (Outside Legal Domain)	“Well, looking back on it, we did happen to comply with the law.”
Restrictive Compliance	“We wanted to do something else but the law prevented us.” “We did it in order to comply with the law.”
Opportunistic Compliance	“Well, the law allows us to do it.” “We operate in that jurisdiction because of the less stringent legal standards.”
Avoidance of Civil Litigation	“We did it because we might get sued otherwise.” “Lawsuits will be dropped.”
Anticipation of the Law	“The law is going to be changed soon.” “We wanted to pre-empt the need for legislation.”

Source: Mark S. Schwartz and Archie B. Carroll, ‘Corporate Social Responsibility: A Three-Domain Approach’ (2003) 13:4 at page 510.

Finally, the ethical domain contains those responsibilities that the company fulfils by meeting its stakeholders’ and society’s normative expectations relating to the principles that companies ought to follow.³² These notions of what is considered ‘ethical’ may be based on conventional standards, on a consideration of the desirable consequences of certain actions, or on a sense of duty owed by companies.³³

The overlaps that arise when two or more circles intersect, representing the activities based on a combination of motivations, are also of significance. The ‘ideal’ as described by Schwartz and Carroll is the following,

The ideal overlap resides at the center of the model where economic, legal, and ethical responsibilities are simultaneously fulfilled.

In this way, the new model is able to overcome the difficulty with the pyramidal heuristic that conveyed, by presenting more aptly the notion that the different components of CSR co-exist and add up towards the conceptualisation of CSR.

³² Ibid at page 511.

³³ Ibid at pages 511-513.

A principal difference between Carroll's earlier pyramidal construct and Schwartz and Carroll's Venn diagram model is that the latter contains three categories, instead of the initial four. 'Philanthropic responsibilities' – the component at the apex of the pyramid, is not explicitly referred to in the new model. This was based on a number of reasons. First,

Carroll acknowledges that it may in fact be "inaccurate" (1979: 500) or a "misnomer" (1993: 33) to call such activities "responsibilities" due to their voluntary or discretionary nature.³⁴

This is particularly significant in the context of the present study, which studies instances where philanthropy has been conceived not merely as a responsibility, but as a mandatory obligation. Another reason was that it was believed that philanthropy was better understood in terms of the underlying reasons motivating companies to engage in such activities. These possible motivations were identified as economic, when philanthropy is undertaken as part of a long-term business strategy, and ethical, when philanthropic actions are motivated by the normative expectations. Thus, philanthropy was re-conceptualised as based on ethical and/or economic considerations, and therefore, the new model subsumed philanthropy under these two categories.³⁵

2.3 CORPORATE PHILANTHROPY AND THE DUTY TO DO GOOD

This study focuses on the philanthropic dimension of CSR which has been made mandatory in countries such as Mauritius and Indonesia. This involves companies contributing money towards the welfare of society. Although philanthropic acts by companies are often motivated by economic reasons, and are not necessarily altruistic in nature, they are at least presented as such. Thus, the roots of this form of CSR can be found in acts of philanthropy as defined along religious, cultural, metaphysical and humanist lines.

The practice of charity is deeply embedded in a number of religions, such as Christian theology. The word, in fact, derives from the Latin 'caritas,' which means 'the

³⁴ Ibid at page 505.

³⁵ Ibid.

friendship of man for God.’ Similarly, in the East, some countries define philanthropic actions along religious and cultural lines. One of the practices in Islam is the Zakat which means ‘purification’ and alms-giving. This practice allows individuals to purify their wealth by donating a specified portion of it to those in need and is in line with the precepts in the Holy Qur’an,

The alms are only for the poor and the needy, and those who collect them, and those whose hearts are to be reconciled, and to free the captives and the debtors, and for the cause of Allah, and (for) the wayfarers; a duty imposed by Allah.³⁶

The African concept of ‘Ubuntu’ also values the act of doing good unto others, and is in fact one of the underlying principles of the codes of corporate governance followed in South Africa and Mauritius, as prepared by Mervyn King. Ubuntu³⁷ is a philosophy whereby the self-concept of one person is tied with that of the other and of the community, such that helping the other and the community ultimately gives meaning to one’s existence. Linking this way of life to philanthropy, King explains,

Simply put, Ubuntu means humaneness and the philosophy of Ubuntu includes mutual support and respect, interdependence, unity, collective work and responsibility. It involves a common purpose in all human endeavour and is based on service to humanity.³⁸

Beyond religious and cultural roots and affiliations, the philosopher Kant asserts that humans have an inherent duty to do good. He adds that there is a ‘categorical imperative’ to do so, explaining:

Act only on that maxim through which you can at the same time will that it should become a universal law.³⁹

³⁶ The Holy Qur’an 9:60

³⁷ ‘In the African context these moral duties find expression in the concept of Ubuntu which is captured in the expression ‘uMuntu ngumuntu ngabantu’, I am because you are; you are because we are’ (King, 17).

³⁸ M King ‘King Report for Corporate Governance for South Africa’ *The Institute of Directors in Southern Africa* (2009) available at <http://www.library.up.ac.za/law/docs/king111report.pdf>, accessed on 10 March 2012 at page 17.

³⁹ I Kant. *Kant: the metaphysics of morals*. Edited by Mary J. Gregor. Cambridge University Press, 1996 at page 42.

For one's action to count as 'good', it needs to be motivated by the will to serve the greater common good and be viewed as thus when performed by other subjects. By the same token, he states that the one who commits a crime should be executed, even if he is the last living person, stating that the execution would absolve others of the guilt of complicity, should they have been alive. What endures from his writings is the categorical imperative to do good for humanity as an end in itself.⁴⁰

At the policy level, at least, it may be posited that the philanthropic dimension of CSR is an extension of the value given to individual charity in culture, religion and philosophy, more generally. The act of making CSR mandatory would be based on similar values, and other policy considerations and contextual factors.

2.4 PRINCIPLES OF CSR

While defining CSR in a comprehensive manner is not easy, because of its many dimensions and the different ways in which it may be manifested, the corporate governance principles underpinning the concept are of assistance in understanding the rationale behind and the intended practice of CSR. These basic principles do not vary significantly from one country to the next, but the focus in the present study is primarily on the code of corporate governance of South Africa, as this will inform subsequent discussions. Incidentally, the Mauritian code of corporate governance, also prepared by Mervyn King, has almost identical provisions as the principles underlying its CSR guidelines.

Compliance with regulations

At the very least, CSR can be manifested in the company's compliance with the national and international laws and should be reflected in the company's practices and

⁴⁰ Ibid at page 34.

relationships with stakeholders.⁴¹ This would be a purely legal dimension of CSR, rather than economic, ethical dimensions, or combinations thereof.

Ethics of corporate governance

The ethics of corporate governance are based on four values, namely, responsibility, accountability, fairness and transparency.⁴² One way for companies to be socially responsible would be to abide by these ethical values. Responsibility requires companies to assume ownership of their actions, particularly the impact of their actions on their economic, social and natural environments. This includes both avoiding harmful actions and being open to ‘corrective actions to keep the company on a strategic path that is ethical and sustainable.’⁴³ Accountability requires companies to be answerable to its stakeholders, including shareholders. Fairness requires that companies take stakeholders’ ‘legitimate interests and expectations’ into account when taking decisions that might affect them. Finally, transparency pertains to companies revealing important information about the company’s performance that may allow stakeholders to take informed decisions.⁴⁴

Triple Bottom Line

In 1970, Friedman proposed that the primary goal of a company should be the maximization of shareholder wealth.⁴⁵ Corporate governance models nowadays incorporate two additional goals namely, social and environmental performance to the equation, on the basis of three of the above-mentioned ethical values which are responsibility, accountability and fairness. As King aptly puts it,

‘It is *unethical* for companies to expect society and future generations to carry the economic, social and environmental costs and burdens of its operations.’⁴⁶

⁴¹ King supra (n38) at page 102.

⁴² King supra (n38) at page 16.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Friedman op cit (n2).

⁴⁶ King supra (n38) at page 17.

The three goals are collectively known as the ‘triple bottom line’. According to King, the ‘triple-context approach enhances the company’s potential to create *economic value*.’ When companies dedicate themselves to these three goals, they are likely to stay in business in the long run. He adds that this construct enables companies to generate long term financial success, ultimately for the benefit of its shareholders.⁴⁷

Corporate citizenship

King III justifies the triple bottom line approach not on the basis of the company’s prospects of economic success, but on the premise of corporate citizenship. As applied in South Africa and Mauritius among others, corporate citizenship, on which CSR is founded, gives the company the rights and responsibilities, in some ways similar to that of a citizen, as outlined in the Constitution of that country.⁴⁸ The company’s responsibilities are to ‘*protect, enhance and invest in the wellbeing of the economy, society and the natural environment*’ and act in an ethical manner to foster the relationship between the company and society.⁴⁹ King emphasizes that such actions should have regard for sustainability and that ‘*business decision-makers adopt a holistic approach to economic, social and environmental issues in their core business strategy*.’⁵⁰

Sustainable development – innovation, fairness and collaboration

King defines sustainability of a company as the way of ‘conducting operations in a manner that meets existing needs without compromising the ability of future generations to meet their needs’⁵¹ Sustainable development requires equal consideration to three important factors, namely, ‘[i]nnovation, fairness, and collaboration’. Each of these is important because without innovation, there cannot be development; without fairness, the positive impact of any initiative on present and future generations does not endure; and without

⁴⁷ Ibid.

