

CSR in Law and Practice in Saudi Arabia

Compared with the UK Model

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Abstract

Corporate Social Responsibility (CSR) in the Kingdom of Saudi Arabia (KSA) is weak both in law and in practice. This thesis proposes solutions to improve CSR regulation and practice in KSA. Doctrinal analysis and a functional comparative law approach are used to analyse both KSA and UK CSR legislation. In the UK, the statutory duty to promote the success of the company (s172) and the strategic report (s414) required by the UK Companies Act 2006 and the non-financial statement are all good starting points, but they are neither joint nor able to sufficiently promote CSR, and s414 does not specify what companies must include in their human rights reports. CSR plans are also lacking in Saudi companies. CSR practices in KSA are unlikely to flourish without significant reform. *Zakat* as an Islamic practise is sometimes used to implement CSR in Saudi Arabia and the KSA may have been slow to adopt CSR due to the transition from *Zakat* to CSR. Compared to other countries, the KSA is relatively new to CSR. Most KSA companies adopt CSR practices voluntarily, but compliance frameworks do not always reflect reality.

This thesis uses interviews with 30 managers and CSR experts from companies or academic institutions in the UK and KSA to assess how CSR is applied in practice in both countries. It concludes that UK CSR is more regulated and has a stronger legal and strategic focus. UK firms consider both international guidelines and domestic legal frameworks and it has world-leading legislation to protect human rights in supply chains in s54 of the Modern Slavery Act 2015. Enlightened shareholder theory, although it faces challenges in its implementation, is an important step to improving CSR in the UK.

By contrast, all economic and social activities in KSA revolve around religion. Saudi businesses follow Islamic agency principles, which means maximising shareholder profits by managers acting as agents for shareholders. Human rights are rarely enforced in the supply chains of most Saudi companies which are typically family-owned, and the focus of many Saudi companies is on improving their local community rather than a broader global outlook. Thus CSR in the KSA may not yet meet international standards.

The thesis proposes four solutions for improving CSR in KSA: first, it proposes an Islamic application of Carroll's pyramid, the I-CSR model. KSA would accept I-CSR because of its religious background. Second, it recommends making donations more strategic. Third, to address the lack of women on Saudi boards, Saudi companies should conduct an annual gender

audit. Fourth, it recommends the introduction of a code of conduct that incorporates human rights across supply chains.

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Declaration

I hereby declare that this thesis represents my own work which has been done after registration for the degree of PhD at the University of Sheffield and has not been previously included in a thesis or dissertation submitted to this or any other institution for a degree, diploma or other qualifications. I have read the University's current research ethics guidelines, and I have attempted to identify all the risks related to this research that may arise in conducting this research, obtained the relevant ethical approval, and acknowledged my obligations and the rights of the participants.

Abbreviations

Word	Abbreviation
Corporate Social Responsibility	CSR
European Union	EU
Organisation for Economic Cooperation and Development's	OECD
UN Global Compact	UNGC
International Labour Organisation	ILO
Corporate governance	CG
Company Law	CL
Company Law Review Steering Group	CLRSG
Companies Act 2006	CA 2006
Financial Reporting Council	FRC
Environmental, social and governance	ESG
<i>Shari'a</i> Supervisory Boards	SSBs
Islamic Corporate Social Responsibility	I-CSR
Saudi Company Law	SCL
Triple bottom line	TBL
Enlightened shareholder value	ESV
London Stock Exchange Group	LSEG
Modern Slavery Act 2015	MSA 2015
Transparency in Supply Chains	TISC
Corporate Manslaughter and Corporate Homicide Act 2007	CMCHA 2007
Bribery Act 2010	BA 2010
Corporate Environmental Responsibility	CER
Environmental Protection Act 1990	EPA 1990
Energy Savings Opportunity Scheme	ESOS
Common Consolidated Corporate Tax Base	CCCTB
Financial Conduct Authority	FCA
Gulf Cooperation Council	GCC
Arab Forum for Environment and Development	AFED
Saudi General Investment Authority	SAGIA
Saudi Arabia Responsible Competitive Index	SARCI

Chapter 1. Introduction

1.1 Background

'In developed economies, companies' adoption of CSR policies is no longer a desirable extra but a necessity'.¹ According to Zerk, CSR is the 'company's responsibility to act ethically and in accordance with law and to minimise any adverse effects of its operations on the environment, on society, or human health'.²

Consequently, CSR has become an increasingly important part of global business and regulatory debates.³ Although CSR was previously considered a sign of the goodwill of companies toward society, today non-compliance with CSR standards is regarded as a source of reputational risk and may result in substantial losses for organisations.⁴ Nevertheless, international corporations from different national contexts and different violations of aspects of CSR (e.g. Nestlé farms,⁵ Zara,⁶ etc.) have become regularly and repeatedly involved in CSR scandals and 'greenwashing'.⁷

Essentially, CSR involves 'a shift in the focus of corporate governance from profit maximisation for shareholders to responsibility to a broader range of stakeholders'.⁸ It has become natural to perceive corporate governance as a moderator between green organisational practices and CSR reporting but it is more usually accepted that corporate governance is a pervasive system of standards which seek to work holistically to both govern and promote the company's internal management by enhancing transparency and accountability. Thereby, the shareholders are better placed to exercise control over the company's long-term direction. However, the law, if not the practice, is slowly shifting towards a more stakeholder-oriented

¹ Saud Mandurah, Jamal A. Al-Khatib and Saleh Al-Sabaan, 'Corporate Social Reporting among Saudi Arabian firms: An Empirical Investigation' (2012) 28 *Journal of Applied Business Research* 5.

² Jennifer Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge University Press 2006) 299.

³ He-Boong Kwon and Jooh Lee, 'Exploring the differential impact of environmental Sustainability operational efficiency, and corporate reputation on market valuation in high-tech-oriented firms' (2019) 211 *International Journal of Production Economics* 1.

⁴ *ibid.*

⁵ Joe Sandler Clarke, 'Child Labour on Nestlé Farms: Chocolate Giant's Problems Continue' *The Guardian*, 2 Sep 2015 <<https://www.theguardian.com/global-development-professionals-network/2015/sep/02/child-labour-on-nestle-farms-chocolate-giants-problems-continue>> accessed 18 July 2022.

⁶ Anderson Antunes, 'Zara Accused of Slave Labour in Brazil' *Forbes Magazine* 17 August 2011, available online at; <<https://www.forbes.com/sites/andersonantunes/2011/08/17/zara-accused-of-alleged-slave-labor-in-brazil/#58c3fed21a51>> accessed 13 May 2020.

⁷ Larry Lia, Adela McMurray, Jinjun Xue, Zhu Liu and Malick Sya, 'Industry-wide corporate fraud: The truth behind the Volkswagen scandal' (2018) 172 *Journal of Cleaner Production* 1.

⁸ Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' *New York Times Magazine* (13 September 1970) 1.

approach. A major component of the UK's corporate governance code is its efforts to engage the board and workforce to better understand the workforce's views and concerns. A board's duty under section 172 of the Companies Act 2006 includes considering the interests of stakeholders during its duties to promote the company's success. Value alignment with corporate strategy is also a requirement for board members, as is assessing how long-term value is to be protected.⁹

The discussion of CSR has become increasingly important in the KSA. There is evidence that Saudi corporations have started experiencing institutional pressures associated with the implementation of CSR practices.¹⁰ However, the laws and practices of CSR in KSA are underdeveloped and mostly ad hoc in manner. This research compares and contrasts the existing laws and practices of CSR in KSA and the UK and proposes *sui generis* solutions to improving the CSR regulations and practices in KSA.

1.2 Preamble & research questions

The primary question of the study is:

- How can the Law and Practice of CSR in Saudi Arabia be improved?

Four secondary questions arise from the primary question:

- What is the status of CSR in the UK and Saudi literature?
- What effects do the regulatory frameworks for CSR have in Saudi Arabia and the UK?
- How do CSR practitioners evaluate the current state of implementation of CSR in the two countries and why?
- How might CSR in Saudi Arabia be improved?
- What is the significance of these solutions?
- Can they be implemented?

⁹ Nick Gibbon, Clive Garston and Bridget Salaman, *Corporate Governance and Directors' Duties in The UK (England and Wales): Overview / Practical Law* (Practical Law 2019) <<https://uk.practicallaw.thomsonreuters.com/3-597-4626?contextData=%28sc.Default%29>> accessed 7 July 2022.

¹⁰ Norah Altobashi, 'an investigation of Corporate Governance practices in Saudi Arabia listed companies: Adoption and policy challenges' (2019) PhD thesis (University of Essex) 1.

1.3 The Importance of the research and contributions of this thesis

1.3.1 Contribution to Knowledge

An analysis of the literature (see Chapter 2) shows that there is no systematised comparison between the KSA and the UK of CSR from a legal perspective, nor an in-depth legal analysis of updated CSR regulations and practices in KSA. Al-Janadi, Rahman and Oma¹¹ examined Saudi corporate governance in terms of voluntary disclosure and ran a brief comparison with the UK. Al-Ghamdi and Rhodes¹² raised the issue of the effectiveness of corporate governance in Saudi listed companies but did not build elaborate on the links between CSR and international and private law, only providing some examples from the UK, US and France.

This research, by providing a direct comparison in law and in practice, can fill this gap. This is important, especially in KSA, because it will in turn contribute to a more coherent basis on which to consider the development of laws in the KSA and to improve CSR practices by reference to lessons from western countries, and whether the UK model is a good driver of CSR standards worldwide.

1.3.2 Contribution to theory

This study will contribute to building an interdisciplinary framework of CSR in KSA because it will consider the effect of Islam and socio-cultural factors. Such attempts to connect Islam, socio-cultural factors and organisational CSR in the KSA have been made before, but they may be characterised as rudimentary and purely theoretical reviews. Hill et al.¹³ admitted simply that Islam had significantly contributed to CSR in KSA. Similarly, Gelmini¹⁴ focused on Islam and CSR challenges in the financial sector of the KSA but failed to apply any cultural frameworks for a more detailed analysis. This work will assess the effect of religio-cultural factors on CSR and thus fill a gap in the current literature. Based on these findings, Chapter 6 presents proposals for improvements to the theory of Islamic CSR (i-CSR) proposed by Muhammad Adnan Khurshid¹⁵ to make it suitable for application in Saudi Arabia.

¹¹ Yaseen Al-Janadi, Rashidah Abdul Rahman and Normah Hajj Oma, 'Corporate Governance Mechanisms and Voluntary Disclosure in Saudi Arabia' (2013) 4 *Research Journal of Finance and Accounting* 4.

¹² Mohammed Al-Ghamdi and Mark Rhodes, 'Family Ownership, Corporate Governance and Performance: Evidence from Saudi Arabia' (2015) 7 *International Journal of Economics and Finance* 2.

¹³ Bryan Hill, Michael Lunn, William Morrison, Jonathan Mueller and Caitlin Robertson, 'Saudi Arabia: an Overview of Executive Compensation, Board Structure, and Sustainability' (2015) 4 *Drake Management Review* 2, 20.

¹⁴ Lorenzo Gelmini, 'Islamic Banks: Sustainability Integrated Reporting & Religion' (2017) 1 *Corporate Governance and Sustainability Review* 2, 35.

¹⁵ Muhammad Adnan Khurshid, Abdulrahman Al-Aali, Ahmed Ali Soliman and Salmiah Mohd Amin 'Developing an Islamic Corporate Social Responsibility Model (I-CSR)' (2014) 24 *Competitiveness Review* 258.

1.3.3 Contribution to methodology

This thesis is presented as a unique mixture of functionalism, black letter analysis and qualitative research that provides access to individuals' perceptions of CSR and its effect on sustainable performance in a real Saudi organisation. The unique feature of these methods is that they acknowledge that legal remedies may not always be the only solution and that norms and institutions outside the law can provide alternative solutions. 'Extra-legal' refers to conduct that extends legislative action, judicial orders and unwritten trade regulations. It holds that social problems may have legal solutions in some places, while social customs or practices may resolve them in others.¹⁶

Previously, researchers studying the CSR framework and its implications for the KSA were predominantly involved in reviewing the literature.¹⁷ Alshareef and Sandhu¹⁸ went beyond this and added a qualitative analysis of interviews to their review of the corporate governance structure in KSA. A case study by Issa¹⁹ failed to include in-depth qualitative data analysis and a comparative scope, which is also compensated for by the methodological set of this investigation. This thesis provides a more in-depth qualitative study of the legal challenges facing CSR in KSA and provides suggestions for solving them.

1.3.4 Contribution to practice

This will contribute to the development of an enhanced framework of CSR regulations for Saudi companies. The target companies will benefit from the investigation into managerial and non-managerial opinions on the connection between CSR and sustainable performance. The author will provide the full text of this thesis to the middle managers in large Saudi companies and they will be able to use it for strategic insight and decision-making for CSR. Expatriate managers employed by Saudi companies will benefit from a better understanding of how Islam and socio-cultural factors have influenced the current practice of CSR in the company. Saudi companies will also benefit from the practical solutions proposed by the author in Chapter 6, such as a model for a comprehensive code of conduct and a code for improving demographic

¹⁶ Konrad Zweigert and Hein Kötz, *an Introduction to Comparative Law* (3rd edn Oxford University Press, Oxford 1998) 34.

¹⁷ Bryan Hill, Michael Lunn, William Morrison, Jonathan Mueller and Caitlin Robertson, 'Saudi Arabia: an Overview of Executive Compensation, Board Structure, and Sustainability' (2015) 4 *Drake Management Review* 2, 20.

¹⁸ Mohammed Naif Alshareef and Kamaljeet Sandhu, 'Integration of Corporate Social Responsibility (CSR) into Corporate Governance: A New Model, Structure and Practice: A Case Study of Saudi Company' (2015) 3 *European Journal of Accounting Auditing and Finance Research* 1, 1.

¹⁹ Ayman Issa, 'The Factors Influencing Corporate Social Responsibility Disclosure in the Kingdom of Saudi Arabia' (2017) 11 *Australian Journal of Basic and Applied Sciences* 10.

diversity in Saudi companies. Ultimately, the long-term aim of the researcher is to share this thesis with the Ministry of Human Resources,²⁰ Ministry of Commerce²¹ and Capital Market Authority²² in the KSA to create a future CSR code. Thus, this thesis is intended to influence the future regulation of CSR in KSA.

1.4 Aim and objectives

This study aims to analyse the challenges of CSR in law and practice in the UK and KSA and will suggest solutions to improve the regulatory framework of CSR in KSA.

The research objectives are:

1. To compare the current status of CSR in the UK and KSA including the link between religious commitment and CSR in KSA and strategic behaviour for CSR linked to long-term value in the UK. This is achieved by answering the research question: What are the current status of CSR in the UK and Saudi literature?
2. To identify weaknesses and points of criticism in UK laws in their support for CSR and test if the UK (or the West in general) sees CSR as a good example that can be transferred to KSA. This is achieved by answering the research question: What effects do the regulatory frameworks of CSR have in Saudi Arabia and the UK?
3. To evaluate the role of internal CSR rules in supporting CSR and the profitability of Saudi corporations. The CSR laws will be linked to implementation and the gap between law and practice will be identified. This objective is related to answering the research question: How do CSR practitioners evaluate the current implementation of CSR in both the UK and Saudi Arabia and what are their reasons?
4. To develop practical recommendations for how CSR can be enhanced legally and practically in the KSA in light of comparisons with the western version, given 'motivation' as an example of different social, cultural and religious practices of CSR in both contexts. This is achieved by answering the research question: What are the

²⁰ The Ministry of Human Resources in KSA is responsible for organising institutional work in applying CSR and measuring social responsibility practices and creating the necessary incentives for companies to raise the level of disclosure of their non-financial practices.

²¹ The Ministry of Commerce is responsible in Saudi Arabia for the regulation of unlisted companies.

²² The Capital Market Authority in Saudi Arabia is responsible for regulating companies listed on the stock exchange.

proposed solutions to improve CSR in Saudi Arabia in law and practice? What is the significance of these solutions? And how can they be implemented?

1.5 Methodology

1.5.1 Analytical methodologies

To assess Saudi compliance with CSR rules and identify the challenges that Saudi firms are facing in their CSR theoretically in laws and legislations, this thesis uses two methodologies. The first is a functionalism approach based on the analysis of two markets, the KSA and the UK. The purpose of this methodology is to compare the regulatory framework in the UK and on the international level with the laws functionally enacted in KSA. Although the laws are different, their purpose is to reach the same result. KSA and the UK were chosen because they take different approaches to CSR. As a result of certain critical aspects of the legal systems under study being similar, a comparison between them is feasible.²³

The second is a legal doctrinal or black letter analysis of primary sources. Legal scholarship is traditionally conducted through doctrinal methodology. A normative (or ‘black letter’) methodology is usually associated with legal research.²⁴ Therefore, a doctrinal approach evaluates legal sources. A doctrine-exclusive approach examines law separately. This means that a doctrine is viewed as a set of written rules and principles which can be studied and analysed by using only legal sources while ignoring its effects and application. Through this method, Saudi regulations, if any, are analysed to identify gaps in the promotion of CSR.

Comparative Study (Functionalism)

Using the functional method, this thesis intends to conduct a comparative study. This concept was first developed by Konrad and Zweigert in the early 1970s.²⁵ They suggested that functionalism is the fundamental principle of comparative law.²⁶ Functionalist approaches to the study of comparative law have been controversial ever since.²⁷ Michaels claims that the ‘Functional Method has become a mantra and a *bête noire* of comparative law’.²⁸ He also

²³ Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny ‘Law and Finance’ (1998) 106 *The Journal of Political Economy* 1113.

²⁴ Emerson Tiller and Frank Cross, ‘What is Legal Doctrine?’, (2006) 100 *North-Western University Law Review* 517.

²⁵ Konrad Zweigert and Hein Kötz (n 16) 34.

²⁶ *ibid.*

²⁷ Ralf Michaels, ‘The Functional Method of Comparative Law’ in M. Reimann & R. Zimmermann (eds) *The Oxford Handbook of Comparative Law* (Oxford University Press 2006); Richard Hyland, ‘Comparative Law’, in Dennis Patterson (ed) *A Companion to Philosophy of Law and Legal Theory* (Blackwell Publishers 1996) 188.

²⁸ *ibid.*

claims that functionalism is seen by its proponents as the ultimate method for getting the best results, but for its critics, it is not a sound enough methodology.²⁹ He goes on to argue that the functional method is a chimera when viewed from the perspective of theory and practice of comparative law and occupies only a marginal position in theory.³⁰ Michaels is right in his analysis that functionalism provides a way of comparison that is not available to other methods. The functionalism approach is therefore recognised by Ralf Michaels as ‘one of the approaches to micro-comparison’.³¹ It seems justified to use functionalism since this thesis does not seek macro-comparative analysis, but rather focuses on one aspect of CSR regulation in particular. It is also focused on how firms respond to the problems of CSR, which is in line with functionalism.

It is true that there is no single functional method, but functionalism is rooted in reality; it focuses on the effects of the rules, not the rules themselves. As part of functional analysis, legal rules seek to solve social problems connected to economics.³² Functionalists tend to value events more than doctrinal arguments. Usually, it analyses decisions that are representative of real scenarios and compares the responses of different legal systems to the same type of scenario.³³ This thesis has exactly the same purpose; to provide a lawful solution for a real-life dilemma.

Michaels distinguishes seven different concepts of functionalism:

- (1) finalism, a neo-Aristotelian functionalism based on inherent teleology
- (2) adoptionism, evolutionary functionalism in a Darwinian tradition
- (3) classical (Durkheimian) functionalism, explaining institutions through their usefulness for society
- (4) instrumentalism, a normative theory of using law for social engineering
- (5) refined functionalism, a functionalist method that replaces certain postulates of classical functionalism with empirically testable hypotheses
- (6) epistemological functionalism, an epistemology that focuses on functional relations rather than on the ontology of things and
- (7) equivalence functionalism, building on these concepts but emphasising the non-teleological, non-causal aspect of functional relations.³⁴

This thesis is based on classical Durkheimian functionalism. Its elements include scientific research, an understanding of society that incorporates its interconnections, the belief that society has a particular need and the belief that legislation should be based on the needs of

²⁹ Ralf Michaels (n 27) 340.

³⁰ *ibid.*

³¹ *ibid.*, 341.

³² Mathias Siems, *Comparative Law* (2nd edn, Cambridge University Press 2018) 32.

³³ Ralf Michaels (n 27) 342.

³⁴ *ibid.*, 344.

society rather than book theory.³⁵ Due to its explicit rejection by Durkheim, equivalence functionalism³⁶ will not be employed because it is incompatible with the classical approach. Nevertheless, following the classical approach does not mean the concept of functional equivalent is to be rejected entirely as it has a central place in functionalist comparative law. Rather, it implies that it is just a step in the comparison process and not considered final.³⁷

Traditionally, classical functionalism is based on three premises: legal systems encounter similar problems; legal systems take different legal measures to solve the same problem; and despite diverse legal measures, legal systems achieve similar outcomes. In comparing the solutions, the comparator might find that a solution sometimes seems superior and at others, the differing solutions seem to be equally valid. As a result, the definition of functionalism is flexible since it cannot be described formally. Rather than focusing on formal comparison requirements, functionalism is concerned with how foreign law operates in the area in question.³⁸ Functional analysis makes it possible to meaningfully compare across countries, legal systems and institutions that are otherwise incompatible and unrelated.³⁹ Zweigert and Kötz argue that the comparatist should sometimes look for functional equivalents outside of purely legal devices.⁴⁰

Functionalism recommends studying a law's function, particularly its social purpose when conducting comparative legal research. According to this principle, things are comparable if they serve similar purposes in law.⁴¹ Whytock argues that comparative law scholars should argue that countries have similar legal systems that can address any social problems.⁴² Zweigert and Kötz claim that the legal systems of societies face broadly similar challenges.⁴³ This assumption has been contested by several authors. For example, the assumption that all societies suffer from the same problems is criticised by Richard Hyland, who suggests that this assumption is an attempt to avoid determining if the societies under comparison deal with the

³⁵ Ralf Michaels (n 27) 350.

³⁶ Equivalence functionalism focuses on the problems of adapting social systems to changes of the environment. Its goal is to organise a 'context of comparison and substitution' to find 'variation possibilities' in the sense of 'possibilities of the change, substitution and replacement' of equivalent services.

³⁷ Émile Durkheim, *Les règles de la méthode sociologique* (5th edn, 1988) 187.

³⁸ Konra Zweigert and Hein Kötz (n 16) 34, 35.

³⁹ Giesela Ruhl, 'Behavioural analysis and comparative law: improving the empirical foundation for comparative legal research' in Hans-W. Micklitz, Anne-Lise Sibony and Fabrisio Esposito, *Research Methods in Consumer Law: A Handbook* (Edward Elgar Publishing, 2018) 484.

⁴⁰ Konra Zweigert and Hein Kötz (n 16) 38.

⁴¹ *ibid*, 34.

⁴² Christopher Whytock, 'Legal Origins, Functionalism, and the Future of Comparative Law' (2009) 2009 *The Brigham Young University Law Review* 1879.

⁴³ Konra Zweigert and Hein Kötz (n 16) 34.

same issues or not.⁴⁴ Moreover, societies may give a problem a different level of importance. Developing countries, for instance, may not be concerned about investor protection as much as developed countries.⁴⁵

It can be said that a functionalist approach to comparative law can serve as a guide for the development of applied comparative law and a methodological guide.⁴⁶ It is because functionalists suggest ways of resolving a specific problem based on circumstances and conditions.⁴⁷ Functionalism was chosen for these exact reasons; to look at how The UK laws operate concerning CSR and apply some of the solutions found in The UK regulations to Saudi Arabia if possible. This thesis includes some support for the idea that functional criteria can be used as assessment criteria. Functionalism is, therefore, also used as a ‘better law comparison’ or ‘better solutions’.⁴⁸

The ‘better solution’ or ‘better law comparison’ within functionalism is best described by von Mehren.⁴⁹ He argues that jurists need to know how other legal systems deal with specific issues to aid their imagination and to see the positives and negatives of different approaches. In doing so, lawyers can identify innovative solutions to problems they encounter in their practice and aid in the reform of the legal system.⁵⁰ For Zweigert and Kötz, a comparative legal science allows us to discover new ways to prevent or resolve social conflicts and provide a wider array of solutions than studying one nation’s legal system simply because different approaches to the law offer more possibilities than any one legislature could ever imagine.⁵¹ This is the so-called ‘better solution’. For Schlesinger, foreign solutions may serve as models or guides.⁵² A functionalist legal analysis can contribute to law reform, especially if it aims to address the system of law in the researcher’s country.⁵³

⁴⁴ Richard Hyland, *Gifts A Study in Comparative Law* (1st Edition, Oxford University Press 2012) 188.

⁴⁵ While this point was made with regard to legal origins scholarship, it can still be applied to functionalism; See: John Ohnesorge, ‘Legal Origins and the Tasks of Corporate Law in Development,’ (2009) 2009 *The Brigham Young University Law Review* 1619, 1630-1631.

⁴⁶ Konra Zweigert and Hein Kötz (n 16) 11.

⁴⁷ *ibid*, 11.

⁴⁸ Christopher Whytock (n 42) 1897.

⁴⁹ Arthur T von Mehren, ‘The Comparative Study of Law’ (1991) 67 *Tulane European and Civil Law Forum* 43, 47.

⁵⁰ *ibid*, 43, 47.

⁵¹ Konra Zweigert and Hein Kötz (n 16) 15.

⁵² ‘When a problem is viewed in the deeper perspective made possible by the comparative method, a number of alternative solutions may come into sight’. See: Rudolf B. Schlesinger; Hans W. Baade, Mirjan R. Damaska and Peter E. Herzog, *Comparative Law: Cases, Text, Materials* (5th ed., West Academic Publishing, 1988) 22.

⁵³ John Henry Merryman, *The Loneliness of the Comparative Lawyer and Other Essays in Foreign and Comparative Law* (Kluwer Law International, 1999) 486.

Some comparative legal scholars have criticised the ‘best solution’ tendency to exaggerate the similarities between societies.⁵⁴ Whitman acknowledges that functionalism is useful, but argues that it also draws its strength from a dubious premise: that all societies view social issues in roughly the same way.⁵⁵ Another criticism is voiced by Jonathan Hill who asked ‘on what basis are comparative lawyers qualified (or at any rate better qualified than lawyers whose studies are limited to their own country) to make evaluations of different legal systems?’⁵⁶ In his view, functionalists are mistaken in believing that their method allows them to make such an evaluation since it is objective. He argues that only value judgements can be used to evaluate different legal solutions but that comparatists are almost always biased by their value judgements when considering the merits and shortcomings of other legal systems.⁵⁷ As long as the researcher and the audience are aware of that deficiency, functionalism can still be applied. Additionally, as Whitman rightly pointed out:

Traditionally minded comparative lawyers write in ways that reflect the concerns and interests of the legal profession, while neglecting the sorts of issues that preoccupy social scientists and political leaders. Thus, they focus on topics like the different jurisprudential approaches and procedures of the common law and civil law traditions, while finding little to say about the role of the law in different socio-economic systems. The result is that comparative law scholarship often seems out of tune with the dominant issues of the modern world. Accordingly, our first step [...] should be to shake free from our comfortable habit of addressing ourselves to the community of lawyers. Instead, we should write for a wider audience of readers concerned about contemporary differences in social and economic orientation.⁵⁸

Its inherent ‘naturalness’ and the lack of an alternative have made functionality useful for comparative law, despite its limitations. Graziadei argues that functional comparisons are constant hallmarks of everyday life, whether it is working, teaching or learning and interacting with people from different cultures that shape our worldview.⁵⁹ Michaels believes that

⁵⁴ James Q. Whitman, The Neo-Romantic Turn, in Pierre Legrand & Roderick Munday (eds) *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003) 312.

⁵⁵ *ibid*, 313.

⁵⁶ Jonathan Hill, ‘Comparative Law, Law Reform and Legal Theory’ (1989) 9 *Oxford Journal of Legal Studies* 101, 102.

⁵⁷ *ibid*, 106.

⁵⁸ James Q. Whitman, ‘Consumerism Versus Producerism: A Study in Comparative Law’ (2007) 117 *The Yale Law Journal* 340, 344.

⁵⁹ Michele Graziadei, ‘The Functionalist Heritage’ in Legrand and R Munday (eds) *Comparative Legal Studies: Traditions and Transitions* (Cambridge University Press 2003) 113; Jean-Claude G mar, ‘Seven Pillars for the Legal Translator: Knowledge, Know-How and Art’ in Šarčević (ed) *Legal Translation: Preparation for Accession to the European Union* (Faculty of Law University of Rijeka 2001) 111 and 121-125; Mark Van Hoecke, ‘Deep Level Comparative Law’ in M Van Hoecke (ed) *Epistemology and Methodology of Comparative Law* (Hart Publishing 2004) 173.

comparing foreign and domestic laws enables us to better understand our own.⁶⁰ Examining UK law will help us better understand the Saudi approach to CSR. Functionalism also allows us to perceive practical problems and their solutions independently from the doctrinal framework of the compared legal systems.⁶¹ In the same context, Graziadei claims that even the incomparable is comparable.⁶² This approach, therefore, allows us to compare a common law jurisdiction with a civil law jurisdiction highly influenced by Islamic concepts as long as the same problems arise.⁶³

A major criticism of the use of functionalism is that it works well when comparing legal systems that are politically and culturally similar, but less well when the systems are not. For example, an issue in comparisons of the UK and KSA could be the influence of Islam on CSR in KSA. While functionalism in its traditional form is imperfect, this thesis addresses the issue by considering von Mehren's viewpoint that, when social, political and economic values are shared, the systems as a whole and their intellectual structures can be compared.⁶⁴ However, such a view does not seem to be shared by everyone. For example, Zweigert and Kötz, the 'founding fathers' of theory, argue that rules can be compared effectively if they serve the same purpose and address the same issue.⁶⁵ In the same vein, von Mehren stated that convergence on a functional level represents the criterion of comparability. The principles, rules and theories of fundamentally different institutions can be compared only when their purposes are comparable.⁶⁶

There is no clear definition of function, and we are not sure whether it refers to the results or the purpose of a legal rule. Using Zweigert and Kötz's definition of 'fulfilment,' this thesis defines function as the results of the application of legal rules and they stated that '[i]ncomparables cannot usefully be compared, and in law, the only things which are comparable are those which fulfil the same function'.⁶⁷ The second ambiguity is linked to the

⁶⁰ Ralf Michaels (n 27) 342.