⁴⁸ King supra (n38) at page 18.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ King supra (n38) at page 108.

collaboration, each company may engage in its own small project which may not contribute to the long term sustainable goals of society.⁵²

Social transformation

In South Africa in particular, the concept of sustainable development cannot be extricated from issues of social transformation and redress, which are part and parcel of the post-Apartheid policies. For King, ‘integrating sustainability and social transformation in a strategic and coherent manner will give rise to greater opportunities, efficiencies, and benefits, for both the company and society’.⁵³ For example, companies are required in their initiatives to be sensitive to issues of discrimination and violations of human rights that occurred during the Apartheid era, to help resolve those injustices and empower the victims. This will allow them to ‘creat[e] and sustain conditions in which human potential can develop,’⁵⁴ hence contributing to sustainable development in line with the principles of Ubuntu.

Enlightened Shareholder approach

The enlightened shareholder approach, as described in the triple bottom line section, is one where the company’s activities are driven by a concern for stakeholders only in as far as these activities are of benefit to its shareholders. This approach features in the UK Combined code of corporate governance, in its framing of CSR. Companies are expected to partake in CSR activities but without losing sight their primary goal which is shareholder wealth maximisation. This is based on the understanding that CSR, carried out in this way will ultimately benefit the shareholders. As King explains, ‘in the enlightened shareholder approach the legitimate interests and expectations of stakeholders only have an instrumental value.’

⁵² King supra (n38) at page 11.

⁵³ Ibid.

⁵⁴ King supra (n38) at page 21.

Inclusive stakeholder approach

While the inclusive stakeholder approach adopted in South Africa and Mauritius for example, also takes into account the ‘expectations of stakeholders other than shareholders,’ it goes beyond the enlightened shareholder approach.

Under the inclusive stakeholder approach, companies do not give primary importance to any particular stakeholder but rather consider what is in the companies’ best interests. In other words, when the board makes decisions, it is required to balance the interests and expectations of all stakeholders including shareholders, in order to arrive at a decision that is in the best interest of the company, on a case-by-case basis. As emphasised in King, ‘The shareholder, on the premise of this approach, does not have a predetermined place of precedence over other stakeholders’. Such precedence may or may not be given depending on particular circumstances at the time of the decision making. This approach aligns itself with CSR and corporate citizenship in its consideration of stakeholder interests and in the way in which the best interests of the company are understood.

The best interests of the company should be interpreted within the parameters of the company as a sustainable enterprise and the company as a responsible corporate citizen.

2.5 RESEARCH ON MANDATORY CSR

So far, researchers have engaged in philosophical debates on how CSR should be conceptualised, impact evaluations, and economic discussions on ways in which CSR can serve as a business strategy. It is noteworthy that the legislations that mandate CSR are quite recent, having been enacted in 2009 in Mauritius and 2007 in Indonesia. Therefore, studies in this field of mandatory CSR are still emerging and likely to influence scholarship in the broader field of corporate citizenship.

In line with the research questions, this study examines the rationale and implications for making CSR mandatory, especially in the developing countries. It adopts

a philosophical stance on the issue predominantly to illustrate possible ways of thinking about mandatory CSR.

CHAPTER 3: THE RATIONALE BEHIND MANDATORY CSR

This chapter explores the rationale behind laws that make it mandatory for companies to spend on CSR activities. The first section of the chapter studies the way in which CSR is made mandatory by examining the legislative provisions in the Acts and Bills of Indonesia, Mauritius and India, which contain mandatory CSR provisions. The three cases are presented in chronological order, in terms of the time when their legislations were introduced.

Based on these legislations and on studies that have been made on the topic of corporate philanthropy more generally, the second section then examines the possible economic and ethics-based rationale for legally imposing CSR. The specific context of the three countries of Indonesia, Mauritius and India, is subsequently considered, to the extent to which it is indicative of the rationale for introducing mandatory CSR laws in those specific countries.

3.1 LEGISLATIVE PROVISIONS ON MANDATORY CSR

3.1.1 Indonesia

Indonesia was one of the first countries in the world to introduce mandatory CSR in its law. Its earliest legislation in this respect was the State-Owned Enterprises Law⁵⁵ which required Indonesian State-Owned Enterprises (SOEs) to actively assist Small and Medium-Sized Enterprises (SMEs), cooperatives and people.⁵⁶ In 2007, Indonesia passed the Investment Law⁵⁷ requiring foreign investors in Indonesia to partake in social responsibility; and the Limited Liability Company Law,⁵⁸ which applied mandatory CSR

⁵⁵ State-Owned Enterprises Law Number 19 of 2003.

⁵⁶ Ibid at Art 88.

⁵⁷ Investment Law Number 25 of 2007.

⁵⁸ Limited Liability Company Law Number 40 of 2007.

provisions to ‘companies doing business in the field of and/or in relation to natural resources.’⁵⁹

It is noteworthy that the CSR provisions in all the three legislations apply to different kinds of companies; the State-Owned Enterprises Law provisions apply to state-owned businesses,⁶⁰ the Investment Law to foreign companies in Indonesia,⁶¹ and the Limited Liability Company Law to companies whose work relates to natural resources.⁶² In addition, in two of the legislations mentioned above, the State-Owned Enterprises Law and the Limited Liability Company Law, the definition of CSR is specifically tailored to what appears to be a response to the specific needs of the country. The State-Owned Enterprises Law imposes CSR obligations in the form of helping SMEs, whereas the Limited Liability Company Law circumscribes CSR to ‘environmental social responsibility.’⁶³ Of the three legislations, the one that has more specific terms relating to the obligations placed on companies is the Limited Liability Law. Therefore, the rest of this brief case study will focus on this statute.

Interestingly, in the case of the Limited Liability Company Law, the intention of the legislature was originally to apply mandatory CSR provisions to all companies. The original Article 74(1), in its draft form, was worded as follows,

A limited liability company is obligated to conduct corporate social and environmental responsibility.⁶⁴

This was met with resistance from various groups such as the Indonesia Business Links, the Indonesian Institute of Accountants, the Indonesian Chamber of Commerce and the National Committee on Governance. Their arguments were, inter alia, that mandatory CSR was contradictory to accepted principles and practices of corporate governance; that the

⁵⁹ Ibid at Art 74.

⁶⁰ State-Owned Enterprises Law supra (n55).

⁶¹ Investment Law supra (n57).

⁶² Limited Liability Company Law supra (n58).

⁶³ Ibid at Art 74(1).

⁶⁴ E Lyon, ‘CSR Law in Indonesia’ *CSR Asia*, 25 July 2007, available at <http://www.csr-asia.com/upload/csrasiaweeklyvol3week30.pdf>, accessed on 10 April 2013.

definition of CSR had been narrowed down to philanthropic activity, ignoring its other aspects; and that the regulation of CSR would be counterproductive in light of the anticipated raise in corporate taxes.⁶⁵ As a response to these concerns, Article 74(1) was therefore amended to the present form,

Companies doing business in the field of and/or in relation to natural resources must put into practice Environmental and Social Responsibility.⁶⁶

This was further elucidated in 2012, when the Government Regulation regarding Social and Environmental Responsibility of Limited Liability Companies was issued, as required by Article 74(4) of the statute.⁶⁷ As per Articles 2 and 3 of the Regulation, every company has social and environmental responsibility, but this responsibility is a legally-enforceable obligation only for those companies, which either manage and exploit natural resources, or whose business activities impact on natural resources and environmental sustainability.⁶⁸

As discussed in previous chapters, CSR may be implemented in a number of ways. In the case of the Indonesian Limited Liability Companies Law, the CSR expected from companies is defined as follows,

a Company's commitment to taking part in sustainable economic development in order to improve the quality of life and environment, which will be beneficial for the Company itself, the local community and society in general.⁶⁹

This commitment is further qualified by Article 74(2) which describes it as an 'obligation of the Company which shall be budgeted for.'⁷⁰ From these two provisions it may be understood that the form of CSR being referred to, would essentially fall under corporate philanthropy, since it is a monetary contribution to social ends that goes beyond the company's narrowly defined economic interests.

⁶⁵ Ibid.

⁶⁶ Limited Liability Company Law supra (n58) at Art 74(1).

⁶⁷ Government Regulation Number 47 of 2012 at Article 74(4).

⁶⁸ Ibid.

⁶⁹ Limited Liability Company Law supra (n58) at Art 1.

⁷⁰ Limited Liability Company Law supra (n58).

Another feature of the Indonesian legislation, which gains added importance when it is compared with the Mauritian and Indian provisions in subsequent sections, is that the exact amount of this monetary contribution is not prescribed. Article 74(2) requires that the said amount be budgeted as a portion of the company's performance calculated 'with due attention to decency and fairness.'⁷¹ The words of this subsection make it difficult to gauge the extent to which companies are expected to contribute towards sustainable development; and therefore, the way in which one is to establish non-compliance with the law. In addition, the consequences of such non-compliance remain unclear, especially as the 'sanctions' which Article 74(3)⁷² would need to be detailed in legislative regulations, have not as yet been published.

Notwithstanding a few areas of uncertainty, however, it is unequivocal that the Indonesian legislation was ground-breaking in its legal imposition of an activity hitherto assumed to be voluntary in essence. It is thus understandable that, the draft form of the law was met with strong resistance, which partly explains its subsequent dilution when it was finally enacted into law.

3.1.2 Mauritius

A law imposing CSR in the form of corporate philanthropy was passed in Mauritius in 2009. Interestingly, this provision, which was originally part of the Budget Speech for the year by the Minister of Finance, was subsequently included in the Income Tax Act of 1995 as an amendment.⁷³ This, as well as a few of the provisions in the legislation discussed below, would indicate that mandatory CSR was framed within that of corporate taxation, which would suggest a conceptual shift in the notion of CSR, as will be discussed below.