⁶¹ Jaakko Husa, 'Comparative Law, Legal Linguistics and Methodology of Legal Doctrine' in: M. Van Hoecke (ed.) *Methodologies of Legal Research. Which Kind of Method for What Kind of Discipline?* (Hart 2011) 221. As Zweigert and Kötz noted 'the comparatist must eradicate the preconceptions of his native legal system' Konra Zweigert and Hein Kötz, (n 16) 35.

⁶² Michele Graziadei (n 59) 105.

⁶³ Esin Örüçü and David Nelken warn that the functional approach 'does not solve the issue of comparability as between a Western legal system and a religious system'. See: Esin Örüçü and David Nelken, *Comparative Law: A Handbook* (Bloomsbury Publishing 2007).

⁶⁴ Arthur T. von Mehren (n 49) 43.

⁶⁵ Konra Zweigert and Hein Kötz (n 16) 34.

⁶⁶ Arthur T. von Mehren (n 49) 43.

⁶⁷ Konra Zweigert and Hein Kötz (n 16) 34.

question of for whom the legal rule is functional. Zweigert and Kötz suggest that ‘the functionality of the legal rules is ‘measured’ for society as a whole’.⁶⁸

There are three stages in the functional method of comparative law: (1) the researcher describes the issue in terms of its function without applying his own legal framework; (2) a rigorous analytical process that allows objective comparisons across legal systems; and (3) the researcher compares and evaluates the analysis from a purely functional perspective. Functionalism uses a problem-based approach to frame research questions, which leaves some room for flexibility.⁶⁹

Despite having fundamentally different meanings and purposes, functionalism can serve a variety of purposes. It can influence the way we understand the law, but also serve as the common denominator of comparison, the *tertium comparationis*. It can also explore similarities – the *praesumptio similitudinis*⁷⁰ – to determine the ‘better law’. Functionalism can also be used to build a system or to create a unifying rule. In this thesis, functionalism serves primarily as a *tertium comparatist* to decide which solution is best for the research problem.

In light of the recent increase in academic interest in Islamic law and countries governed by its principles and by secular law since 11 September 2001, using functionalism to compare religious laws with European ones is not likely to pose significant challenges because families, inheritances and commercial transactions are influenced by a number of religious systems. As a result, the implementation of the major world systems has become functionally comparable with religious regimes, particularly Islamic ones.⁷¹

⁶⁸ Konra Zweigert and Hein Kötz (n 16) 34.

⁶⁹ Mathias Siems (n 32).

⁷⁰ The *praesumptio similitudinis*, namely the axiom that, once legal doctrine is stripped away, developed legal systems tend to reach similar practical results. See for example, Gerhard Dannemann, Hyland, Richard: *Gifts. A Study in Comparative Law* (1st edn, Oxford University Press 2009).

⁷¹ Mark Hill, ‘European-American Law and Religion Consortium’ (2004) 7 *Ecclesiastical Law Journal* <<https://www.cambridge.org/core/journals/ecclesiastical-law-journal/article/abs/europeanamerican-law-and-religion-consortium/818938D376AA2688544E2790DE144AA0>> accessed 25 January 2022; Andrew Phang and Lord Denning, ‘The Influence of Religion on Law’ (2001) 16 *Journal of Law and Religion* 719; Stefano Hendrianto, ‘Comparative Law and Religion: Three-Dimensional (3D) Approach’ 2017 *Law and Method* <https://www.researchgate.net/publication/322704460_Comparative_Law_and_Religion_Three-Dimensional_3D_Approach> accessed 25 January 2022.

Legal doctrinal analysis

This thesis uses doctrinal legal analysis as a second method. According to Van Hoecke, its purpose is to interpret texts and documents according to standard methods of interpretation.⁷²

Legal scholars collect empirical data (statutes, cases, etc.), word hypotheses on their meaning and scope, which they test, using the classic canons of interpretation. In a next stage, they build theories [...] which they test and from which they derive new hypotheses [...] Described in this way, doctrinal legal scholarship fits perfectly with the methodology of other disciplines.⁷³

A doctrinal research study looks at cases using legal reasoning. In legal studies, legally formulated propositions are analysed, organised and categorised.⁷⁴ Ian Dobinson and Francis Johns viewed theoretical legal research as simply asking what the law is in a given field.⁷⁵ This means that this approach has to do with the development and application of legal theory and doctrine. This kind of research is sometimes called theory-only research. Depending on the complexity of the situation, this could involve simple research to discover a particular statement of the law, or a more in-depth analysis of the relevant legal statute.⁷⁶

This thesis uses doctrinal legal analysis because the underlying research question was intended to criticise and direct legal doctrines. As part of the process of critiquing the law, the legal texts should first be analysed doctrinally to identify glitches and defects in the law. This thesis uses doctrinal legal analysis by examining the shortcomings of Saudi CSR legislation by comparing it with UK laws. For example, section 172 of the UK Companies Act and s54 of the UK Modern Slavery Act 2015 will be discussed extensively using doctrinal analysis. Brownsword argues that legal doctrinal researchers tend to remain focused on primary source documents such as legislation and cases and avoid moving away from mainstream materials to soft law regulations and codes of practice).⁷⁷ However, the legal doctrinal method is still considered one of the best ways of analysing soft laws.

⁷² Mark van Hoecke, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?', in M. van Hoecke (ed) *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 4.

⁷³ *ibid.*, 11.

⁷⁴ Shriram Tiwary, 'Doctrinal and Non-Doctrinal Legal Research,' in K. Verma & M. Afzal Wani (eds) *Legal Research and Methodology* (Indian Law Institute., 2006) 68.

⁷⁵ Ian Dobinson and Francis Johns, 'Qualitative Legal Research', in Michael McConville & Wing Hong Chui (eds) *Research Methods for Law* (Edinburgh University Press, 2007) 18.

⁷⁶ *ibid.*

⁷⁷ Roger Brownsword, *Law, Rules, Regulation and Technology* (1st edn, Routledge, Taylor & Francis Group 2021) 1.

The strengths of doctrinal law are to clarify, direct and correct law doctrine.⁷⁸ In doctrinal legal research, practical solutions to legal problems are provided and this is relevant to legal practice, but it is different from practical legal research in that it tries to understand the law, not just apply it to the problem at hand.⁷⁹ Taking a doctrinal approach, the author verifies current knowledge on legal issues. Therefore, doctrinal research facilitates a reassessment of a specific area of law and identifies gaps between the current laws and society's aspirations. Building legal knowledge of a specific legal issue is thus the main goal of doctrinal legal research, which is the first step to resolving the issue. As an example, knowing how the current Saudi law fails to promote CSR will be essential for solving the main research question of how CSR in the KSA can be improved. The research issue, therefore, cannot be resolved until the gap between what Saudi law says and what it ought to say on this issue is defined.

The major weakness of the doctrinal methodology is that, unlike other methodologies, it focuses on the law itself. In a pure doctrinal view, the law is not addressed in terms of its effects or application, but as a collection of principles which can be discerned and analysed.⁸⁰ Critics have often pointed out that it does not question or challenge the law's application and thus is out of touch with reality.⁸¹ The researcher tried to overcome this problem by using an empirical methodology involving qualitative interviews with 30 social responsibility practitioners in the UK and KSA. The study addresses this weakness because it identifies practical problems related to reality and thus helps in finding practical and applicable legal solutions. This means that doctrinal analysis is complementary to empirical study, as legal analysis is a first step to understanding the law.

Empirical methodology

The thesis also uses an empirical methodology (qualitative interviews) to explore the current application of CSR in the UK and KSA.

Qualitative interviews

With ethical approval from the University of Sheffield, 30 interviews were conducted with professionals, managers and those involved with CSR management from 20 Saudi and 10 UK organisations. It was decided to cap the number at this level because the information they

⁷⁸ Peter Birks, 'Editor's Preface'. In: Birks (ed) *What are Law Schools for?* (OUP, 1996) ix.

⁷⁹ Mathias M. Siems and Daithí mac Síthigh, 'Mapping Legal Research' (2012) 71 *The Cambridge Law Journal* 651, 654.

⁸⁰ Ishwara Bhat, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles' (2020) 2020 *Idea and Methods of Legal Research* 143.

⁸¹ *ibid.*

provided became repetitive, signalling saturation. To facilitate the discussion of a variety of issues relevant to the study, a set of semi-structured questions was prepared. Since it logically outlined which topics or questions should be discussed during the interview, a semi-structured interview was the best choice as it helped the author gain a deeper understanding of the participants and kept the interviews on track by exploring more information systematically.

Each interview lasted an hour. During the interviews, both Arabic and English were used (20 in Arabic and 10 in English). The interviewees consented to be recorded and transcripts were then made. An Arabic-to-English translator reviewed most of the interviews after the author translated them and ensured that the slang was correctly translated. Using thematic analysis, the author then analysed the data. A number of questions were posed regarding the CSR commitments of their company, the rules of conduct it has established and the challenges facing the company, particularly concerning environmental preservation and profit.

Chapter 2. Literature Review

2.1 Introduction

CSR has become entrenched in corporate governance regulations throughout the world. As Jeremy Moon has pointed out, it has many overlapping definitions⁸² because since its emergence in the late 1980s, theoretical and practical aspects of CSR have been steadily explored and widened. Consequently, CSR is now a thriving industry with dedicated staff, ‘newsletters, professional associations and armies of consultants’.⁸³

This chapter examines the current state of CSR in law and practice in the UK and Saudi literature. It summarises the history of CSR, analyses its definitions, provides an overview of the legal framework for CSR in the UK and Saudi Arabia, and examines problems in the existing literature on CSR practices in Saudi Arabia and how they might be resolved.

CSR measures at the international level have so far only been soft law instruments. The lack of an international hard law instrument can partially be explained by the lack of a uniform definition and understanding of this concept. In the UK, the applicable provisions have been criticised for lacking enforceability. It also demonstrates that the understanding by Saudi scholars of CSR and the lack of CSR policies are not in line with the international framework, which fails to promote CSR as expected at the international level.

Therefore, there is a lack of understanding of the most effective strategies and policies of CSR in supply chains in Saudi Arabia and this review will provide an evidence-based understanding of the problem.

2.2 History of CSR

Corporate donations for social causes as one aspect of CSR have a long history and philanthropists and companies have had a considerable impact on society. The term was first used in 1954 by Gerald J. Schnepf and Howard Bowen in their publication *Social Responsibilities of the Businessman*.⁸⁴ This section explores the brief history of CSR, for two

⁸² Jeremy Moon, ‘Government as a driver of corporate social responsibility’ (2004) International Centre for Corporate Social Responsibility, Research Paper Series. No. 20.

⁸³ Paddy Ireland and Renginee G. Pillay, ‘Corporate Social Responsibility in a Neoliberal Age’ in Peter Utting & Jose Carlos Marques (eds) *Corporate Social Responsibility and Regulatory Governance* (UNRISD, 2010) 86.

⁸⁴ Gerald J. Schnepf and Howard R. Bowen, ‘Social Responsibilities of the Businessman’ (1954) 15 *The American Catholic Sociological Review* 42; Archie B. Carroll, ‘Corporate Social Responsibility’ (1999) 38 *Business & Society* 268.

reasons. First, a historical review of CSR in the literature is limited, particularly concerning linking the development of the concept with the behaviour of the company,⁸⁵ Second, by exploring its roots, it becomes possible to adopt a historical concept of CSR for use in Saudi firms which has been tested, along with its effects, purposes and problems. The exploration is based on historical data that is the most important evidence in the quest to figure out how companies and societies have used the concept of CSR in the past. Historical definitions are the only comprehensive evidence base for thinking about and analysing how companies operated in the past.

2.2.1 CSR before the 1970s

After World War II, CSR emerged as an anti-communist idea.⁸⁶ Before the 1950s, Clark's 'business social control' was considered an effective tool for CSR in the US.⁸⁷ Since the middle of the 19th century, most companies' interests were with their employees and monitoring organisations did not show whether the goal of the companies at the time was to increase the productivity of their employees for purely commercial purposes or humanitarian goals with the growth of the 'industrial welfare movement'.⁸⁸ For example, UK factories were in a miserable position, especially concerning the employment of women and children and when the industrial welfare movement emerged, charitable giving was used to improve the conditions of those workers as a kind of commercial profit for industrial companies.⁸⁹

Considering that corporations are a key part of capitalist society, this debate over whether they should behave socially responsibly has continued since the 1930s. As Berle Jr and Merrick

⁸⁵ Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir and Brynhildur Davídsdóttir, 'A Literature Review of the History and Evolution of Corporate Social Responsibility' (2019) 4 *International Journal of Corporate Social Responsibility* 1.

⁸⁶ Nicholas N. Eberstadt, 'What History Tells Us about Corporate Responsibility' (EconBiz 1977) <<https://www.econbiz.de/Record/what-history-tells-us-about-corporate-responsibility-eberstadt-nicholas/10002093979>> accessed 25 January 2022.

⁸⁷ Robert Kramer, 'Book Review: The Social Control of Business. John Maurice Clark' (1926) 4 *University Journal of Business* 307.

⁸⁸ Archie B Carroll, 'A History of Corporate Social Responsibility: Concepts and Practices' (ResearchGate, 2008) <https://www.researchgate.net/publication/282746355_A_History_of_Corporate_Social_Responsibility_Concepts_and_Practices> accessed 25 January 2022. See also: Smriti Chand, 'Welfare Work Movement for Factory Workers in The 19th and Early 20th Centuries' (*Your Article Library*) <<https://www.yourarticlelibrary.com/human-resources/the-welfare-work-movement-for-factory-workers-in-the-19th-and-early-20th-centuries/2414>> accessed 25 January 2022.

⁸⁹ Ni Made Suci, 'The evolution of management thought Oleh Daniel A. Dan Arthur G. Bedeian (Suatu Kajian Kritis)' (2019) 1 *Prospek: Journal of Mangament and business* 7.

Dodd Jr debated, Berle Jr argued that corporations were only held accountable to their shareholders, while Dodd argued that they also should be held accountable to society.⁹⁰

There is no dispute that the procedures for monitoring the social behaviour of the company or what is known as the common value in the 1950s were very lax despite the growing social concern about the behaviour of companies.⁹¹ The situation changed dramatically when Gerald J. Schnepf and Howard Bowen published their book.⁹² Although there is no evidence of any improvement in CSR practices in the 1950s, Schnepf and Bowen made suggestions that they saw as advanced at the time. For example, they proposed a structural change in boards of directors to reflect social attitudes and suggested a social audit as a means of measuring corporate social performance.⁹³

In the 1960s, Keith Davis was the first to link CSR as a corporate action to management and argued that a socially responsible business would be profitable in the long term.⁹⁴ William C. Frederick was also influential at the time and saw CSR as the outcome of a general social purpose that is not limited to any individual or company.⁹⁵

CSR has spread across the global community over the last few decades through the activities of both professionals and researchers and a new CSR institutional infrastructure seems to have arisen.⁹⁶ Beginning in the 1970s, a variety of attempts has been made to introduce detailed legally binding documents governing corporate activity and have resulted in several instruments addressing CSR, predominately soft law instruments. For example, Morrell Heald's path-breaking book, *The Social Responsibilities of Business: Company and Community*, was published in the 1960s and although it does not provide a new definition of CSR, it seems that he views it from the perspective of businessmen, given that they tested it themselves and they should put in place the appropriate mechanism for CSR.⁹⁷

⁹⁰ Allen Ferrell, Hao Liang and Luc Renneboog, 'Socially Responsible Firms' 2014 SSRN Electronic Journal. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2464561> accessed 25 January 2022.

⁹¹ Archie B Carroll (n 88).

⁹² Gerald J. Schnepf and Howard R. Bowen (n 84).

⁹³ *ibid.*

⁹⁴ Keith Davis, *Human Relations at Work* (McGraw-Hill 1967).

⁹⁵ William C Frederick, Keith Davis and James E Post, *Business and Society* (7th ed McGraw-Hill 1992) 1.

⁹⁶ Sandra Waddock, 'Building a new institutional infrastructure for corporate responsibility' (2008) 22 *Academy of Management Perspectives* 87.

⁹⁷ Morrell Heald, *Company and Community: The Responsibilities of Business in Society* (Place of publication not identified 1967) 348.

Johnson developed the conventional wisdom of CSR, which is the balance between all the interests of stakeholders, including employees.⁹⁸ He is considered one of the most prominent pioneers in the creation and development of stakeholder theory and one of its strongest supporters.⁹⁹

Education, development, pollution control and support for minorities were the most prominent issues of CSR by the end of the 1970s.¹⁰⁰ Carroll argued that CSR, including its ethics and care for society, is primarily an economic responsibility, as if the company continues to operate and earns profits, it contributes to the growth and welfare of society.¹⁰¹

2.2.2 CSR after the 1970s

In the 1980s, the idea of obligating CSR was first proposed.¹⁰² It was seen as a voluntary commitment toward shareholders, employees, suppliers, customers and others. CSR became a routine process for the company and not the sum of the results of a business,¹⁰³ and this contradicted the social performance model,¹⁰⁴ although the hierarchy of CSR was a springboard for discussions and suggestions about the development of concepts and practices.¹⁰⁵

In the 1990s, philanthropy around the world fuelled the concept of CSR, and this greatly enhanced the stakeholder theory.¹⁰⁶ For example, the fast food chain McDonald's expanded greatly in that period, partly because of its social practices.¹⁰⁷ Business ethics was a common practice within CSR and was viewed as a commitment tool, especially concerning supply chains rather than merely charitable initiatives.¹⁰⁸

⁹⁸ Harold L Johnson, *Business in Contemporary Society: Framework and Issues* (Wadsworth Publishing Company 1971).

⁹⁹ Archie B Carroll (n 88).

¹⁰⁰ Sandra L. Holmes, 'Executive Perceptions of Corporate Social Responsibility' (*Econpapers.repec.org*, 1978) <<https://econpapers.repec.org/RePEc:eee:bushor:v:19:y:1976:i:3:p:34-40>> accessed 25 January 2022.

¹⁰¹ Archie B. Carroll, 'Corporate Social Responsibility (CSR) is on a Sustainable Trajectory' (2015) 05 *Journal of Defense Management* <https://www.researchgate.net/publication/289366605_Corporate_Social_Responsibility_CSR_is_on_a_Sustainable_Trajectory> accessed 25 January 2022.

¹⁰² Thomas M. Jones, 'Corporate Social Responsibility Revisited, Redefined' (1980) 22 *California Management Review* 59, 67.

¹⁰³ *ibid.*

¹⁰⁴ Marjo Elisa Siltaoja, 'Revising the Corporate Social Performance Model – Towards Knowledge Creation for Sustainable Development' (2013) 23 *Business Strategy and the Environment* 289, 302.

¹⁰⁵ Patty Bick, Wen-Chyuan Chiang, Sharon (Xuerong) Huang and Li Sun, 'Corporate Social Responsibility and ASC 820 Hierarchy: Evidence from Responsible CSR Activities' (2015) 8 *International Journal of Revenue Management* 299.

¹⁰⁶ Jeff Frooman, 'Stakeholder Influence Strategies' (1999) 24 *The Academy of Management Review* 191.

¹⁰⁷ Tony Royle and Brian Towers, *Labour Relations in The Global Fast-Food Industry* (The Taylor & Francis e-Library 2005) 240.

¹⁰⁸ Jane Collier, 'FOCUS: Research in Business Ethics Business Ethics Research: Shaping The Agenda' (1995) 4 *Business Ethics: A European Review* 6, 12.

The early 2000s was a starting point for empirical research linking CSR with a number of factors. For example, the positive relationship between social performance and the attractiveness of the employer was discovered and the belief that accidents negatively influence a company's reputation.¹⁰⁹ Hence, the business case for CSR appeared.¹¹⁰ While it was from the point of view of business owners an economic necessity,¹¹¹ social institutions have argued that CSR should be a mandatory act of the company regardless of any profits or losses.¹¹²

Integrating CSR with corporate systems in the European Union (EU) and the US was a necessity due to the spread of social unrest in the 1980s and 1990s,¹¹³ and some have argued that increased social reporting is a clear example of the realisation by Western society, particularly in the US and the UK, of the importance of institutionalising CSR.¹¹⁴ Despite this realisation, many have questioned the success of CSR in the short and medium term.¹¹⁵ They stress that the only proof of the development and improvement of CSR must be based on companies publishing their work in CSR, especially influential companies.¹¹⁶

2.2.3 International efforts to frame CSR

In 1976, one of the most influential international instruments on CSR was established; the Organisation for Economic Cooperation and Development's (OECD) *Guidelines for Multinational Enterprises*.¹¹⁷ Some have argued that this guiding principles has helped the

¹⁰⁹ Kristin B. Backhaus, Brett A. Stone and Karl Heiner, 'Exploring the Relationship Between Corporate Social Performance and Employer Attractiveness' (2002) 41 *Business & Society* 292, 318; Stelios C. Zyglidopoulos, 'The Impact of Accidents on Firms' Reputation for Social Performance' (2001) 40 *Business & Society* 416, 441.

¹¹⁰ Michael Hopkins, 'The Business Case for CSR: Where Are We?' (2003) 5 *International Journal of Business Performance Management* 125.

¹¹¹ Laura J. Spence, 'CSR and Small Business in A European Policy Context: The Five 'C'S of CSR and Small Business Research Agenda 2007' (2007) 112 *Business and Society Review* 533, 552.

¹¹² Waris Ali and Jędrzej George Frynas, 'The Role of Normative CSR-Promoting Institutions in Stimulating CSR Disclosures in Developing Countries' (2017) 25 *Corporate Social Responsibility and Environmental Management* 373, 390.

¹¹³ Dirk Matten and Jeremy Moon, 'Implicit' and 'Explicit' CSR: A Conceptual Framework for A Comparative Understanding of Corporate Social Responsibility' (2008) 33 *Academy of Management Review* 404, 424.

¹¹⁴ Wendy Chapple and Jeremy Moon, 'Corporate Social Responsibility (CSR) in Asia' (2005) 44 *Business & Society* 415, 441.

¹¹⁵ David Vogel, *The Market for Virtue: The Potential and Limits of Corporate Social Responsibility* (Brookings Institution, US 2006) 222.

¹¹⁶ *ibid.*

¹¹⁷ OECD, 'Guidelines for Multinational Enterprises'

<http://www.oecd.org/document/28/0,3746,en_2649_34889_2397532_1_1_1_1,00.html> accessed 24 January 2020.

business community build an environment of trust and reciprocity,¹¹⁸ However, the ‘should’ contained in the provisions of the principles undoubtedly cancels any binding force.¹¹⁹

Cooperation between UN agencies and business actors is the result of the UN Global Compact (UNGC).¹²⁰ After Kofi Annan presented the Compact of the UN, he emphasised its voluntary nature by calling on business leaders to voluntarily adopt it.¹²¹ It is a CSR initiative that encourages businesses to act responsibly in line with human rights, labour, environmental and anti-corruption standards for corporate policies and practices.¹²² It has 17 Sustainable Goals.¹²³ The Global Compact was intended to be a code of conduct as a soft, non-binding law.¹²⁴ According to Moshkin:

One reason the initiative has been so successful is the UNGC’s extensive toolbox, which includes action platforms to establish partnerships and solve challenges, an online UN Business Action Hub and other resources, such as a reporting partnership with Global Reporting Initiative (GRI), which helps businesses share information, engage in open dialogue and take action to accelerate tangible progress toward a more sustainable world.¹²⁵

CSR measures in organisations committed to the UNGC principles are much better compared to others according to a Report on UNGC performance.¹²⁶ The main drawback of this instrument is the lack of any sanctions for non-compliance. To remedy this, a mechanism enabling the exclusion of members who have ‘severely violated the principles was introduced’.¹²⁷ This instrument has the best results in influencing companies to adopt CSR principles.

¹¹⁸ Heather Bowman, ‘If I Had a Hammer: The OECD Guidelines for Multinational Enterprises as Another Tool to Protect Indigenous Rights to Land’ (2006) 15 Washington International Law Journal 703.

¹¹⁹ OECD (n 121) Principle IV.

¹²⁰ UN Global Compact, ‘Global Compact Participants’

<<http://www.unglobalcompact.org/ParticipantsandStakeholders/index.html>> accessed on 24 January 2020.

¹²¹ Kofi Annan, ‘Kofi Annan’s Address to World Economic Forum in Davos Secretary-General’ (United Nations February 1, 1999) <<https://www.un.org/sg/en/content/sg/speeches/1999-02-01/kofi-annans-address-world-economic-forum-davos>> accessed December 12, 2022.

¹²² UN Global Compact, ‘2010 Annual Corporate Sustainability Report’

<<https://www.unglobalcompact.org/participation/report/cop/create-and-submit/active/13668>> accessed on 24 January 2020; UN Global Compact, ‘UN Global Compact Progress Report 2018’

<<https://www.unglobalcompact.org/library/5637>> accessed on 24 January 2020.

¹²³ No poverty, zero hunger, quality education, decent work and economic growth, responsible consumption and production and reduced inequalities. See: UN Global Compact (n 122).

¹²⁴ Jennifer Zerk (n 2) 259.

¹²⁵ Julia Moshkin, ‘Why the UN Global Compact is a CSR commitment that works’ (1 May 2019)

<<http://www.ethicalcorp.com/why-un-global-compact-csr-commitment-works>> accessed on 25 March 2020.

¹²⁶ Ecovadis, ‘Commitment vs. Practice: A Comparison of CSR Performance of the UN Global Compact Signatories and Non-Signatories’ <<https://www.ecovadis.com/library/commitment-vs-practice-comparison-csr-performance-un-global-compact-signatories-non-signatories/>> accessed on 25 March 2020.

¹²⁷ UN Global Compact, ‘Integrity Measures No. 4’, available at:

<<http://www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html>> accessed on 24 January 2020.

In 1977, the International Labour Organisation (ILO) Tripartite Declaration was adopted and it is related to the responsibility of companies for the human rights of employees and suppliers.¹²⁸ This declaration has been strongly criticised by some workers' organisations who assert that it contributes to undermining the establishment of companies due to the current implementation mechanism of the periodic reports of companies¹²⁹ although some argue that the declaration contributes to improving the performance of multinational companies, especially concerning human rights.¹³⁰

The UN has discussed draft laws binding on multinational corporations through 'Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to human rights obligations'.¹³¹ The draft Norms sought to impose the same set of human rights obligations on companies that states have under treaties.¹³² The document was much criticised and never adopted.¹³³

In 2011, the 'Guiding Principles on Business and Human Rights' became a key guide to CSR both inside and outside the company.¹³⁴ Many see the Guiding Principles as an appropriate tool for the global economy in direct line with human rights while others consider it nothing but a management tool for a company to clearly express its control and power.¹³⁵ The creation of public awareness in companies is not through the imposition of laws and regulations in stark contrast to the principles of capitalism, but rather through civil society organisations.

¹²⁸ ILO, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (1977) ILO Doc. 28197701, OB Vol. LXI, 1978, ser. A, no. 1; ILO, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy,' (3d ed. 2001); ILO, 'Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy' (4th ed. 2006).

¹²⁹ Jernej Letnar Cernic, 'Corporate Responsibility for Human Rights: Analyzing the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy' (Papers.ssrn.com 2009) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1459548> accessed 25 January 2022.

¹³⁰ Paul Kenneth Kinyua, 'The Accountability of Multinational Corporations for Human Rights Violations: A Critical Analysis of Select Mechanisms and Their Potential to Protect Economic, Social and Cultural Rights in Developing Countries' (SSRN May 4, 2010)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1599842> accessed December 13, 2022.

¹³¹ UN Doc. E/CN4/Sub.2/2003/12/Rev.2 of 26 August 2003.

¹³² *ibid.*

¹³³ John G. Ruggie, 'The construction of the UN 'protect, respect and remedy' framework for business and human rights: the true confessions of a principled pragmatist' (2011) *The European Human Rights Law Review* 127.

¹³⁴ These principles are organised in three pillars: 'the state duty to protect human rights, the corporate duty to respect human rights, and the need for access to effective remedy mechanisms when abuses occur'. J Ames, 'Taking responsibility' (2011) *European Lawyer* 15.

¹³⁵ Brigitte Hamm, 'The Struggle for Legitimacy in Business and Human Rights Regulation—A Consideration of the Processes Leading to The UN Guiding Principles and an International Treaty' (2021) *23 Human Rights Review* 103.

CSR has been limited to generating profits; however, it now encompasses a broader range of responsibilities, with companies viewed as primarily responsible for delivering shared values.¹³⁶ Social expectations of how corporations should behave have also changed in relation to CSR and for the foreseeable future, CSR will remain relevant.¹³⁷

2.3 Definitions of CSR

This section provides a clear and comprehensive definition and understanding of CSR. It examines the traditional definition of CSR and the contemporary definition of stakeholder capitalism, and distinguishes between CSR and corporate sustainability. It then reviews the debate about the definition of CSR why the term CSR is used in this thesis .