⁷¹ Limited Liability Company Law supra (n58) at Art 74(2).

⁷² Ibid at Art 74(3).

⁷³ Income Tax Act of 1995.

At the outset, the provisions on mandatory CSR apply to almost all companies incorporated in Mauritius. The few exceptions, as listed in section 50K, include global business companies,⁷⁴ banks whose income is sourced from non-residents or global business companies, Integrated Resort Scheme companies,⁷⁵ and non-resident trusts.⁷⁶ Thus, one of the ways in which the scope of the Mauritian legislation can be understood to have gone beyond that of Indonesia, is in the relatively broader application of mandatory CSR. This application of mandatory CSR to most companies is similar to the approach which was initially intended by the Indonesian legislation, but subsequently frustrated by the opposition received from various business-related groups in the country.

The starting point of the mandatory CSR provisions set out in the Mauritian legislation is the CSR fund. Section 50L of the Income Tax Act requires that registered companies set up a ‘CSR fund,’ which is described as follows,

Every [profitable] company shall, in every year, set up a CSR Fund equivalent to 2 per cent of its chargeable income of the preceding year.⁷⁷

The focus at the very outset is thus set on the amount that companies are expected to spend on CSR. The explicit quantifying of the CSR expenditure constitutes another area of difference between the approach of the Indonesian legislators and their Mauritian counterparts. This provision is also brings out the striking similarity between corporate taxation and the manner in which CSR is made mandatory in Mauritius. In fact, the mandatory CSR provisions are to be found in the chapter titled ‘Corporate Taxation,’ and the very definition of ‘income tax’ in section 2 includes the CSR charge as described in section 50L.⁷⁸ More importantly, the Mauritian Act stipulates that where the amount spent on CSR is less than the amount provided for CSR in the CSR fund, the difference is to be

⁷⁴ According to section 71 of the Financial Services Act of 2007, ‘global business companies’ are companies that are resident in, and are managed from, Mauritius, and have a license to conduct business outside the country.

⁷⁵ Companies which are responsible for the implementation of the Integrated Resort Scheme, which is a scheme facilitate the acquisition of residential property by non-citizens in Mauritius (Board of Investment IRS Guidelines, 2012).

⁷⁶ Income Tax Act of 1995 section 50K.

⁷⁷ Ibid.

⁷⁸ Income Tax Act of 1995 section 50L.

remitted to the Mauritius Revenue Authority (the Mauritian tax collection office).⁷⁹ The implications of mandatory CSR spending being made a part of corporate taxes will be discussed in the next chapter.

However, the idea of mandatory CSR goes beyond that of corporate taxation, because companies are required to spend the money set aside in the CSR fund in certain specific ways. Companies may implement a CSR project as prepared by themselves or direct the funds to approved NGOs, Special Purpose Vehicles, or corporate partners.⁸⁰ Following the enactment of the Income Tax Act, guidelines were issued by the National CSR Committee⁸¹ which includes representatives from the government and the private sector.⁸² Notably, the guidelines identify CSR priorities, as a list of ‘areas of intervention’ where companies need to focus their CSR contributions. These areas are mentioned in broad terms, as ‘socio economic development (including gender and human rights), health, education and training, leisure and sports, environment, and catastrophic interventions and support.’

In order to delimit these areas, therefore, the guidelines provide another list, of activities that would not be considered as CSR. This includes inter alia, contributions for religious activities, contributions to activities discriminating on the basis of race, place of origin, political opinion, colour or creed, and activities which are against public safety and national interest. Interestingly, the list of non-qualifiable activities also includes activities aimed at staff welfare. Whereas a broad conception of CSR would include such activities, termed as ‘internal CSR’ by the European Commission’s CSR Green Paper,⁸³ the deliberate non-inclusion of this category, makes it clear that the intention of the legislators

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ ‘Corporate Social Responsibility’ *CSR Mauritius*, 2012, available at <http://www.csr.mu/>, accessed on 12 April 2013.

⁸² ‘Corporate Social Responsibility’ *National Empowerment Foundation*, 19 October 2011, available at <http://www.nef.mu/csr/>, accessed on 12 April 2013.

⁸³ Commission of the European Communities, 2001. *Green Paper: Promoting a European framework for Corporate Social Responsibility* at p 8, available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf, accessed on 22 April 2012.

was that 'CSR' for the purposes of the Income Tax Act, would only refer to CSR in the form of corporate philanthropy, directed externally to clearly defined sectors. This is also a pre-emptive move to prevent CSR 'tax' avoidance through expenditure on staff welfare.

Finally, a distinguishing feature of the Mauritian law on mandatory CSR spend is the way in which it deals with non-compliance. As mentioned previously, unused money from the CSR fund is to be re-directed towards the Mauritius Revenue Authority, just as any normal tax payment. Conversely, where a company spends more on CSR, than the required two per cent of its book profit after income tax, this excess amount may be, subject to specific conditions, carried forward to future financial years thus reducing the quota for CSR spend in those years. The way in which the two per cent figure is mentioned, is noteworthy. An alternative could have been to set the two per cent figure as a minimum amount that companies would be free to go beyond. The fact that provision is made, instead, for situations where more than the required two per cent has been spent on CSR, suggests, perhaps, a reluctance to over-burden companies. It is worth noting that contrary to what happened in Indonesia, there was no open resistance to the imposition of mandatory CSR as such a move would have appeared very unpopular and not politically correct.

3.1.3 India

More recently, in India, the Companies Bill 2012⁸⁴ was passed, in order to replace the Companies Act of 1956. Section 135 of the Bill requires 'every company having net worth of rupees five hundred crore⁸⁵ or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year'⁸⁶ to set up a CSR Committee constituted of at least three directors. The role of this committee would be to formulate a CSR policy, recommend the amount of money to be spent on CSR, and

⁸⁴ The Companies Bill, 2012, Bill No. 121-C of 2011.

⁸⁵ One crore is equivalent to ten million.

⁸⁶ Companies Bill 2012 supra (n84) at section 135(3).

monitor the implementation of the policy by the company.⁸⁷ The committee is also responsible for ensuring that the policy is documented in financial reports, and that the activities outlined in the policy are actually carried out by the company.⁸⁸

The Companies Bill sets out areas in which CSR may be undertaken in the form of recommendations. These include, inter alia, the eradication of extreme hunger and poverty, the promotion of education, the promotion of gender equality, the reduction of child mortality and improvement of maternal health, combating diseases such as HIV/Aids and malaria, environmental sustainability.⁸⁹ The list is not exhaustive and provision is made for ‘other matters’ to be prescribed at a later stage. In addition, section 35(5) requires that preference be given to local areas and regions where the company has its operations.

Similarly to the Mauritian legislation, the Companies Bill specifies the amount of money to be spent by companies on CSR every year, namely ‘at least two per cent of the average net profits of the company made during the three immediately preceding financial years.’⁹⁰ The use of the words ‘at least’ clearly establishes the two per cent amount as a minimum threshold, unlike the case of Mauritius. Also, the choice of basing the calculation of the portion of the company’s profits to be spent on CSR on the average profits of the three preceding years, as opposed to, for example, the profits of the same year, as in the case in Mauritius, is significant. Basing the calculations on average profits would ensure that the CSR spend would not be drastically reduced by a significant decrease in profits in a given year.

On the other hand, the provisions on non-compliance are relatively less strict than those in the Mauritian Act. The proviso to section 135(5) states that,

⁸⁷ Ibid.

⁸⁸ Ibid at section 135(4).

⁸⁹ Ibid at Schedule VII.

⁹⁰ Companies Bill 2012 at section 135(3).

if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.⁹¹

This approach mirrors the ‘comply or explain’ principle used in codes of corporate governance such as the UK Combined Code, where, similarly, derogations from principles need to be formally justified.⁹² While it may be argued that this makes it easier for companies to avoid compliance, the provision on non-compliance follows the spirit of corporate governance principles, which are intended as guidelines, in recognition of the fact that over-regulation of the way companies operate may impair their effectiveness as companies.⁹³

The table below compares the legislative provisions of Indonesia, Mauritius and India that have been discussed in the preceding pages.

	Indonesia	Mauritius	India
Companies to which mandatory CSR law applies	Companies in field relating to natural resources	All companies incorporated in Mauritius, with a few exceptions	Companies having net worth of five hundred crore rupees or more, or turnover of one thousand crore rupees or more, or a net profit of five crore rupees or more
Amount to be spent on CSR	To be budgeted and calculated as cost	2 per cent of chargeable income	At least 2 per cent of average net profits made during 3 immediately preceding financial years
Guidelines on where money should be	- Environmental causes for companies in fields relating to natural resources	Programme/ NGO must be approved by ministerial committee	Preference to local areas where the company is based Schedule VII

⁹¹ Ibid.

⁹² King supra (n38) at page 4.

⁹³ Ibid.

spent	- SMEs, cooperations and people, for state-owned enterprises	NEF-approved NGOs... Regulations set out areas of focus and non-qualifiable activities	contains an open-ended list of recommendations on areas that CSR projects may focus on
What happens if obligation not met by companies	Sanctions for companies in fields relating to natural resources	If less than 2 per cent is spent, difference to be remitted to DG of MRA (If more is spent, excess amount may be carried forward to subsequent years)	Failure to spend amount needs to be explained in report by Board

3.2 POSSIBLE RATIONALE BEHIND MANDATORY CSR

As the literature review in the preceding chapter would demonstrate, it is commonly believed that, inherent in the concept of the corporate philanthropy dimension of CSR, is the understanding that it is voluntary. Schwartz and Carroll's Venn diagram model of CSR activities⁹⁴ had subsumed corporate philanthropy under the ethical and economic dimensions of CSR on the basis that philanthropy is undertaken by companies either because it is expected by society or because it is the right thing to do, or as part of a marketing/public relations strategy. The fact that some countries have chosen to make CSR spending mandatory, as discussed in the case studies above, essentially creates an additional category for classifying corporate philanthropy - that of legal obligations.

Schwartz and Carroll's heuristic is useful tool for exposing the rationale underlying such legislation as it provides a framework for understanding the motivations behind different kinds of CSR activities, and thereby, for understanding whether/why CSR is desirable. The rationale for making CSR mandatory would be influenced by the desirability of corporate philanthropy on the basis of economic and ethical considerations,

⁹⁴ MS Schwartz and AB Carroll 'Corporate Social Responsibility: A Three-Domain Approach' (2003) 13 *Business Ethics Quarterly* at page 509.

and of the specific circumstances of the countries where mandatory CSR has been, or might be, introduced.

3.2.1 Economic rationale

The economic rationale for companies to engage in CSR, as Schwartz and Carroll would define it, represents the motivation to engage in CSR because it would have direct or indirect positive financial implications for the company. This applies to different forms of CSR, including sponsorship and corporate philanthropy.

The correlation between companies' engaging in corporate philanthropy and financial benefits has been the subject of several studies. A number of these studies are concerned with the direct financial benefits of CSR, that is, with the impact of a company's CSR activities on the revenue it earns as a result of its core business activities. Baron posited that companies compete against one another for market share composed of socially responsible customers, and coined for the purposes of his theory, the term 'strategic CSR.'⁹⁵ McWilliams and Siegel investigated the similar notion of profit-making through CSR and described a model where of two identical products from different companies, some consumers and stakeholders would perceive greater value in the one that has an added 'social' attribute.⁹⁶ CSR may thus be useful for companies as a marketing and product differentiation tool. Siegel and Vitaliano expand on the idea of the market demand for CSR, explaining how this demand is based on the perception of some consumers that socially responsible companies are more reliable and honest, and that therefore it is more likely that their products are of better quality. As Siegel and Vitaliano put it, CSR becomes thus 'a form of advertising to establish or sustain brand loyalty.'⁹⁷

⁹⁵ DP Baron 'Private Politics, Corporate Social Responsibility, and Integrated Strategy' (2001) 10 *Journal of Economics and Management Strategy*.

⁹⁶ A McWilliams and D Siegel 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) 25 *The Academy of Management Review* at page 117.

⁹⁷ D Siegel and D Vitaliano 'An Empirical Analysis of the Strategic Use of Corporate Social Responsibility' 16 *Journal of Economics & Management Strategy* at page 776.

Founded on the premise that a socially responsible company having a positive image in the market is likely to give it a competitive advantage vis-à-vis other companies whose offerings are similar but which do not possess this added 'social' attribute, socially responsible companies are more likely to succeed in the long term. The chances of long-term success are also enhanced by the fact that socially responsible companies are able to avoid the legal actions that companies with socially reprehensible practices run the risk of facing. This in turn means that socially responsible companies are more likely to attract and retain long-term investors and good employees, because they offer more security. As far as investors are concerned, there is an added incentive for investing in socially responsible companies, beyond that of the better long-term prospects of such an investment. Investing in socially responsible companies is itself considered as socially responsible behaviour,⁹⁸ and companies that practise corporate social investment are likely to have a better reputation and enjoy the benefits that ensue.

Due to the company's enhanced ability of thus attracting and retaining long-term investors and good employees, indirect financial benefits also follow, in that having such investors and employees allow the company to perform better. This would help to maintain this competitive advantage that the company may have, by virtue of its reputation in the market.

While it is true that the economic rationale as described above should be sufficient to motivate companies to engage in CSR without it being mandatory, laws that do make CSR mandatory would further ensure that CSR activities are undertaken. And the economic advantage which, as described above, constitutes a reason for some companies to pursue CSR activities would be neutralized if all companies are compelled by law to indulge in CSR. In other words, companies that have a CSR program are no longer seen as 'special'. They thus lose the competitive edge that they had on those that did not have such a scheme – since now everybody is compelled to 'do CSR'. For the public,

⁹⁸ King supra (n38).

companies are ‘doing CSR’ not because they are motivated by their concern for others but because they are required to do so by law. One may thus speculate that law-makers did not have the companies’ specific interests in mind while formulating policies to impose mandatory CSR. Their main motivation would seem to be more social and to increase funds available to government to deal with social and/or environmental issues.

3.2.2 Ethics-based rationale

Schwartz and Carroll explain the ethical reasons motivating CSR activities as responsibilities based on the normative expectations of society.⁹⁹ CSR activities that fall within the ethical domain stem from a ‘responsiveness to both domestic and global ethical imperatives.’¹⁰⁰ Whether these imperatives also motivate law-makers to legally impose CSR is discussed below.

As was briefly mentioned in Chapter 2 of this study, Schwartz and Carroll detail three types of ethical standards that may motivate CSR. The first of these is the ‘conventional standard,’ based on an adherence to accepted norms of corporate conduct understood as necessary for the proper functioning of the company.¹⁰¹ This ethical standard focuses on the influence exerted by external standards, on corporate behavior, and assumes that the resulting ethical conduct is a result of accepting those external standards as justified. As early as 1970, the Committee for Economic Development (CED) in the US wrote of a level of social responsibilities that went beyond profitability and the accompanying consciousness of issues relating to the environment, employee welfare, consumer right. The CED recognised in addition, as the ‘outer circle’ of a company’s responsibilities:

⁹⁹ MS Schwartz and AB Carroll ‘Corporate Social Responsibility: A Three-Domain Approach’ (2003) 13 *Business Ethics Quarterly*.

¹⁰⁰ Ibid at page 511.

¹⁰¹ MS Schwartz ‘Corporate Social Responsibility: An Ethical Approach’ (2011) at page 98.

the newly emerging and still amorphous responsibilities that business should assume to become more broadly involved in actively improving the social environment. (For example, poverty and urban blight).¹⁰²

The importance of CSR in the form of corporate philanthropy has since been widely accepted in codes of corporate governance and international instruments such as the European Commission's CSR Green Paper.¹⁰³ One may wonder whether these normative expectations, that companies should be more responsive to social issues and contribute towards the betterment of society, have exerted a significant influence on the rationale underlying *mandatory* CSR provisions. Mandatory CSR legislation is reflective of the ethical value of the accepted norms relating to corporate conduct, and in line with this recognition of ethical value, such legislation is a way of ensuring that companies follow what is generally expected of them in terms of social responsiveness – if not in the interest of the companies themselves, at least in the interest of social and political stakeholders. This political dimension cannot be underestimated since the perception that social problems are being addressed has an impact on voting behaviour in democratic systems.

The second kind of ethical standard acting as a motivation for undertaking CSR is the consequentialist standard, which focuses on the ends or consequences of corporate conduct as a way of justifying it. Schwartz explains it thus,

An action is considered ethical according to consequentialism when it promotes the good of society, or more specifically, when the action is intended to produce the greatest net benefit (or lowest net cost) to society when compared to all of the other alternatives.¹⁰⁴

The rationale behind mandatory CSR legislation may be understood to be consequentialist to a significant extent. While the normative justification for mandatory CSR is open to debate, such is not the case for the consequentialist justification. As may be observed in the three case studies described in this chapter, the mandatory CSR legislation is geared towards the needs of society or some other related political agenda. As such, in the three

¹⁰² Ibid at 15, ced.

¹⁰³ Commission of the European Communities 2001 supra (n83).

¹⁰⁴ M S Schwartz op cit (n90) at page 99.

cases, the focus is not merely on mandating CSR because companies ought to partake in CSR. The legislations define CSR in a certain way and/or specify areas where CSR activities may be undertaken, because to a very large extent, the rationale behind the legislations is the desirability of certain anticipated consequences of CSR. It is thus the desirability of these consequences that confers ethical value to the concept of mandatory CSR and justifies it.

The final ethical standard that Schwartz and Carroll describe as a motivation for mandatory CSR is the deontological standard, which stems from the consideration of one's duty or obligation. Unlike the conventional standard, which would justify conduct based on accepted social norms, and unlike the consequentialist standard, which would justify the conduct by its consequences; the deontological standard justifies conduct based on the idea of an inherent duty. While this duty is often also a social norm, it is not the norm that justifies the conduct, but rather, the fact that the duty exists. The existence of such a duty may be founded on a number of different justifications. For example, Schwartz and Carroll write of natural justice as a foundational principle justifying the imposition of an ethical duty.¹⁰⁵ In the previous chapter, the roots of philanthropy were identified in religious doctrine and philosophical ideas such as Kant's categorical imperative.¹⁰⁶ Both kinds of justifications recognize value in 'doing good' based on the idea that there exists an inherent duty to do so. It would appear that the corporate 'person' is being treated on the same level as any human person with similar duties and responsibilities.

More importantly, in the case of CSR, there are a number core values that create certain duties for companies. Some of these values would be trustworthiness, responsibility and accountability, a concern for stakeholders, and corporate citizenship. These values create a duty that companies be socially responsible. And one of the justifications behind making CSR mandatory is the fact that, quite simply, it is assumed

¹⁰⁵ MS Schwartz op cit (n90) at 99.