2.3.1 Stakeholder capitalism vs traditional definition of CSR

It is accepted that stakeholder capitalism does not diminish the profits of a corporation, but that it is likely to increase them due to social and brand popularity gains.¹³⁸ However, this is far from the established 1970s economic definition of CSR, most notably supported by Milton Friedman who argued that profit is the most important objective for a corporation and this can only be restricted by two factors: law and ethics.¹³⁹ This definition is consistent with the principles of agency in Islam, whereby the agent serves the interests of the principal in the first place.¹⁴⁰

The gist of Milton Friedman's definition is that it is not possible to talk of stakeholder interests because companies are fiction and it is their executives – who are also employees – who should be liable for their actions.¹⁴¹ When performing their professional duties, they are restrained only by what is acceptable to them legally and ethically.¹⁴²

¹³⁶ Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir and Brynhildur Davídsdóttir (n 85).

¹³⁷ Hildegunn Mellesmo Aslaksen, Clare Hildebrandt and Hans Chr. Garmann Johnsen 'The Long-Term Transformation of the Concept of CSR: Towards a More Comprehensive Emphasis on Sustainability - International Journal of Corporate Social Responsibility' (SpringerOpen August 11, 2021) <<https://jcsr.springeropen.com/articles/10.1186/s40991-021-00063-9>> accessed December 13, 2022.

¹³⁸ Hugh Grove, Maclyn Clouse and Tracy Xu, 'Stakeholder Capitalism Strategies and Opportunities for Corporate Governance' (2020) 9 Journal of Governance and Regulation 59.

¹³⁹ Milton Friedman, 'A Friedman doctrine-The Social Responsibility of Business is to Increase its Profits' (1970) *New York Times Magazine*, available at: <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> accessed 9 January 2022.

¹⁴⁰ Kartika Kumalasari, 'A Critical Perspective towards Agency Theory' (Journal of Akuntansi Multiparadigma January 1, 2013) <https://www.academia.edu/84289582/A_Critical_Perspective_towards_Agency_Theory> accessed December 21, 2022.

¹⁴¹ Thomas Carson, 'Friedman'S Theory of Corporate Social Responsibility' (1993) 12 Business and Professional Ethics Journal 3.

¹⁴² Milton Friedman (n 139).

While Friedman's definition was largely driven by a fear of socialism, it strengthens the argument for the personal responsibility of the decision-maker. He distinguishes between the social stance of the executive and what they are 'permitted' to do in performing their duties.¹⁴³ Friedman argues that in every case when upper-level executives engage in a cause that they consider socially responsible, they are spending other people's money for the benefit of the common good. In this case, if the policies reduce the return to shareholders, they would be wasting money.¹⁴⁴ The total of such actions would, in Friedman's view, amount to both imposing taxes 'and deciding how the tax proceeds shall be spent'.¹⁴⁵

Thus appropriating the shareholders' money is unjustified because each of them can decide what socially responsible causes (if any) they would like to spend their money on.¹⁴⁶ Not only does embracing stakeholder capitalism cause an act of appropriation of money and power, but it is also against the principle of agency under which the executive is expected to act on behalf of the owners of the company.¹⁴⁷ Friedman argues that the justification for putting an executive ahead of a corporation is to serve the interests of the shareholders, their principal. Once the executive starts chasing a social purpose, however virtuous it may be, they deviate from the core purpose for which they have been employed and become a public servant rather than a servant of the company.¹⁴⁸ This becomes even more relevant once one appreciates that the resources that such socially responsible practices serve to reallocate are by definition scarce, which makes it even more important to ensure that their reallocation is carried out fairly.

These arguments gain greater force once it is considered that much of what was happening in the 1970s CSR wars was of almost no consequence compared to the effect an active-corporation on stakeholder capitalism principles may have today on the development of a country.¹⁴⁹ This suggests that some reflection on the effect of going too far with stakeholder capitalism policies should not be out of order for company executives or those who push for a

¹⁴³ Johannes Jahn and Rolf Brühl, 'How Friedman's View on Individual Freedom Relates to Stakeholder Theory and Social Contract Theory' (2016) 153 *Journal of Business Ethics* 41-52.

¹⁴⁴ Milton Friedman (n 139).

¹⁴⁵ *ibid.*

¹⁴⁶ Milton Friedman, *Capitalism and Freedom* (1962 University of Chicago Press) 272.

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid.*

¹⁴⁹ Ronald Jelinek, 'Corporate Social Responsibility: Woke and Morally Broke' (*Catholic Business Journal*, 2022) <<https://www.catholicbusinessjournal.com/news/life-and-liberty/csr-catholic-social-responsibility/corporate-social-responsibility-woke-and-morally-broke/>> accessed 16 August 2022.

change. At the very least, one should question whether concentrating so much power in the hands of executives is what progressives want to see.¹⁵⁰

Concentrating so much power in the hands of corporate executives should also raise the question of competence; how competent these people are to solve the pressing social problems of our time and whether they are using the scarce resources at their disposal in the best possible way.¹⁵¹ Any action that has been taken by the management in direction of effecting social change should also be questioned in terms of how much investment has been allocated, who decides how much,¹⁵² and what determines when the executive has gone too far in investing the money and the time of the company in the pursuance of such objectives. Whatever the investment, this is a cost which the executive imposes on the shareholders, employees and customers and so it is worth asking what the appropriate share of involvement is and where the involvement of other corporations should start.¹⁵³

A not insignificant issue to consider is the effect of such actions on the future of those executives – their continuous or future employability and the degree to which they may be held accountable for their actions.¹⁵⁴

These arguments have been countered by stating that despite all the weaknesses of stakeholder capitalism, this is a far faster and more efficient way of effecting social change than having to wait on the slow regulatory system.¹⁵⁵ However, Friedman reminds his readers that there is no way to determine whether the ideas CEOs are trying to push forward are good for society or that they will have beneficial long-term consequences.¹⁵⁶ Once again, the problem is with the lack of oversight over the content of the ideas that are being put forward. While climate change, diversity and poverty may all be good and worthy causes, the moral content is consequential and can change depending on the faction pushing the cause. In any case, the very fact that such ideas are advanced by a monopolistic power (a large corporation) through a process invokes the language of morality and ethics and invites a moral judgement.¹⁵⁷ The one proposed by

¹⁵⁰ Ronald Jelinek (n 149).

¹⁵¹ Milton Friedman (n 139).

¹⁵² Olga Brezhneva-Yermolenko, 'Social Investments as A Tool for Increasing the Social Capital of the Company' (2015) 58 *International Letters of Social and Humanistic Sciences* 58-67.

¹⁵³ Milton Friedman (n 139).

¹⁵⁴ *ibid.*

¹⁵⁵ Hildegunn Mellesmo Aslaksen, Clare Hildebrandt and Hans Chr. Garmann Johnsen (n 137).

¹⁵⁶ Milton Friedman (n 139).

¹⁵⁷ Ruth Breeze, 'Legitimation in Corporate Discourse: Oil Corporations after Deepwater Horizon' (2012) 23 *Discourse & Society* 18.

Friedman – that ‘one man’s good is another’s evil’ – asks us, among other things, to revisit the content of the ideas so often submitted as an unquestionable human good.¹⁵⁸

Considering all this, one might be excused for questioning whether large corporations are indeed pressured by a small group of activists on Twitter to do their bidding or are choosing which group of activists they wish to submit to, which they would not otherwise be able to do. Coupled with the immense power to effect social change, corporate behaviour becomes a diversion rather than a driver of diversity.

Friedman’s definition had been confronted with several counter-arguments from modern economists. For example, Friedman’s argument has been criticised by saying, what is good for shareholders is good for society mantra only works when markets have perfect performance.¹⁵⁹ Markets, however, never work perfectly, which is something Bertrand and Friedman agreed on.¹⁶⁰ Be that as it may, it is unclear what the perfect performance of the market has to do with accepting or rejecting the stakeholder capitalism approach in corporate business. If anything, any crisis in the market would by definition turn the attention of the CEO towards the problems facing the corporation rather than towards spending scarce resources in the pursuance of social causes.

The critique by Friedman had been rebutted in two ways. First, it has been argued that it would hold only on the premise that the economic and social are necessarily distinct and in any case, those social goals can be equally well achieved by individuals rather than corporations.¹⁶¹ This can only be true in cases where the corporation in question acts in a diffused and piecemeal way, which has been the case in the past.¹⁶²

Another interesting response, published by the *New York Times* in commemoration of Friedman’s article came from Johnson & Johnson CEO Alex Gorsky, it was noted by him that his company never put shareholders before patients, doctors, nurses, parents, community members, and other users of its ‘products and services and then their customers and business

¹⁵⁸ Milton Friedman (n 139).

¹⁵⁹ Taylor Tepper, ‘Friedman on The Social Responsibility of Business, 50 Years Later’ (2020) *Forbes*, available at: <https://www.forbes.com/advisor/investing/milton-friedman-social-responsibility-of-business/> accessed 9 January 2022.

¹⁶⁰ *ibid.*

¹⁶¹ Michael E. Porter and Mark R. Kramer, ‘The Competitive Advantage of Corporate Philanthropy’ (2002) *Harvard Business Review*, available at: <https://hbr.org/2002/12/the-competitive-advantage-of-corporate-philanthropy> accessed 10 January 2022.

¹⁶² *ibid.*

partners'.¹⁶³ If true, this is concerning, at least for Johnson & Johnson shareholders, particularly in light of the shareholder primacy model which has been dominant in the Western market for decades. However, the fact that Gorsky feels emboldened to state what he did is a manifestation of how much has changed in corporate culture and how detached corporate executives have become from the responsibilities traditionally weighing on them.

His statements should be seen in the \$2 billion baby powder lawsuit against Johnson & Johnson which was won by 22 women who had developed ovarian cancer 'linked to the company's talcum powder'.¹⁶⁴ The presiding judge ruled that the company had 'misrepresented the safety of these products for decades' and the evidence at trial had shown 'particularly reprehensible conduct on the part of Defendants'.¹⁶⁵ The *New York Times* reported that 'more than 9,000 women had so far been named as plaintiffs in lawsuits against the company'.¹⁶⁶ This comes on the heels of a bad track record in safety, most notably starting in 1982 with the death of 7 customers 'who took extra-strength Tylenol capsules laced with cyanide'.¹⁶⁷

The overall effect was that Johnson & Johnson hit a very rough financial spot, which was only barely alleviated by the vaccine against Covid-19 produced in 2021, which also had its fair share of issues,¹⁶⁸ including that it 'has been linked to deadly side effects'.¹⁶⁹ Curiously, the company's CEO's statement was to the effect that patients rather than shareholders are the focus of the company's attention; however, it appears that the firm has traditionally been negligent with respect to the patients it serves. Recently the CEO in question, who was famous for being the second-highest paid CEO in healthcare,¹⁷⁰ left Johnson & Johnson to become a member of the board of directors of Apple.¹⁷¹

¹⁶³ Taylor Tepper (n 159).

¹⁶⁴ Alison Durkee, 'Supreme Court Won't Hear Johnson & Johnson Challenge of \$2 Billion Baby Powder Lawsuit' (2021) available at: <https://www.forbes.com/sites/alisondurkee/2021/06/01/supreme-court-wont-hear-johnson--johnson-challenge-of-2-billion-baby-powder-lawsuit/?sh=26f3c593d6eb> accessed 9 January 2022.

¹⁶⁵ *ibid.*

¹⁶⁶ *ibid.*

¹⁶⁷ Edward Segal, 'Johnson & Johnson Faces Yet Another Crisis Situation This Year' (2021) *Forbes*, available at: <https://www.forbes.com/sites/edwardsegal/2021/12/17/johnson--johnson-faces-yet-another-crisis-situation-this-year/?sh=6d5e78f511c7> accessed 9 January 2022.

¹⁶⁸ BBC, 'US panel recommends J&J shots be sidelined after clot deaths' (2021) available at: <https://www.bbc.com/news/world-us-canada-59692776> accessed 9 January 2022.

¹⁶⁹ Edward Segal (n 167).

¹⁷⁰ Ayla Ellison, '18 highest-paid CEOs in healthcare' (2021) *Becker's Hospital Review*, available at: <https://www.beckershospitalreview.com/compensation-issues/18-highest-paid-ceos-in-healthcare.html> accessed 9 January 2022.

¹⁷¹ Johnson & Johnson, 'Alex Gorsky to Serve as Executive Chairman and Transition Role of Chief Executive officer of Johnson & Johnson to Joaquin Duato, Effective January 3, 2022' (2021) available at: <https://www.jnj.com/alex-gorsky-to-serve-as-executive-chairman-and-transition-role-of-chief-executive-officer-of-johnson-johnson-to-joaquin-duato-effective-january-3-2022> accessed 9 January 2022.

Alternatively, it has been suggested that Friedman's definition is two-dimensional because shareholders in a company that is situated in their own city would benefit from any local socially-oriented activities by the company in their city and, the argument goes, would prefer a lower income on their investment rather than losing these non-tangible benefits.¹⁷² It is arguable that from an economic perspective at least, such claims are difficult to prove and even if it works in scenarios where shareholders invest in their city, it will not apply to shareholders investing at a distance. The truth of the matter is that Anglo-Saxon shareholding, unlike its European Continental counterpart, is dispersed and many smaller shareholders build up a diverse portfolio of investments, spread across a country and even an economic region.¹⁷³ It would be hard to convince such shareholders to care about the socially responsible causes supported by the CEOs of the companies in which they have invested.

It appears, therefore, that it is the CEOs who care or at least pretend to care for such causes, and it is they who act without delay and in a way that demonstrates their solidarity with the causes trending at any historical moment.

2.3.2 Corporate Sustainability vs CSR

Considering that 'Corporate Sustainability' and 'CSR' are terms that lack specific and fixed definitions, they have remained an open door to many interpretations, most notably that they are two separate terms that mean slightly different things.¹⁷⁴ They argue that some activities are either responsible or sustainable, but cannot be both.¹⁷⁵ While the concepts of sustainability refer to the environmental scenario and climate change, the concepts of CSR refer to the ethical aspect of companies as a transparent tool for managing human and financial resources.¹⁷⁶

CSR often aims to improve social welfare in a way that does not conflict with increasing the value of the company and this does not necessarily mean increasing the welfare of the shareholders themselves; the company may sacrifice short-term profits for purely social goals, which may later benefit the company in the long-term.¹⁷⁷ Whilst many, especially in the

¹⁷² Taylor Tepper (n 159).

¹⁷³ Dennis C. Mueller, 'The Anglo-Saxon Approach to Corporate Governance and its Applicability to Emerging Markets' (2006) 14(4) *Corporate Governance and International Review* 207.

¹⁷⁴ Ivan Montiel, 'Corporate social responsibility and corporate sustainability: Separate pasts, common futures' (2008) 21 *Organisation & Environment* 248.