¹⁰⁶ Immanuel Kant. *Kant: the metaphysics of morals*. Edited by Mary J. Gregor. Cambridge University Press, 1996 at page 29.

that companies are under a duty to be socially responsible. Mandatory CSR may thus be validated on the basis that it is a way of getting companies to perform duties that they inherently hold as corporate citizens.

3.3. RATIONALE WITH SPECIFIC REFERENCE TO THE THREE CASE STUDIES

As mentioned earlier, in countries that have enacted, or are considering to enact, mandatory CSR legislation (Mauritius, Indonesia, India), there is an additional legal rationale for companies to spend on CSR projects. In other words, in addition to companies engaging in CSR for economic and ethical reasons, they would also do so, because the law now requires them to. The question that arises, then, relates to how this obligation may be justified in terms of the law.

Given that in all three cases where mandatory CSR laws have been introduced, the countries in question are developing countries, one possibility is that the law is a result of, perhaps, a natural evolution of the concept of philanthropy or corporate citizenship, but sped up by the developmental needs of those countries as well as the relative ineffectiveness of government institutions to address pressing social problems. This would explain why, even in when developing countries do not have mandatory CSR laws, society expects acts of philanthropy from companies. In South Africa, for example, concerns have been raised that companies do not contribute enough to the welfare of society, as will be discussed in the next chapter.

In addition, in the case of Indonesia, the legal provisions would also seem to be a response to the practices of certain companies, namely companies whose business involves natural resources. The fact that the law only applies to these companies suggests that they are perceived to be more prone to impact negatively on their environment. Imposing mandatory CSR provisions on them would be, then, either a way to either counterbalance any such potentially negative impact, or an anticipatory punitive measure.

In the case of Mauritius, as was seen in the course of the analysis, an important consideration that would have formed at least part of the rationale behind the mandatory CSR legislation, was to incorporate CSR in corporate taxation laws. One may even be tempted to see the mandatory CSR laws as a barely disguised manner of raising taxes while maintaining the corporate tax rate at 15 per cent.¹⁰⁷

Finally, if mandatory CSR is a disguised increase in corporate tax, one may wonder why the concerned countries did not go for a straightforward increase. Is there an unstated intention to leverage on the perceived managerial ‘superiority’ of the private sector, on its ability to deliver results? Is it an acknowledgement of the fact that government would not be able to achieve the same results without the managerial input from the private sector?

3.4 CONCLUSION

There is clearly a strong rationale, based on both economic and ethical considerations, for companies to voluntarily engage in corporate philanthropy. One may debate whether this rationale extends to the case of mandatory CSR as well. In addition, the specific social contexts in which Mauritius, Indonesia and India have introduced mandatory CSR may also explain the passing of such laws. This context-based rationale may be applicable to other developing countries, such as South Africa, which, in addition to having similar developmental needs as the three afore-mentioned countries, is also on a path of redress and transformation, wherein corporate interventions may be of value. The next chapter discusses in depth a possible rationale which may be formulated for mandatory CSR in South Africa.

¹⁰⁷ Income Tax Act of 1995 supra (n 73) at section 47.

CHAPTER 4: A CASE FOR MANDATORY CSR IN SOUTH AFRICA

While the previous chapter explored the rationale for mandatory CSR generally and in specific reference to the three countries that have introduced such a law, this chapter focuses on the context of South Africa and outlines a case that may be made for introducing mandatory CSR in the country. The first part of the chapter reflects on the specific circumstances and needs of South Africa as a developing country and as a country that is recovering from a recent history of institutionalised injustice. The focus is on the concerns that have been expressed on the role that companies should play in society. The second part of the chapter critically discusses whether, and in what way, mandatory CSR may be applied in South Africa as a way of addressing these concerns. This discussion is further developed by a critical examination of the notion of CSR itself, as it may be understood through the prism of broader economics and sociological theories.

4.1 THE CSR FRAMEWORK IN SOUTH AFRICA

The legal framework for CSR in South Africa is based on a combination of statutory obligations, and principles contained in its code of corporate governance. Some of the social responsibilities held by companies are embedded in legislation such as the National Environmental Management Act,¹⁰⁸ the Labour Relations Act,¹⁰⁹ and the Consumer Protection Act.¹¹⁰ These statutes codify the companies' duties towards their various stakeholders, and recognise these duties as legally enforceable.

On the other hand, the responsibilities contained in the code of corporate governance are recommendations, with a voluntary basis for compliance. The preface to the King III Code justifies the latter approach of voluntary compliance, by contrasting it with the 'comply or else' approach where sanctions are imposed in the case of non-compliance,

¹⁰⁸ National Environmental Management Act 107 of 1998.

¹⁰⁹ Labour Relations Act 66 of 1995.

¹¹⁰ Consumer Protection Act 68 of 2008.

There is an important argument against the ‘comply or else’ regime: a ‘one size fits all’ approach cannot logically be suitable because the types of business carried out by companies vary to such a large degree. The cost of compliance is burdensome, measured both in terms of time and direct cost. Further, the danger is that the board and management may become focused on compliance at the expense of enterprise. It is the duty of the board of a trading enterprise to undertake a measure of risk for reward and to try to improve the economic value of a company. If the board has a focus on compliance, the attention on its ultimate responsibility, namely performance, may be diluted.¹¹¹

Accordingly, the approach upon which ‘compliance’ with the code of corporate governance is based, is that of ‘apply or else’ - companies are required to apply the principles of corporate governance and justify instances of deviance from these principles. In this approach The Johannesburg Stock Exchange rules, in addition, require listing companies to provide a report on their application of the said principles.

The form of CSR that constitutes the focus of this study, corporate philanthropy, comes under the ambit of the code of corporate governance, which implies that it is a recommendation, rather than a legally enforceable obligation. The Code’s framing of corporate philanthropy is based upon the recognition of the importance of sustainability, and upon the inclusivity of stakeholders approach. Sustainability issues are identified in the Code both from an international and a local perspective. As King writes, on the growing prominence of sustainable business practices,

The proliferation of initiatives, tools and guidelines on sustainability is evidence of the growing awareness of sustainability issues. Because the company is so integral to society, it is considered as much a citizen of a country as is a natural person who has citizenship... This involves social, environmental and economic issues – the triple context in which companies in fact operate.¹¹²

The meaning given to sustainability in the Code is captured in the following words,

Boards should no longer make decisions based only on the needs of the present because this may compromise the ability of future generations to meet their own needs.¹¹³

¹¹¹ King *supra* (n38) at page 4.

¹¹² *Ibid* at page 9

¹¹³ *Ibid*.

This long-term vision required of companies is an important characteristic of King III's recommendations on corporate philanthropy and corporate governance more generally.

King cautions however against limiting CSR to philanthropy alone, and encourages rather the alignment of corporate practices with ethical standards,

The manner in which the company conducts its internal and external affairs should be beyond reproach. An ethical corporate culture is more than social philanthropy or charitable donations.¹¹⁴

Another important underlying principle in this context, as mentioned previously, is the inclusivity of stakeholders approach, whereby 'the board of directors considers the legitimate interests and expectations of stakeholders on the basis that this is in the best interests of the company, and not merely as an instrument to serve the interests of the shareholder.'¹¹⁵ In addition to a long-term vision, therefore, companies are also required to think more broadly about the range of persons and factors that their actions will influence. This constitutes the foundation of the understanding of CSR in the Code. It clearly goes beyond mere philanthropy and monetary donations – often referred to as 'guilt money'.

4.2 CONCERNS RELATING TO CSR IMPLEMENTATION IN SOUTH AFRICA

As laudable as the aims of the legislative framework may be, however, what happens in practice, does not necessarily reflect the principles and policies as described above. As Hamann and Kapelus point out,

In South Africa, core business practices framed by the country's colonial and apartheid history have been relatively resistant to socially motivated change, despite the increasing prominence of CSR policies and reports.¹¹⁶

There is an underlying inference in the words of Hamann and Kapelus, that the 'increasing prominence' of CSR guidelines is not sufficient to encourage a higher level of corporate social responsiveness, as might have been expected. The fact that compliance with the

¹¹⁴ Ibid at page 15

¹¹⁵ Ibid at page 10

¹¹⁶ R Hamann and P Kapelus 'Corporate Social Responsibility in Mining in Southern Africa: Fair accountability or just greenwash?' (2004) 47 *Society for International Development* at page 90.

principles of corporate governance is voluntary may be identified as a factor which contributes to this gap between policy and practice.

The issue is not necessarily that companies do not contribute enough to social welfare, but more importantly, that society expects more from companies as far as their social interventions are concerned. The history of the South Africa has an important influence on the expectations that are held in relation to the role that companies ought to play in society. As was reported on a survey carried out by David Fig on perceptions of corporate giving,

The perception that business provides only weak support for communities is reflected in the results of a national survey on giving, in which two-thirds of the respondents felt that business should pay more taxes to help the poor. The author of the survey report remarks: 'In a country where between 45% and 55% of the population lives in poverty ... [T]he link between past discrimination and current support for a redistributive project is clear.'¹¹⁷

Interestingly, the form of support expected from companies is monetary in nature, and a specific reference is made to taxes, which may remind one of the mandatory CSR policy in Mauritius.

Another important element of Fig's report, as mentioned above, is the link drawn with the idea of social transformation and reconciliation in South Africa. As he points out, the transformation project had, in its beginnings, an explicitly stated goal of wealth redistribution through, inter alia, nationalisation policies.¹¹⁸ Although these policies eventually became less drastic, the underlying ethos was not lost, and this ethos continues to form the basis for society's normative expectations of corporate social responsibility. In addition, some radical writers, as quoted by Fig, would argue that businesses contributed to the perpetration of apartheid, which would be an added justification for placing companies under a responsibility to help in the alleviation of social problems.