¹⁷⁵ Ionela Carmen Pirnea, Marieta Olaru, and Cristina Moisa, 'Relationship between corporate social responsibility and social sustainability' 2001 *Economy Transdisciplinarity Cognition* 34.

¹⁷⁶ Víctor Meseguer-Sánchez, Francisco Jesús Gálvez-Sánchez, Gabriel López-Martínez and Valentín Molina-Moreno, 'Corporate Social Responsibility and Sustainability. A Bibliometric Analysis of Their Interrelations' (2021) 13 *Sustainability* 1636.

¹⁷⁷ Hans B. Christensen, Luzi Hail and Christian Leuz, 'Mandatory CSR and Sustainability Reporting: Economic Analysis and Literature Review' (2021) 26 *Review of Accounting Studies* 1176, 1248.

operations management literature, argue that sustainability primarily aims to reduce energy costs and pollution,¹⁷⁸ the problem with this approach is that it sticks to a narrow vision of sustainability linked mainly to natural resource economics, while CSR encompasses broader corporate programmes that benefit the community.¹⁷⁹ CSR is also affected by ‘social power; accountability; public image and business ethics’.¹⁸⁰ Some argue that executives’ motives are key to a better understanding of CSR. For example, when the company presents a certain social characteristic to become a competitive tool for the company, it practises CSR.¹⁸¹ Sustainability has become a corporate synonym for all that is positive and the term has been exploited for profit purposes and, in most cases, it means an environmental approach. Even economic sustainability has been interpreted as reducing the social costs of providing environmental protection.¹⁸²

While both concepts are often used as synonyms,¹⁸³ and to differentiate corporate sustainability and CSR is to overlook a large amount of literature on the topic, this thesis will rely on the term CSR because ‘corporate sustainability’ conveys a narrower understanding than CSR. Sustainability often has an environmental connotation¹⁸⁴ and ‘CSR’ allows consideration of a broader range of issues.¹⁸⁵ This means being able to address issues that are part of the social pillar of CSR such as human rights.

2.3.3 The debate about the definitions of CSR

With the growing academic and public interest in CSR has come an increasing number of definitions.¹⁸⁶ CSR is seen as the most important challenge in the 21st century and it has different aspects that must be dealt with differently.¹⁸⁷ A workable definition of CSR is

¹⁷⁸ Tom Kuhlman and John Farrington, ‘What Is Sustainability?’ (2010) 2 *Sustainability* 3436, 3448.

¹⁷⁹ David Chandler, *Corporate Social Responsibility: A Strategic Perspective* (Business Expert Press, 2015); Karim Khondkar, Suh Sang Hyu, Carter Clairmont and Zhang Mo, ‘Corporate Social Responsibility: Evidence from the United Kingdom’ (2015) 14 *Journal of International Business Research* 85.

¹⁸⁰ Jeremy Moon (n 82) 2.2; David Crowther, Shahla Seifi, *Redefining Corporate Social Responsibility* (Emerald Publishing Limited, 2018).

¹⁸¹ Marc Orlitzky, ‘Strategic Corporate Social Responsibility and Environmental Sustainability’ (Sageoup, 2011) <<https://journals.sagepub.com/doi/abs/10.1177/0007650310394323>> accessed 26 January 2022.

¹⁸² John Morelli, ‘Environmental Sustainability: A Definition for Environmental Professionals’ (2011) 1 *Journal of Environmental Sustainability* 1, 10.

¹⁸³ CSR Report 2020 of Wordline Company:

<https://reports.worldline.com/content/dam/worldline/documents/publications/reports/2016/csr-report-2016-en.pdf>.

¹⁸⁴ Cedric Pugh, *Urbanisation, The Environment and Sustainability* (Earthscan 1996).

¹⁸⁵ Mikito Ishida, ‘CSR and Human Rights Policy for Startups’ 2015 SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2742262> accessed 16 August 2022.

¹⁸⁶ Charlotte Villiers, ‘Corporate law, corporate power and corporate social responsibility’ in N Boeger, R Murray and C Villiers (eds) *Perspectives on Corporate Social Responsibility* (Edward Elgar 2008) 91-93.

¹⁸⁷ Randa Diab-Bahman, ‘Corporate Social Responsibility and Culture: Exploring CSR in an Arab Context’ (*Journal of Management Information and Decision Sciences* April 30, 2022)

important because it will help in identifying the most prominent aspects that should be improved and framing the most essential aspects of CSR will be key in addressing them.

What constitutes CSR has always been contested as all CSR definitions have been challenged¹⁸⁸ because CSR includes a radical change in the company's behaviour to include the interests of stakeholders in addition to maximising profit for shareholders,¹⁸⁹ this premise makes the term overlap with many other corporate behaviours including business ethics and corporate citizenship.¹⁹⁰ As Elkington noted, CSR is a shift from 'bottom line' to 'triple bottom line'.¹⁹¹ It is not only compatibility between economic growth and environmental factors, but it has an important aspect, which is social.¹⁹² The balance between people, planet and profits means that the company has a competitive advantage over its counterparts in the long-term because it builds a healthy long-term economic environment.¹⁹³

Because of the different stakeholders including suppliers, consumers and creditors, the definition of CSR is in a state of constant controversy.¹⁹⁴ Some see CSR as a purely voluntary commitment.¹⁹⁵ This approach has a direct consequence that the law and CSR became separate concepts. However, others argue that CSR has legal implications so it is not enough to express it as voluntary.¹⁹⁶ This means fulfilling social, economic and environmental obligations either voluntarily or by law.¹⁹⁷ For example, quality of life is one of the aspects of CSR, even if it does not reach the minimum legal requirements of companies.¹⁹⁸ This may be limited to large

<<https://abacademies.org/articles/corporate-social-responsibility-and-culture-exploring-csr-in-an-arab-context-14809.html>> accessed December 21, 2022.

¹⁸⁸ Ray Broomhill, 'Corporate Social Responsibility: Key Issues and Debates' (2007) Dunstan Paper N° 1/2007 t <<https://pdfs.semanticscholar.org/a5ce/08f5639582ea6a03bc70b0d2a99b35adf8b9.pdf>> accessed on 24 January 2020; Blowfield and Murray, *Corporate Responsibility* (3rd edition, Oxford University Press, 2014).

¹⁸⁹ Milton Friedman (n 8).

¹⁹⁰ Jeremy Moon (n 82).

¹⁹¹ John Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (Capstone, 1997) 1-402.

¹⁹² Michael Mitchell, Allan Curtis and Penny Davidson, 'Evaluating the Process of Triple Bottom Line Reporting: Increasing The Potential for Change1' (2008) 13 *Local Environment* 68.

¹⁹³ Craig R. Carter and Dale S. Rogers, 'A Framework of Sustainable Supply Chain Management: Moving Toward New Theory' (2008) 38 *International Journal of Physical Distribution & Logistics Management* 360, 387.

¹⁹⁴ Jennifer Zerk (n 2) 34.

¹⁹⁵ EU definition: 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interactions with their stakeholders on a voluntary basis'; European Commission, 'Green paper: Promoting a European framework for Corporate Social Responsibility' (2001) COM 366 final, 20.0.

¹⁹⁶ Andreas Rühmkorf, *Corporate Social Responsibility, Private Law and Global Supply Chains* (Cheltenham, UK: Edward Elgar Publishing 2015).

¹⁹⁷ Saleem Sheikh, *Corporate Social Responsibilities: Law and Practice* (Cavendish 1995) 15.

¹⁹⁸ Kevin Campbell and Douglas Vick, 'Disclosure Law and the market for corporate social responsibility' in D McBarnet, A Voiculescu and T Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2007) 242.

companies and not start-ups. From another angle, some argue that CSR is a moral discourse and that companies, as members of society, must act ethically in a manner that does not harm people or the planet.¹⁹⁹

The definitional framework for CSR has been divided into 4 parts: law, economy, charity and ethics. ‘The relative importance placed by 241 CEOs surveyed on the four components: economic = 3.5; legal = 2.54; moral = 2.22; charitable = 1.30’.²⁰⁰ Legally, CSR rules are considered a ‘codified ethic,’ and some have argued that companies’ compliance with the rules is binding for operating purposes.²⁰¹ CSR has been defined as making decisions based on arguments and not just for economic reasons, as it is a ‘reflexive law’ that regulates the moral rules on which CSR is based.²⁰² For example, considering the legality of the law is not limited to the prohibition of discrimination but the promotion of equality through normative measures.²⁰³

The adopted definition for this thesis is that of Zerk who argues that ‘businesses have a social responsibility to act ethically and in accordance with their legal obligations and to maintain a minimal impact on the environment, society and human health from their operations and activities’.²⁰⁴ It thus considers both the legal and the ethical aspects. Zerk directly references the obligation to comply with the law, while also directly referencing ‘operating ethically’ and outlining the obligation to ‘strive to minimise any adverse effects’ of company operations in a variety of areas, thereby indicating a moral and ethical component.²⁰⁵ This is important because it references the degree to which moral and ethical concerns can underpin business decisions and overarching strategy, even if these do not amount to rules which have a legal foundation.²⁰⁶ While there is a wide variety of divergence surrounding the degree to which a CSR definition comprises either legal or moral elements, this definition adequately reflects both elements that are present in a company’s operational strategy.²⁰⁷ This is important, particularly in being able

¹⁹⁹ Jennifer Zerk (n 2) 32.

²⁰⁰ Archie B. Carroll, ‘Carroll’s Pyramid of CSR: Taking Another Look’ (ResearchGate, 1979) <https://www.researchgate.net/publication/304662992_Carroll's_pyramid_of_CSR_taking_another_look> accessed 16 August 2022.

²⁰¹ Anna Beckers, ‘Towards A Regulatory Private Law Approach for CSR Self-Regulation? The Effect of Private Law on Corporate CSR Strategies’ 2019 SSRN Electronic Journal. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3369596> accessed 16 August 2022.

²⁰² Karin Buhmann, ‘Corporate Social Responsibility: What Role for Law? Some Aspects of Law and CSR’ (2006) 6 Corporate Governance: The International Journal of Business in Society 193.

²⁰³ *ibid.*

²⁰⁴ Jennifer Zerk (n 2) 299.

²⁰⁵ Jennifer Zerk (n 2).

²⁰⁶ Karin Buhmann (n 202) 193.

²⁰⁷ *ibid.*

to identify companies which are CSR compliant. A company which is complying with its CSR-related legal obligations but doing nothing more is CSR compliant, while a company that has adopted an extensive range of CSR practices above and beyond the legal requirements is also CSR compliant.²⁰⁸

There is a bewildering variety of concepts and definitions of CSR in the literature, making it difficult to find an encompassing and universal definition. However, CSR is gaining traction among companies that are committed to defining and integrating it into their operations. In general, CSR can be defined in several ways, but there is no clear, universally accepted definition and no overall consensus regarding the ideal definition, making its development and measurement challenging. Zerk's definition of CSR has been chosen because it covers an array of topics, such as eradicating poverty, creating jobs, protecting the environment and improving education and health.

2.4 Practice of CSR

In developed economies, having a CSR programme is now required to improve reputation.²⁰⁹ As Mohammed Naif Z Alshareef and Kamaljeet Sandhu argue, '[o]ver the recent years, corporate failures have emphasised the role of good governance, accountability and ethics, shifting the debate towards the areas of corporate governance (CG) and ethical aspects of the economic conduct'.²¹⁰

This section focuses on investigating the different forms of regulatory frameworks associated with CSR in the UK and KSA. This is very important in finding out where the literature has reached in analysing the current legal framework of CSR and its impact on practice, the answer undoubtedly contributes to finding a ground for discussing the current legislation of CSR in Saudi Arabia and the need to improve it, by comparing it with the UK model, which is a pioneer in this field.

Smith, Adhikari and Tondkar indicate that factors affecting CSR activities vary from corporate financial reports because CSR is their primary concern and is discussed by larger stakeholder groups.²¹¹ According to Adams, analysing CSR contributing factors would strengthen the

²⁰⁸ Arjun Adhikari, *Corporate Social Responsibility: Voluntary or Mandatory?* (2014) 8 *NJA Law Journal* 185.

²⁰⁹ Saud Mandurah, Jamal Khatib and Saleh Al-Sabaan (n 1) 1049.

²¹⁰ Mohammed Naif Alshareef and Kamaljeet Sandhu (n 18) 1.

²¹¹ Joyce van der Laan Smith, Ajay Adhikari and Rasoul H. Tondkar, 'Exploring differences in social disclosures internationally: A stakeholder perspective' (2005) 24 *Journal of Accounting and Public Policy* 123.

transparency of organisations and, ultimately, contribute to improved organisational results overall.²¹² As Adams, Hill and Roberts have noted:

To improve the quality and quantity of corporate social reporting, it is important to study not only the current extent and quality of disclosure to determine best practice, but also to study the factors influencing corporate social accountability and reporting.²¹³

Therefore, this study is primarily concerned with investigating the CSR policies and their consequences to improve CSR activities in Saudi Arabia relative to the UK. The literature review will therefore concentrate primarily on previous studies into CL & CG and CSR and CSR policies in supply chains.

2.4.1 The UK

Unlike during the post-World War II era, the contemporary concept of CSR in the UK focuses much more on conservatism.²¹⁴ In essence, the priority has shifted from shareholders to employees, consumers, creditors and society at large, calling for companies to be re-envisioned as social or public institutions with duties to all of these parties along with shareholders.²¹⁵ Some contemporary CSR experts view corporations as having no enforceable duties beyond those owed to their shareholders.²¹⁶ Accordingly, CSR techniques support neoliberal claims that the government should strive to combat poverty without interfering excessively with

²¹² Carol A. Adams, 'Internal Organisational Factors Influencing Corporate Social and Ethical Reporting: Beyond Current Theorising' (2002) 15 *Accounting Auditing and Accountability Journal* 223.

²¹³ Carol A. Adams, Wan-Ying Hill and Clare B. Roberts, 'Corporate social reporting practices in Western Europe: legitimating corporate behaviour?' (1998) 30 *British Accounting Review* 1, 2.

²¹⁴ Julia M. Puauschunder, 'Intergenerational Leadership: an Extension of Contemporary Corporate Social Responsibility (CSR) Models' 2018 SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3175656> accessed 18 July 2022; Daniel Kinderman, 'Corporate Social Responsibility and The Welfare State: The Historical and Contemporary Role of CSR in The Mixed Economy of Welfare' (2013) 43 *Contemporary Sociology: A Journal of Reviews* 70, 72.

²¹⁵ Ronald K. Mitchell, Bradley R. Agle and Donna J. Wood, 'Toward A Theory Of Stakeholder Identification And Salience: Defining The Principle Of Who And What Really Counts' (1997) 22 *Academy of Management Review* 853-886.