¹¹⁷ D Fig 'Manufacturing Amnesia: Corporate Social Responsibility in South Africa' (2005) 81 *International Affairs* (Royal Institute of International Affairs) at page 605.

¹¹⁸ *Ibid* at pages 608, 616.

However, as mentioned earlier, what happens in practice does not seem to match up to the normative expectations of society, and writers such as Fig have expressed scepticism with regards to the prospects of companies becoming more socially responsive,

From most of the evidence presented, it seems there are few grounds for confidence that firms will carry out a more equitable post-apartheid transformation voluntarily. On occasion, when the state's own measures lag behind the needs of business, as for example in the sphere of HIV/AIDS support, some firms have taken limited initiatives to introduce new social practices. However, even these have been very selective, uneven and slow. In terms of employment equity, affirmative procurement, augmentation of black shareholding and so on, the state has often had to intervene, through legislation or through the drafting of sectoral charters, to put business on the road to transformation. However, where the law provided for voluntary agreements on the curbing of pollution, these have not worked out in practice. The two EMCAs put in place have been abandoned for the present, mostly because of strong objections from civil society actors on the grounds that the process was not inclusive enough, and that voluntary agreements could not replace the urgent need for standard-setting, adequate monitoring and sanctions for non-compliance.¹¹⁹

Fig's contentions highlight even more strongly the possibility that the voluntary approach to compliance for CSR is inadequate. This sense of inadequacy is furthered by the fact that, other than the recommended guidelines, there are a number of internal and external factors that encourage companies to engage in CSR. The internal factors Fig identifies are motivations based on economic reasons and a sense of responsibility towards society - factors that are somewhat similar to the economic and ethics-based rationale in the previous chapter. The external factors refer to 'pressures' that come from outside the company, namely pressure from the state in the form of legislation; pressure that arises when the state fails in addressing social issues; international pressure; pressure from civil society groups; and market pressures.¹²⁰

4.3 CONCLUSION

There is a perceived discrepancy between the aims of the legislative framework on CSR as motivated by the needs and expectations of South African society, and the CSR

¹¹⁹ Ibid at page 616.

¹²⁰ Ibid at page 606.

practices that occur on the ground. As such, one of the possible ways in which this may be resolved, could be to make changes to the legislative framework. There may be, in other words, a rationale for introducing mandatory CSR in South Africa, based on the specific circumstances of the country. This rationale would supplement the general rationale that may be formulated for mandatory CSR, which was set out in the previous chapter.

University of Cape Town

CHAPTER 5: IMPLICATIONS OF MAKING CSR MANDATORY IN SOUTH AFRICA

This chapter investigates some of the possible implications of making CSR mandatory in South Africa. It begins by outlining the implications of mandatory CSR that exist at a conceptual level, in other words, the way in which making CSR mandatory impacts upon the notion of CSR. The structure of the rest of the chapter thus parallels that of the 'rationale' section of the previous chapter. It begins by critically examining how the economic rationale motivating CSR translates into the context of mandatory CSR legislation. The next section of the chapter evaluates the way in which the ethics-based reasoning for companies to engage in CSR, applies to mandatory CSR. Finally, the rest of the chapter focuses on the context-specific reasons that would have motivated the introduction of mandatory CSR laws in the three cases of Indonesia, Mauritius and India, in order to identify factors that may potentially reduce the extent to which policy reasons are reflected in practice.

5.1 CONCEPTUAL IMPLICATIONS

Making CSR mandatory changes, in some fundamental ways, the way in which corporate philanthropy has been understood. As previously discussed, philanthropy, or the desire to promote the welfare of others through the donation of money and time, in its original conception at least, is inherently voluntary in nature. Thus, the very notion of mandatory philanthropy rings as anomalous.

Notwithstanding the voluntariness element, there is often a sense of duty attached to such actions in the different schools of thought. Deontologists such as Immanuel Kant would base an evaluation of the moral righteousness of actions on whether they are undertaken in recognition of a 'categorical imperative,' or the absolute moral duty to do

good as an end in itself.¹²¹ In religious doctrine and cultural philosophies such as Ubuntu, philanthropy is recognised as desirable, intrinsically motivated and based on a certain set of values.¹²² In this case too, a sense of duty often underlies the framing of philanthropy.

However, mandatory CSR laws often go beyond recognising and imposing a value-based duty to engage in philanthropy. It is not merely seen as desirable to act accordingly, but the duty is subsequently enforced in a way that warrants that provisions be made to address and deter non-compliance. Perhaps the conceptualisation of philanthropy in religious doctrine that is closest to these legislative provisions is the practice of *zakat* in Islam, whereby persons are placed under an obligation to contribute a pre-specified portion of their wealth to charity every year, and a failure to do so is seen as blameworthy.¹²³ Interestingly, in Indonesia, which is one of the very first countries to have made CSR mandatory, 87.2 per cent of the population identifies itself as Muslim, and there is reason to believe there is a correlation between the country's religious practices and the law relating to CSR. A similar provision exists in Saudi Arabia based on Sharia law. Although Indonesia does not specify the applicable sanctions for non-compliance with its law on mandatory CSR, provision has been made in its legislation for the promulgation of such sanctions in the form of regulations.

While the Mauritian statute does not impose sanctions for non-compliance, the fact that funds set aside for CSR that remain unused, need to be redirected to the Mauritian Revenue Authority, explicitly designates that the stipulated portion of the company's profits be used for specified purposes - towards an approved CSR project, or to be paid as taxes. Either way, the said portion may not be used by the company for other purposes other than CSR. In contrast, the Indian Bill does allow for non-compliance, in that it stipulates that companies that do not use the amount reserved for CSR as required, need to formally give reasons for their non-compliance. As far as the Mauritian Act is concerned,

¹²¹ I Kant, *Kant: the metaphysics of morals*. Edited by Mary J. Gregor. Cambridge University Press, 1996 at page 29.

¹²² King supra (n38) at page 17.

¹²³ The Holy Qur'an 9:60

therefore, the obligation to partake in CSR, particularly corporate philanthropy, is enforced in a manner that significantly reduces the voluntariness factor that is generally associated with philanthropy. It also tends to generate a tacit resistance.

In addition, there is an element of voluntariness associated with CSR as a recommended practice of corporate governance. This is true especially of South Africa and Mauritius, which follow a code of corporate governance prepared by Mervyn King. The codes of both countries follow the ‘apply or explain’ approach, essentially describes the voluntary basis upon which the codes operate. King explains the approach thus, distinguishing it from the alternative approach of ‘comply or explain’,

The ‘comply or explain’ approach could denote a mindless response to the King Code and its recommendations whereas the ‘apply or explain’ regime shows an appreciation for the fact that it is often not a case of whether to comply or not, but rather to consider how the principles and recommendations can be applied.¹²⁴

In the ‘apply or explain’ approach, therefore, a certain amount of discretion is given to companies, such that what is required of them is that they comply with the principles underlying the provisions. Companies are then required to provide reasons to justify instances where these principles have not been applied, for example because doing so would not have been in the best interests of the company.

CSR is usually embedded in codes of corporate governance, and therefore, intended as a recommendation or guideline. Its incorporation into legislation that makes it mandatory therefore fundamentally changes the way it was originally conceptualised. This is also in line with theories on CSR which even until now, continue to represent corporate philanthropy as desirable, but essentially voluntary or discretionary. This conceptual change may, in turn, may have implications on the manner in which CSR activities are carried out, because it represents a fundamental change in the motivation underlying such activities. This will be further discussed later in the chapter.

¹²⁴ King supra (n38) at page 4.

5.2 IMPLICATIONS RELATING TO THE ECONOMIC RATIONALE FOR CSR

As described in the previous chapter, one of the motivations presented as a case for CSR is based on the idea of ‘strategic CSR.’ According to a number of empirical studies, there is a possible causal connection between CSR and long-term profitability, based on the fact that CSR is a useful tool for image-building and brand development. The premise that lies at the foundation of these theories is linked to positive perception that is held of socially responsible companies by relevant stakeholders such as consumers, employees and investors.

However, it is debatable whether the CSR activities that result from mandatory CSR laws, where the different stakeholder groups would be aware that such conduct is legally required, would have the same effect. To some extent at least, especially where the law is strict in its enforcement of compliance, the perception linked to CSR activities may be impacted by the awareness that the CSR activities are not being undertaken voluntarily. The connotations of social responsiveness linked to voluntary CSR may be replaced by those of mere legal compliance. This would then impact on the incentive that companies would have, for engaging in CSR, and possibly therefore, on the manner in which they subsequently do so.

5.3 IMPLICATIONS RELATING TO THE ETHICS-BASED RATIONALE FOR CSR

The ethics-based rationale, based on the Schwartz and Carroll’s Venn diagram heuristic,¹²⁵ considers as its starting point the normative expectations of the role of companies and the extent of their responsibilities. The responsibility placed on companies is justified by society’s expectations relating to companies’ social responsiveness. The conceptual and economic implications of mandatory CSR laws, as described above, would have an influence upon the manner in which the ethics-based rationale for CSR translates into the context of mandatory CSR. In addition, other factors linked to the nature of

¹²⁵ M S Schwartz and A B Carroll ‘Corporate Social Responsibility: A Three-Domain Approach’ (2003) 13:4 at page 509.

companies and of the kind of contribution to society which is expected of them, may also impact on this dimension. These different implications are discussed below.