²¹⁶ Rebecca Chunghee Kim, 'Rethinking Corporate Social Responsibility Under Contemporary Capitalism: Five Ways to Reinvent CSR' 2022 *Business Ethics the Environment & Responsibility* 346-362; Marie-Laure Djelic and Helen Etchanchu, 'Contextualizing Corporate Political Responsibilities: Neoliberal CSR in Historical Perspective: Semantic Scholar' (*Journal of Business Ethics* January 1, 1970) <<https://www.semanticscholar.org/paper/Contextualizing-Corporate-Political-Neoliberal-CSR-Djelic-Etchanchu/f81bae8a2240ff8992647299a092c45dae8f66ee>> accessed January 9, 2023.

economic affairs.²¹⁷ CSR business cases often emphasise the long-term value to shareholders of CSR, thus elucidating the idea of enlightened shareholder value in the UK.²¹⁸

Companies Act 2006

CSR has never been codified in the UK even though two promising Bills have been introduced into Parliament. The first was introduced in 2003 and aimed, among other things, at strengthening the transparency of companies about CSR.²¹⁹ It also contained a contractual duty ‘to pay compensation to those harmed as a result of failures of management and expanded the duties of the directors to take account of their behaviour’s environmental and social effects’.²²⁰ Partly because of the continuing process of updating the Companies Act 2006 (CA), this bill did not succeed. The second also aimed at strengthening the reporting system about social and environmental impacts.

A ‘triple bottom line’ approach to CSR uses legislation that addresses the social and environmental effects of the business operation²²¹ along with the criteria outlined in the Companies Act 2006. The Company Law Review Steering Group (CLRSG) was not aware of CSR during the reforms of 2006, but it came up with an ‘enlightened shareholder value’ model, implicitly assuming corporations will behave responsibly.²²² According to the CLRSG, companies must be formed and managed in a way that maximises shareholder value, with creditors protected and ‘public disclosure of information’ doing ‘more good for the community’ under current legislation.²²³ However, the Companies Act 2006 has developed significant provisions for enhancing the corporate responsibility of organisations and directors,

²¹⁷ Renginee G. Pillay, ‘The Limits to Self-Regulation and Voluntarism: From Corporate Social Responsibility to Corporate Accountability’ (2016) 2014 SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2880122> accessed 14 July 2022; Virginia E. Harper Ho, ‘Enlightened Shareholder Value’: Corporate Governance Beyond the Shareholder-Stakeholder Divide’ 2010 SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1476116> accessed 14 July 2022.

²¹⁸ *ibid.*

²¹⁹ Section 3 of the UK Corporate Responsibility Bill 2003.

²²⁰ Sections 4, 5, 6 and 7 of the UK Corporate Responsibility Bill 2003.

²²¹ Paulina Książak and Barbara Fischbach, ‘Triple Bottom Line: The Pillars of CSR’ (2018) 4 Journal of Corporate Responsibility and Leadership 95; Jaroslav Belas and Katarina Zvarikova, ‘Triple Bottom Line of The CSR Concept and Its Reporting’ (2021) 129 SHS Web of Conferences 07001; Jimin Shim et al., ‘The Impact of CSR on Corporate Value of Restaurant Businesses Using Triple Bottom Line Theory’ (2021) 13 Sustainability 2131.

²²² Robert Monks, ‘Modern Company Law for a Competitive Economy: The Strategic Framework’ (2000) 8 Corporate Governance an International Review 16.

²²³ Para 5.1.4 of The Company Law Review Steering Group.

not only towards the shareholders but also towards wider ‘stakeholders such as customers, employees, investors, the environment and local communities’.²²⁴

When it came to Section 172(1),²²⁵ the government sent mixed signals. Section 172(1) codifies for the first time in law the primacy of shareholders.²²⁶ This was initially thought of merely as an alternative to the ethical duty of making decisions that were in the company’s best interests. However, because it changed the role of directors, it was also somewhat radical.²²⁷ Many UK commercial law firms had written about this ambiguity when the law was enacted.²²⁸ The section incorporates the ‘enlightened shareholder value’ system of CG but almost all responses concern the effectiveness of this provision.²²⁹ For instance, after the requirement to produce operating and financial reports by listed companies is removed, the value of stockholders could still be enhanced.²³⁰ Because some doubted the ability of section 172(1) to change company behaviour, considerable criticism was voiced. The concern most strongly expressed is whether non-shareholder groups could take legal action if directors fail to consider their interests and how legal advice might affect directors and shareholders.²³¹ Many commentators understood the section to represent the interests of the entire company but it does serve its intended purpose of ensuring businesses are run for long-term prosperity rather than for short-term gain.²³²

²²⁴ Kong Shan Ho, ‘Is section 172 of the Companies Act 2006 the guidance for CSR?’. 2010 31 the Company Lawyer 207.

²²⁵ Under the Companies Act 2006 (CA 2006), directors have seven general duties to the company. One of these duties, commonly referred to as the ‘s172 duty’, is ‘to promote the success of the company’. Part 1 of that duty requires directors to do so ‘for the benefit of its members as a whole’, and in doing so, to have regard to the following six factors:

- the likely consequences of any decisions in the long term;
- the interests of the company’s employees;
- the need to foster the company’s business relationships with suppliers, customers and others;
- the impact of the company’s operations on the community and the environment;
- the reputation for a high standard of business conduct; and
- the need to act fairly as between members of the company.

²²⁶ Andrew Keay, ‘Moving Towards Stakeholderism? Constituency Statutes, Enlightened Shareholder Value, and More: Much Ado About Little?’ (2011) 22 European Business Law Review 1-49.

²²⁷ Andrew Keay, *The Enlightened Shareholder Value Principle and Corporate Governance*, Oxford: Routledge, 2012 (2013) 76 The Modern Law Review 1-312.

²²⁸ *ibid.*

²²⁹ Luca Cerioni, ‘The Success of the Company in s. 172(1) of the UK Companies Act 2006: Towards an ‘Enlightened Directors’ Primacy?’ (ResearchGate, 2008) <https://www.researchgate.net/publication/49400339_The_success_of_the_company_in_s_1721_of_the_UK_companies_act_2006_Towards_an_'enlightened_directors'_primacy> accessed 16 July 2022.

²³⁰ Andrew Johnston, ‘After The OFR: Can UK Shareholder Value Still Be Enlightened?’ (2006) 7 European Business Organisation Law Review 817.

²³¹ Joan Loughrey, Andrew Keay and Luca Cerioni, ‘Legal Practitioners, Enlightened Shareholder Value and The Shaping of Corporate Governance’ (2008) 8 Journal of Corporate Law Studies 79-111.

²³² Andrew Johnston, ‘The Shrinking Scope of CSR in UK Corporate Law’ (2017) 74 Washington and Lee Law Review 1031.

Corporate Governance code

In 1992, the Cadbury Report²³³ established a voluntary code of practice for public companies in the UK and this began an extensive tradition of developing CG guidelines. As a result of further development and expansion over the following 25 years, the current UK Corporate Governance Code was developed by the Financial Reporting Council (FRC).²³⁴ Following this, the FRC released The UK Stewardship Code,²³⁵ to improve the quality of engagement between companies and their institutional investors. As a complement to the UK CG Code, the UK Stewardship Code underscores the principle of ‘comply-or-explain’ by creating a stronger link between governance and the investing process.²³⁶ The first version of the SC was released in 2012 with some minor revisions,²³⁷ and as of January 2020, the second version took effect.²³⁸

At the end of 2018, the government commissioned an independent review that found the first version ineffective.²³⁹ Consequently, it was recommended to either scrap or revise the first version to place a greater emphasis on engagement outcomes. It is predicted that the second version, in terms of environmental, social and governance (ESG), will result in a more positive impact, especially when it comes to climate change.²⁴⁰

It has been argued that independent external managers contribute most to a company’s social performance, including its employees, customers, suppliers and communities.²⁴¹ Having government shareholders ensures companies fulfil their CSR and enhances social

²³³ Blenyth Jenkins, ‘Corporate Governance and The Cadbury Report? A Perspective from The Boardroom’ (1993) 1 *Corporate Governance: An International Review* 11, 13.

²³⁴ FRC is the independent regulator responsible for promoting confidence in financial reporting and CG.

²³⁵ The Stewardship Code is a part of UK company law concerning principles that institutional investors are expected to follow. It was first released in 2010 by the Financial Reporting Council (‘FRC’), and in 2019 the FRC released an updated edition of the Stewardship Code.

²³⁶ Subrata Sarkar, ‘The Comply-Or-Explain Approach for Enforcing Governance Norms’ 2015 *SSRN Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2638252> accessed 14 July 2022.

²³⁷ ‘This edition of the Code does not change the spirit of the 2010 Code’ (FRC, *The UK Stewardship Code 2012*, 2).

²³⁸ FRC, *The UK Stewardship Code 2020*.

²³⁹ FRC, *Independent Review of the Financial Reporting Council, 2018, Summary*, paras 12 and 13. The Review was critical of the FRC as a whole and proposed that it be replaced by standard, statutory regulator, which is likely to happen in 2020. At the time of writing the FRC is still a hybrid, originally established by the accounting and auditing professions as a private body, the government now appoints its Chair and Deputy Chair and its powers are largely derived from delegation to it by the government. See, <https://www.frc.org.uk/about-the-frc/funding>. This funding arrangement is likely to continue in place under the new arrangements.

²⁴⁰ Paul Davies, ‘The UK stewardship code 2010-2020 from saving the company to saving the planet?’ 2020 *SSRN Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3553493> accessed 14 July 2022.

²⁴¹ Annisa Putri Caesari, Abdul Kohar Irwanto and Muhammad Syamsun, ‘Analisis Pengaruh Corporate Governance Corporate Social Responsibility, Dan Corporate Financial Performance Terhadap Perusahaan Indeks Kompas100 (The Influence Analysis of Corporate Governance Corporate Social Responsibility, and Corporate Financial Performance to Companies in Kompas100 Index)’ (2015) 5 *Journal of Sains Terapan*, 74-85.

performance.²⁴² However, there has been little empirical research carried out in the UK to determine whether CG approaches are effective, despite the presence of a coherent stream of theoretical approaches that consider the broader environment. An assessment of shareholder and stakeholder theory has found that the growing importance of CSR has expanded the scope of CG.²⁴³ Due to this shift, company-governance practices now look at performance other than financial performance as a means to create shareholder value.²⁴⁴ The governance system is evolving to focus more on the short-term financial performance of directors while also considering long-term sustainability based on stakeholder metrics. Increasing numbers of CSR boards and SEE risk registers indicate that CG and CSR are becoming increasingly aligned.²⁴⁵ Fortunately, within the large sample of companies studied in the UK, CSR and CG are significantly aligned.²⁴⁶ This convergence has been strongly influenced by corporate scandals due to their effect on business ethics. Businesses are starting to look beyond financial performance when determining shareholder value and this has led to a shift in corporate governance towards a stakeholder-based model with directors balancing short-term accountability with long-term sustainability.²⁴⁷

The Modern Slavery Act 2015

The Modern Slavery Act 2015 is another relevant piece of legislation for the UK's regulatory framework for CSR. Under s54, a commercial organisation must prepare slavery and human trafficking statements every year if its total turnover exceeds a prescribed amount.²⁴⁸ This section overlaps with CSR because it is about a human rights issue and therefore falls within the remit of CSR. This responsibility is a system that includes influences outside of a company's internal control and according to management studies and risk-based approaches, companies cannot constantly monitor and control all aspects of their business relationships.²⁴⁹ The UK has witnessed an increase in the awareness of labour standards in the supply chain recent years, spurred by legislation requiring businesses to prepare a report on their efforts to

²⁴² Annisa Putri Caesari, Abdul Kohar Irwanto and Muhammad Syamsun (n 241).

²⁴³ Suzanne Young and Vijaya Thyil, 'Corporate Social Responsibility and Corporate Governance: Role of Context in International Settings' (2013) 122 *Journal of Business Ethics* 1.

²⁴⁴ Kevin Money and Herman Schepers, 'Are CSR and Corporate Governance Converging? A View from Boardroom Directors and Company Secretaries in FTSE100 Companies in the UK' (2007) 33 *Journal of General Management* 1, 11.

²⁴⁵ *ibid.*

²⁴⁶ *ibid.*

²⁴⁷ *ibid.*

²⁴⁸ Modern Slavery Act 2015 s54.

²⁴⁹ Janne Mende and Julia Drubel, 'At the Junction: Two Models of Business Responsibility for Modern Slavery' (2020) 21 *Human Rights Review* 313, 335.

combat slavery.²⁵⁰ The Act has been described by Stefan as a first step in curbing modern slavery in global supply chains, but the low disclosure levels and wide variance in reports remain serious concerns.²⁵¹ ‘Recent governance initiatives to address forced labour in global supply chains have been undermined by the triumph of voluntary reporting over stricter public labour standards, as in the case of the Modern Slavery Act’.²⁵² For example, it does not prevent retailers from exploiting workers in UK garment factories.²⁵³

The Act covers businesses and commercial organisations whose turnover exceeds £36 million and are resident in the UK but foreign companies with subsidiaries in the UK often ignore this requirement.²⁵⁴ Statements and plans rarely examine tiers of compliance in detail, but it seems that companies are currently analysing only the first tier of their supply chains, as opposed to measures like establishing policies and conducting training. In contrast to measures like these and training, audits and other forms of due diligence and risk assessment are less common in the UK.²⁵⁵

As a result of the Act, NGOs, ‘activists and civil society organisations can now monitor corporate behaviour and collaborate with businesses to address issues’.²⁵⁶ It may not be possible to eliminate slavery right away, but the disclosure provisions of the Act may contribute to a long-term solution. Although the Act promotes transparency, it is limited due to limited disclosure requirements, limited reporting entities and limited enforcement mechanisms to hold regulated organisations accountable.²⁵⁷

²⁵⁰ Stefan Schaper and Irene Pollach, ‘Modern Slavery Statements: From Regulation to Substantive Supply Chain Reporting’ (*Journal of Cleaner Production* June 14, 2021)

<<https://www.sciencedirect.com/science/article/pii/S0959652621020904>> accessed January 9, 2023

²⁵¹ *ibid.*

²⁵² Genevieve LeBaron and Andreas Rühmkorf, ‘Steering CSR Through Home State Regulation: A Comparison of the Impact of The UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance’ (2017) 8 *Global Policy* 15, 28.

²⁵³ Ilse Ras and Christiana Gregoriou, ‘The Quest to End Modern Slavery: Metaphors in Corporate Modern Slavery Statements’ 2019 *Anti-Trafficking Review* 100.

²⁵⁴ Hinrich Voss, Matthew Davis, Mark Sumner, Louise Waite, Ilse A. Ras, Divya Singhal and Deepti Jog, ‘International Supply Chains: Compliance and Engagement with the Modern Slavery Act’ (2019) 7(1) *Journal of the British Academy* 61, 76.

²⁵⁵ Fiona McGaughey, Hinrich Voss, Holly Cullen and Matthew C. Davis, ‘Corporate Responses to Tackling Modern Slavery: A Comparative Analysis of Australia, France and The United Kingdom’ 2021 *Business and Human Rights Journal* 1, 22.