At the outset, one may question whether companies are competent to address complex social issues, given the fact that their primary function is economic in nature, and that they are staffed accordingly. There is a danger, therefore, that social issues that need to be addressed are mishandled. If this is the case, it means that while it is expected that companies be more socially responsible, what happens in practice, are interventions by companies that are not able to address social issues in a sustainable manner. This risk would become even more pertinent when CSR is made mandatory, because companies have little choice other than to comply with the law, which would ultimately, then, cause the rationale for CSR to be lost in translation.

Lodge takes this argument further, and discusses the fact that companies providing for social welfare as a form of CSR is not just potentially ineffective but also inappropriate.

Unelected businessmen... have "neither the right nor the competence" to define or establish the goals and the criteria by which society should repair or remake itself.¹²⁶

A similar idea is, as also cited by Brekert, is expressed by DeGeorge,

There is great danger in expecting corporations to take upon themselves the production of public welfare, because they already have enormous power and are not answerable for its use to the general public. Politicians are elected by the public and are expected to have the common good as their end. We should not expect corporations to do what they are neither competent nor organized to do.¹²⁷

Thus, while society's growing expectations from companies may dictate that companies be more socially responsive and active in the promotion of societal welfare, there is a risk that this may not be in the best interests of society itself. The rationale behind expecting companies to be socially responsible, is often linked to a measure of their social power.

¹²⁶ G Brenkert 'Private Corporations and Public Welfare' 6 *Public Affairs Quarterly* (1992) at page 156

¹²⁷ Ibid.

However, it is important to understand the nature of that power, which is essentially one that is not conferred by election and that is held by primarily profit-making entities, in order to avert the danger of inadvertently increasing that power through the concept of mandatory CSR. Companies entering in the public realm would need to be held to similar standards as public bodies in order for the CSR model to be more aligned with the interests of society. This, of course, is difficult to achieve, without compromising the primary function of companies, which is to make money.

In addition, the conceptual shift that is represented by the introduction of laws that make CSR mandatory, as described earlier in this chapter, also impacts on the effectiveness of companies' interventions to deal with social issues. The conceptual shift impacts upon the motivations of companies to engage in CSR. When CSR is meant as a voluntarily undertaken practice, companies would only choose to partake in such activities, either as a business strategy, or out of altruism, or, as is often the case, due to a combination of these two kinds of motivations. Such companies would have been, even before the introduction of mandatory CSR laws, good corporate citizens to some extent at least.

On the other hand, companies that do not see the value of CSR, either from an economic or an ethical standpoint, would not have engaged in CSR, had it not been for the law. It is presumably these companies that the law would have sought to target, seeing as the professed objective behind mandatory CSR legislation is to encourage companies to do more. Ironically, however, these companies, when forced by legislation, to adopt CSR practices, are more likely to adopt a check-box approach to CSR, merely as a way of discharging their legal obligations. Their interventions would then, like those of companies who engage in CSR solely for financially-driven reasons, operate at a superficial level.

If societal expectations from companies are that they be socially responsible in the sense that they address social issues in a sustainable manner, then the 'check-box'

approach that is purportedly encouraged by a mandatory CSR framework, may be of concern. While it would appear that companies are contributing important sums of money towards CSR activities, this is not necessarily reflective of the extent to which they are actually contributing to social welfare. This risk would be exacerbated by the fact that, as previously discussed, the economic rationale motivating CSR may not necessarily translate into the context of mandatory CSR. This could potentially mean that the theoretical benefits of CSR relating to brand-building and long-term profitability become less strongly associated with CSR. This would reduce the inherent incentive to engage in CSR, and thus, make it more probable that companies engage in CSR in a superficial manner.

5.4 IMPLICATIONS AT THE LEGISLATIVE LEVEL

With particular reference to the Mauritian legislation on mandatory CSR, which has been incorporated into taxation laws, one of the possible implications of mandatory CSR laws exists at policy level. The money which, as stipulated by the law, needs to be allocated to CSR, has been included in the definition of 'income tax' for companies. The two per cent portion of the company's profits can thus be equated to a disguised increase in corporate taxes. An important implication of legislation in this form has to do with the transfer of responsibility that it represents. Money that is paid out in taxes is intended for use by the state in, inter alia, addressing social issues. The CSR fund is money that is similar to taxes, except that the responsibility to spend it for the welfare of society is transferred from the state to the companies. Should the companies fail to spend the money as stipulated, it falls back to the state as payment to the Mauritius Revenue Authority.

From a very cynical point of view, this transfer of responsibility may otherwise be understood as an abdication of responsibility on the part of the state. However, even if we choose to reject such cynicism, a gap between intended policy and its manifestation in practice remains. In order to be effective, the legislation would be based on an assumption that the private sector has the means or skills to manage social projects more effectively than public sector agencies. This assumption may be questioned, based on the fact that

companies are essentially profits-driven entities, and the fact that the smaller companies, at least, may not necessarily be equipped with specialised persons to handle CSR issues.

It is thus ironical that countries that legally impose CSR out of an unstated acknowledgement of their failure to effectively deal with daunting social problems (like absolute poverty), end up passing on this responsibility to companies who are still less competent than themselves to deal with the said problems. In fact, at least in countries like Mauritius, these social problems very often result, not from a lack of resources but from a poor management of available resources.

From the point of view of society, the transfer of responsibility, if one sees mandatory CSR thus, would need to be accompanied by measures ensuring standards accountability that are applicable to public bodies. Brenkert makes a compelling argument to this effect, albeit in the context of voluntary CSR contributions that are tax deductible,

In addition, to the extent that corporate contributions to public welfare are tax deductible, the foregone tax revenues constitute a public contribution to itself, through the agency of the corporation. Since public monies are committed through such contributions, the public has a right to assure itself that the standards according to which such monies are expended meet its (minimal) standard.¹²⁸

Even though the context in which Brenkert wrote the above was not that of mandatory CSR, the same reasoning may be applied to the present context, because of the similarity between the two situations. CSR expenditure in the mandatory CSR scenario, especially that of Mauritius, is tax deductible, because it is essentially a way of paying out taxes.

In addition, when mandatory CSR becomes a disguised raise in corporate taxes, tax avoidance (and income maximisation) behaviour is to be expected. This tax approach underlying mandatory CSR may generate a negative behaviour, encouraging companies to look for 'loopholes in the law,' a process which is euphemistically referred to as tax-planning. Kirchler et al write,

¹²⁸ Ibid. at page 160

Would higher tax rates decrease compliance? No clear hypothesis emerges from the standard economic model. Two counteracting effects are proposed: On the one hand, a high tax rate reduces effective income and, therefore, makes tax evasion more profitable. On the other hand, by reducing effective income absolute risk aversion increases... Both of the model's predictions on the impact of tax rates on compliance found empirical support, though most studies report that compliance is lower at high tax rates.¹²⁹

If one goes by the findings of these empirical studies, the fact that mandatory CSR is explicitly presented as a raise in taxes, this could potentially lead to a lower level of compliance. If the aim of such legislation was to encourage companies to be more active in promoting public welfare, this would have been, in actuality, frustrated by the enactment of such a law. This is because what would then happen is that companies would either do the bare minimum by adopting CSR at a superficial level, or seek to avoid having to pay 'taxes.'

5.5 IMPLICATIONS FOR SOUTH AFRICA

However, most of the possible implications detailed above would be, at least in part counteracted, if the mandatory CSR laws, despite their shortcomings, are able to address the specific concerns of developing countries. After all, at least at the time of the present study, the only countries to have introduced mandatory CSR in their law, are developing countries, and that therefore, it is assumed, their need to introduce such laws would be based on a strong need that they would have identified. Thus, it is important to study the possible implications of mandatory CSR in the context of developing countries, and ascertain whether such a law is a suitable response to their needs.

One factor that may impair the ability of the law to address social issues in developing countries is the fact that companies' approach may be at best superficial for reasons given above. Given their lack of in-depth understanding and scarcity of personnel with the necessary competence to effectively deal with social problems, companies very often resort to giving a fish to the starving person without going to the extent of teaching

¹²⁹ Kirchler et al 'Why Pay Taxes?' 7 *A Review of Tax Compliance Decision* (2007)

him how to fish. In addition to this, mandatory CSR laws disperse the social responsiveness obligations among many different companies, in addition to the state itself. This would have an important bearing on the effectiveness of corporate interventions. Perhaps, a few well-planned projects integrating the different companies and the state would have been a better option than many individual donations. The focus of such a collaborative project would be on social issues and the most effective way of handling them. South Africa's King III Code outlines three elements of sustainability, one of which is collaboration,

Innovation, fairness, and collaboration are key aspects of any transition to sustainability – innovation provides new ways of doing things, including profitable responses to sustainability; fairness is vital because social injustice is unsustainable; and collaboration is often a prerequisite for large scale change.¹³⁰

In a later section of the code, King explains,

Although initiatives by individual companies are important, it is increasingly recognised that there are limits to what single companies acting by themselves can achieve. This is particularly true given the systemic character of many socio-environmental challenges, such as climate change, water depletion, informal settlements, and corruption.¹³¹

In addition, with individual donations, especially those carried out without due research, there is a risk of duplication of contributions. In other words, different companies may contribute towards the same project, without knowing about the CSR initiatives of each other. In so doing, some important areas also requiring intervention may remain neglected. This would not only be ineffective, it would also be potentially wasteful. In the context of developing countries in particular, the wastage of resources is of concern, especially seeing as mandatory CSR legislation is intended as a way to address social issues in countries where resources are already scarce.

Moreover, following from previous discussions on the dangers of blurring the public-private divide by imposing public duties on companies, the fact that companies are

¹³⁰ King supra (n38) at page 11

¹³¹ Ibid at page 18

not held to the same accountability standards as the state would also impact on the kind of social change that they are able to, and willing to effect. As Brenkert writes, this is potentially harmful to the interests of society,

[W]hen corporations are asked to undertake public welfare on an ongoing basis, the welfare they give is privatized in a manner that eliminates an important relation for those receiving such welfare. To the extent that it formalizes a relation between the powerful and the powerless, it exposes the recipients of such aid to abuses of power.¹³²

Brenkert thus cautions against the intrusion of private entities in the public sphere based on the fact that ‘the view that the public is simply the arena in which individual actions affect others without their voluntary approval impoverishes the notion of the public.’¹³³ A counter-argument that may be made to this contention is that the state itself may not necessarily be effective in its provision of social welfare, and that this justifies the blurring of the private and public domains, ultimately in the public interest. This is also acknowledged by Brenkert,

Thus, both government and corporations may be inflexible, insensitive, impersonal, non-innovative, as well as hard to move or get through to. They may produce programs which are misconceived, uncoordinated, and/or precipitously stopped, leaving people in the lurch. The production of such programs may increase their power, size and influence; they may also deal paternalistically with those they seek to aid.

Notwithstanding this, the risk that Brenkert cautions against is one that needs to be considered as a possible implication of mandatory CSR.

5.6 CONCLUSION

As demonstrated in Chapter 3, there is a strong rationale for companies to engage in CSR, based on a number of factors including economic and ethical considerations, and the socio-economic situation of different countries. One may be led to believe that this rationale translates into the case for mandatory CSR as well, and that this is a basis for justifying mandatory CSR. Chapter 4 extended this reasoning in its focus on South Africa

¹³² G Brenkert ‘Private Corporations and Public Welfare’ 6 *Public Affairs Quarterly* (1992) at page 159.

¹³³ *Ibid* at page 162.

and its specific needs and concerns, and formulated a possible case for mandatory CSR in South Africa.

However, as this chapter has attempted to show, there may be implications operating at different levels that reduce the applicability of the rationale for CSR to mandatory CSR. Some of these possible implications would encourage us to question the soundness of mandatory CSR as a viable solution to South Africa's needs and concerns.

University of Cape Town

CHAPTER 6: CONCLUSION

In conclusion, this study arose from a need to study the possible implications of laws that make CSR spending – or corporate philanthropy – mandatory. This need was based on the recent emergence of such laws in countries such as Indonesia, Mauritius and India, and the fact that there has not been much research on the topic of mandatory CSR. This need was further augmented by scholarship in developing countries such as South Africa which suggested that there were inadequacies with the voluntary model of compliance that CSR ‘regulations’ are based on.

In order to better understand what the implications of mandatory CSR might be, the study then delved into the rationale for such laws. An exploration of the implications of laws would have been incomplete without understanding, in the first instance, the theories and issues that would have motivated the introduction of such laws. Given the limited research available in the field of mandatory CSR, the said rationale was uncovered by using theories on CSR generally and then extrapolating it to the case of mandatory CSR. It was assumed that similar reasons would have motivated the move towards mandatory CSR. The applicability of the rationale to mandatory CSR was, however, subsequently debated in subsequent chapters.

The focus was then shifted to the case of South Africa which, in some respects, is quite unique. It shares with the other developing countries studied in the present dissertation, concerns relating to social issues and a lack of resources to address these issues, and thus the possible rationale for mandatory CSR as understood from the case studies is not difficult to apply to the country. At the same time, South Africa is also a country which is attempting to reverse the effects of a history of systemised injustice. The project of transformation is understood to be not just the prerogative of the state alone. Other sectors of society, including companies, are also expected to contribute, as its laws on affirmative action demonstrate. Thus, the expectations that are held of companies in

relation to their social responsiveness are heightened. In light of these factors, it was posited that a possible case could be made for the introduction of mandatory CSR in South Africa.

However, although a rationale for mandatory CSR may be formulated, in the context of South Africa, and more generally, with respect to developing countries, it was found that several aspects of the rationale do not translate into the actual practice of CSR. In some cases, it was even found that making CSR mandatory might be counter-productive in light of what developing countries need, due to the lack of expertise, and possibly motivation, of companies to deal adequately with social issues.

In conclusion, it is difficult to justify placing such a high responsibility on companies, even taking into account theories on the revised role of the company in the modern world, and the concerns of developing countries. Given the harm that mandatory CSR may potentially cause to the company's stakeholders, it may be wiser to strengthen industry-specific regulations and continue to encourage more strongly practices of voluntary CSR, rather than to place such an added 'blanket' responsibility on all companies.

6.1 RECOMMENDATIONS FOR FURTHER RESEARCH

The focus of this study was narrowed down to the implications of mandatory CSR spending for developing countries, more specifically South Africa. The reason for this was that developing countries have a greater need for the private sector to contribute towards social progress, and one of the ways to push for an increased contribution on the part of companies would seem to be through laws that make CSR mandatory. It proceeded under the assumption that a study of such laws would be of foremost interest to developing countries. However, the study may not, in its entirety, necessarily hold true for other developing countries whose specific circumstances were not considered. The needs and

specificities of other developing and developed countries may form part of future research studies.

Indonesia, Mauritius and India are among the very few countries to have enacted mandatory CSR legislation recently. The rationale and the implications have been inferred from the little research and literature that is available and applied to South Africa. There is a need to observe the implementation of the mandatory CSR in these countries for a couple of years.

This study is predominantly theoretical in nature. The documents that it utilises and analyses are primarily academic articles, legislative provisions, and codes of corporate governance to illustrate certain ways of thinking about mandatory CSR. Further studies involving data collection from companies can then be taken up against this backdrop to refine the findings of the present thesis.

BIBLIOGRAPHY

Primary Sources: Statutes

Mauritius

Financial Services Act of 2007

Income Tax Act of 1995

Indonesia

Government Regulation Number 47 of 2012 at Article 74(4).

Investment Law Number 25 of 2007.

Limited Liability Company Law Number 40 of 2007.

State-Owned Enterprises Law Number 19 of 2003.

South Africa

Consumer Protection Act 68 of 2008

Labour Relations Act 66 of 1995

National Environmental Management Act 107 of 1998

India

The Companies Bill, 2012, Bill No. 121-C of 2011.

Secondary Sources

‘Corporate Social Responsibility’ *CSR Mauritius*, 2012, available at <http://www.csr.mu/>, accessed on 12 April 2013.

‘Corporate Social Responsibility’ *National Empowerment Foundation*, 19 October 2011, available at <http://www.nef.mu/csr/>, accessed on 12 April 2013.

Baron, D.P. ‘Private Politics, Corporate Social Responsibility, and Integrated Strategy’ (2001) 10 *Journal of Economics and Management Strategy*.

- Brenkert, G. 'Private Corporations and Public Welfare' (1992) 6 *Public Affairs Quarterly*.
- Carroll, A.B. 'The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders' (1991) *Business Horizons* (July – August 1991).
- Commission of the European Communities, 2001. *Green Paper: Promoting a European framework for Corporate Social Responsibility* at p 8, available at http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0366en01.pdf, accessed on 22 April 2012.
- Crick, B. 'A Note On What Is And What Is Not Active Citizenship' (2002). Available:http://archive.excellencegateway.org.uk/media/post16/files/033_BernardCrick_WHAT_IS_CITIZENSHIP.pdf
- Elkington, J. 'Partnerships from Cannibals with Forks: The Triple Bottom line of 21st Century Business,' (2007) 8:1 *Environmental Quality Management*.
- Fig, D. 'Manufacturing Amnesia: Corporate Social Responsibility in South Africa' (2005) 81 *International Affairs* (Royal Institute of International Affairs).
- Freeman, R.E. 'The Politics of Stakeholder Theory: Some Future Directions' (1994) *Business Ethics Quarterly* 4:4.
- Friedman, M. 'The Social Responsibility of Business is to Increase its Profits,' *The New York Times Magazine*, September 13, 1970.
- Hamann, R. and Kapelus, P. 'Corporate Social Responsibility in Mining in Southern Africa: Fair accountability or just greenwash?' (2004) 47 *Society for International Development*.
- Kant, I. *Kant: the metaphysics of morals*. Edited by Mary J. Gregor (1996). Cambridge: Cambridge University Press.
- King, M. 'King Report for Corporate Governance for South Africa' *The Institute of Directors in Southern Africa* (2009), available at <http://www.library.up.ac.za/law/docs/king111report.pdf>, accessed on 10 March 2012.
- Kirchler, E. et al 'Why Pay Taxes?' 7 *A Review of Tax Compliance Decision* (2007)
- Lyon, E. 'CSR Law in Indonesia' *CSR Asia*, 25 July 2007, available at <http://www.csr-asia.com/upload/csrasiaweeklyvol3week30.pdf>, accessed on 10 April 2013.
- McWilliams, A. and Siegel, D. 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) 25 *The Academy of Management Review*.
- Schwartz, M.S. 'Corporate Social Responsibility: An Ethical Approach' (2011). Canada: Broadview Press.

Schwartz, M.S. and Carroll, A.B. 'Corporate Social Responsibility: A Three-Domain Approach' (2003) 13:4 *Business Ethics Quarterly*.

Siegel, D. and Vitaliano, D. 'An Empirical Analysis of the Strategic Use of Corporate Social Responsibility' (2007) 16 *Journal of Economics & Management Strategy* at 776.

The Holy Qur'an 9:60

University of Cape Town