²⁵⁶ Muhammad Azizul Islam and Chris J. van Staden, ‘Social Movement Ngos and The Comprehensiveness of Conflict Mineral Disclosures: Evidence from Global Companies’ (2018) 65 *Accounting, Organisations and Society* 1, 19.

²⁵⁷ Muhammad Azizul Islam and Chris J. Van Staden, ‘Modern Slavery Disclosure Regulation and Global Supply Chains: Insights from Stakeholder Narratives on the UK Modern Slavery Act’ [2021] *Journal of Business Ethics* <<https://link.springer.com/content/pdf/10.1007/s10551-021-04878-1.pdf>> accessed 17 August 2022.

In summary, despite criticism of s54, it is pioneering in protecting human rights in global supply chains. The criticism focuses on the fact that disclosure alone is not sufficient to protect human rights, as there is no mechanism to deal with the reports required from companies. Therefore, much of the literature considers the section as only a first step to improving CSR in global supply chains

2.4.2 Saudi Arabia

The discussion of CSR in Saudi Arabia has become very significant, though CSR literature is still very limited. Major organisations are working in the country, public, ‘semi-private and non-governmental, to increase the profile of this phenomenon. Compared to western countries, Saudi Arabia has distinct religious, political, cultural and value structures affecting its social and economic development’.²⁵⁸ This section focuses on the limited policies of CSR in the KSA. Its dissection, analysis and criticism are very important in improving them. Saudi Arabia’s lack of legislation that promotes CSR in supply chains is an important first step to suggesting appropriate legislative mechanisms, as the lack of a legislative framework may facilitate the legal transplantation of s54 of the UK Act, after addressing the shortcomings and defects in the section.

Shari’a law and CSR

‘Islam is integrated into all parts of Saudi society, including law, the economy and politics’.²⁵⁹ ‘The influence of *Shari’a* law on people’s daily activities and businesses is well-documented’.²⁶⁰ In this institutional and social sense, Islam is not only a personal faith but also an agency for society and its institutions and a guide to the behaviour of individuals.²⁶¹ Socio-economic justice is an integral component of Islam since its main goal is to create an equal society that complies with the Holy Qur’an.²⁶² ‘Islam considers economic activities not as the end in itself, but rather as a means to an end. Therefore, some Islamic business values are part of core CSR practices. For instance, the concept of giving to improve society and the living

²⁵⁸ Nisar Ahamad Nalband and Mohammed S. Al-Amri, ‘Corporate social responsibility: Perception, practices and performance of listed companies of Kingdom of Saudi Arabia’ (2013) 23 *Competitiveness Review: an International Business Journal* 284.

²⁵⁹ Gordon Melton and Martin Baumann, ‘Religions of the World: A Comprehensive Encyclopedia of Beliefs and Practices, 2nd Edition [6 Volumes]’ (*Google Books* September 21, 2010) <https://books.google.com/books/about/Religions_of_the_World_A_Comprehensive_E.html?id=v2yiyLLOj88C> accessed January 9, 2023.

²⁶⁰ Rehanna Nurmohamed, ‘Shari’a Law and its Impact on the Development of Muslim and Non-Muslim Business Relations in The United Arab Emirates’ (2020) 13 *Law and Development Review* 443, 472.

²⁶¹ Tony Tinker, ‘The enlightenment and its discontents: antinomies of Christianity, Islam and calculative science’ (2004) 17 *Accounting, Auditing & Accountability Journal* 442.

²⁶² The Holy Qur’an S57:25.

standards of local communities – *Zakat* – is enshrined in the religion’.²⁶³ The main purpose of the *Zakat* is a redistribution of wealth.²⁶⁴ ‘However, often such a donation is a one-off initiative and is not sustainable in the long run’.²⁶⁵

Islamic teachings, including the Holy *Qur’an*, deeply enshrine CSR.²⁶⁶ In this process, the *Shari’a* Supervisory Boards (SSBs) play an indirect and limited role.²⁶⁷ For instance, an evaluation of 250 Saudi banks revealed that Islamic banks do have a purpose to improve individuals’ lives, but their role is limited because the SSB is limited and they do not distinguish themselves from traditional banks.²⁶⁸ This remains the case even if each bank has a different approach to CSR. It could be due to a mix-up between philanthropy and CSR, a lack of an organised plan to address the client’s CSR obligations, or both.²⁶⁹ Islamic banks are also required to disclose CSR as part of their accountability to God and humanity. Nevertheless, some have been criticised for non-compliance with CSR disclosures in their annual reports.²⁷⁰

Firms that are not *Shari’a* compliant have a stronger relationship with their CSR than those that are.²⁷¹ This means that CSR activities are being conducted by *Shari’a* firms less frequently than by non-*Shari’a* firms. Hence, managers’ ethical behaviour is not significantly influenced by *Shari’a* status.²⁷² Zubairu, Sakariyau and Dauda studied the CSR activities of four Saudi Arabia-based Islamic banks and the authors argued that their social aims are as important as profit maximisation because of the religious nature of Islamic banks.²⁷³ The fact that Islamic

²⁶³ Asad Zaman, ‘Islamic Economics: A Survey of the Literature: I’ (JSTOR2009)

<<https://www.jstor.org/stable/20839173>> accessed December 22, 2022.

²⁶⁴ Mervyn K. Lewis, ‘Islam and Accounting’ (2001) 25 Accounting Forum 103.

²⁶⁵ Ömer Faruk Şentürk, *Charity in Islam: A Comprehensive Guide to Zakat* (1st edn, Light, Inc 2008) 18; Talha Fadaak, ‘Poverty in the Kingdom of Saudi Arabia: an Exploratory Study of Poverty and Female-headed Households in Jeddah City’ (2010) 44 Social Policy and Administration 689; Caroline Montagu, C., ‘Civil society and the voluntary sector in Saudi Arabia’ (2010) 64 The Middle East Journal 67.

²⁶⁶ Admir Čavalić, ‘Corporate Social Responsibility in Islam’ (*Researchgate* November 15, 2018)

<https://www.researchgate.net/publication/274896915_Corporate_social_responsibility_in_Islam> accessed December 22, 2022.

²⁶⁷ Sutan Emir Hidayat and Ahmad Rafiki, ‘Comparative Analysis of Customers’ Awareness Toward CSR Practices of Islamic Banks: Bahrain vs Saudi Arabia’ 2021 Social Responsibility Journal 1142-1171.

²⁶⁸ Ghaida Alzahrani and Jamaldeen Faleel, ‘The Relationship between Islamic Bank and Corporate Social Responsibility’ (2021) 18 PalArch Journal of Egyptology 392-400.

²⁶⁹ *ibid.*

²⁷⁰ Haitham Nobanee and Nejla Ellili, ‘Corporate Sustainability Disclosure in Annual Reports: Evidence from UAE Banks: Islamic Versus Conventional’ 2016 SSRN Electronic Journal

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2970191> accessed 17 August 2022.

²⁷¹ Muhammad Azam, Javed Akhtar, Syed Amir Ali, and Kamran Mohyudin, ‘The Moderating Role of Shariah Compliance on the Relationship between Firm Profitability and CSR Activities’ (2019) 35 International Journal of Ethics and Systems 709, 724.

²⁷² *ibid.*

²⁷³ Umaru M. Zubairu, Olalekan B. Sakariyau and Chetubo K. Dauda, ‘Evaluation of Social Reporting Practices of Islamic Banks in Saudi Arabia’ (2012) 17 EJBO Electronic Journal of Business Ethics and Organisation Studies <http://ejbo.jyu.fi/pdf/ejbo_vol17_no1_pages_41-50.pdf> accessed 17 August 2022.

banks must be open and reveal a high level of information is directly related to this assumption. The study found no significant difference between Islamic and conventional banks in terms of CSR reporting and revealed poor disclosure practices for the four Islamic banks.²⁷⁴

Companies in Muslim majority countries are morally obligated to assist governments in advancing human rights and addressing CSR challenges.²⁷⁵ To demonstrate the values of Islamic precepts, this study presents a new normative model to illustrate both *fard al 'ayn* (obligation on all citizens) and *fard al kifayah* (obligation on some citizens) using Islamic business ethics literature, stakeholder theory and corporate governance literature.²⁷⁶ Al-Ashammary explains that the defining aspects of I-CSR are three fundamental principles: vicegerency on earth, divine accountability of individuals and the duty to promote good and prohibit evil.²⁷⁷ The I-CSR concept adheres closely to the UNGC's Ten Principles and exceeds the minimum standards set by this framework in many ways.²⁷⁸ For example: exceeding the UN principles of CSR, Islam sees the natural environment as having an inherent ethical basis. People are responsible for caring for and protecting the environment as Allah's stewards. Allah and not people owns the natural world, so if they abuse this responsibility by not protecting nature, they will be punished.²⁷⁹ Halmi describes this implementation of CSR as a means of practising Islamic teachings and demonstrating obedience to God through acts that are worshipful in nature. He has asserted that compliance with Islamic law and its application in business is different from conventional CSR.²⁸⁰

Recently, a study in Saudi Arabia proposed a CSR pyramid based on Islamic principles such as paying *Zakat*, acting ethically and valuing societal goals over shareholder values.²⁸¹ According to the study, if Carroll's model is overturned, it would apply to Saudi firms. In the proposed pyramid, the economic dimension is placed first, then the legal and finally the

²⁷⁴ Umaru M. Zubairu, Olalekan B. Sakariyau and Chetubo K. Dauda (n 273).

²⁷⁵ Maurice J. Murphy and Jan M. Smolarski, 'Religion and CSR: an Islamic 'Political' Model of Corporate Governance' (2018) 59 *Business & Society* 823, 854.

²⁷⁶ *ibid.*

²⁷⁷ Meshaal J. Alshammary, 'Islamic Corporate Social Responsibility (I-CSR) Concept: The Case of 21st Century Middle East' (2014) 10 *Corporate Board role duties and composition* 46, 76.

²⁷⁸ *ibid.*

²⁷⁹ John Zinkin and Geoffrey Alan Williams, 'Islam and CSR: A Study of the Compatibility Between the Tenets of Islam and The UN Global Compact' 2006 *SSRN Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=905201> accessed 17 August 2022.

²⁸⁰ Helmi Muhammad, 'Islamic Corporate Social Responsibility: an Exploratory Study in Islamic Microfinance Institutions' (2020) 7 *The Journal of Asian Finance, Economics and Business* 773, 782.

²⁸¹ Mohammad Nurunnabi, Yazeed Alfakhri and Demah H. Alfakhri, 'CSR in Saudi Arabia and Carroll's Pyramid: What Is 'Known' and 'Unknown''? (2019) 26 *Journal of Marketing Communications* 874, 895.

moral.²⁸² Another Saudi study has revealed that many Saudi companies seem to have a perception that their CSR is largely confined to the local Muslim community.²⁸³ This means that the main catalyst for CSR practices in Saudi Arabia is the Islamic source, as it is a practice that Islam strongly urges and has a reward for.

To summarise, CSR is rooted in Islamic law. Islamic teachings support equality, freedom and community service strongly. Even though some literature criticises the low level of disclosure in Islamic firms, the relationship between Islamic law and CSR is a reality in Saudi Arabia and should not be ignored.

The Saudi company law, CG and CSR

By Royal Decree, Saudi Company Law (SCL) was first legislated in 1965²⁸⁴ and has been amended several times. It regulates the conduct of companies in Saudi Arabia²⁸⁵ and describes the structure of an organisation in which one or more parties agree to conduct business for profit and share profits and losses. Corporate governance regulations (CG) were published in 2006 to replace the SCL 1965.²⁸⁶ While they are primarily derived from the SCL, they are also influenced by the Capital Market Law 2003.²⁸⁷

Saudi Arabia adopted its 'Vision for 2030' in early 2016, which included many important changes to the economic structure of the country. Vision 2030 will change SCL and CG practices and work culture dramatically. The private sector will have a greater role in liberalising the economy from the standpoint of ownership, employment, trade and competition and facilitate investment.²⁸⁸ To achieve its target, the government has passed a series of new laws including the Company Law 2016 (then reformed version 2022) and the CG Regulation.²⁸⁹

²⁸² Mohammad Nurunnabi, Yazeed Alfakhri and Demah H. Alfakhri (n 281).

²⁸³ Magnus Gravem, 'CSR in Saudi Arabia' (MA, the University of Oslo Faculty of Theology 2010).

²⁸⁴ Royal Decree No. M/6 of 1965.

²⁸⁵ Gillian Rice, 'Doing Business in Saudi Arabia' (2003) 46 *Thunderbird International Business Review* 59, 84.

²⁸⁶ Faleh Salem Al Kahtani, 'Current Board of Directors' Practices in Saudi Corporate Governance: A Case for Reform'. In: Samuel O Idowu and Kiyet Tunca Çaliyurt (eds). *Corporate Governance: an International Perspective* (Springer, 2014).

²⁸⁷ Royal Decree No. M/30. Laws and regulation are issued by the Capital Market Authority (CMA).

²⁸⁸ Vision 2030 (2019) Available at: <<https://vision2030.gov.sa/en/node>> accessed 23 January 2020; Ahmed Al Bakr, 'Challenges to Production Base Diversification in Saudi Arabia, Economic Research Department, and Saudi Arabian Monetary Agency (SAMA)' (2015) Economic Research Department Saudi Arabian Monetary Agency, SAMA Working Paper WP/15/8.

²⁸⁹ Lubna Javed Risvi and Zahid Hussain, 'Review of Saudi Arabia Company Law Reforms and its Implications on Corporate Governance Framework- an Evidence from Emerging Market' (2021) 64 *International Journal of Law and Management* 49, 58.

The primary goal of SCL is to regulate both domestic and foreign companies. The new act brought about some changes that have been described as a step forward in Saudi Arabia's corporate sector reform. The law is intended not only to meet the current needs of businesses, but also to create a motivating environment in order to increase their contribution to the national economy. SCL, on the other hand, does not promote CSR in any way.

The major change in the new CG is that it is much more in line with the Company Law, which was not the case with its predecessor.²⁹⁰ The CG includes 'better rights for board members and shareholders but also transparency about their duties and tasks'.²⁹¹ To ensure that listed Saudi companies comply with best corporate governance practices and that stakeholder interests are protected, the CG defines the principles and guidelines for Saudi listed companies on Tadawul, including the regulatory requirements and the rules of management of listed companies.²⁹²

Good CG and corporate responsibility have become synonymous.²⁹³ While maximisation of shareholder value still predominates, the use of other aspects of corporate performance is increasing. It, therefore, becomes clear that the promotion of fairness, transparency, ethics and accountability is best achieved through CG.²⁹⁴

Research on CSR and CG using 166 Saudi companies' annual reports found that disclosure of CSR was positively linked to the companies' size and profit.²⁹⁵ Using seven categories of issues related to workers, society, climate, goods and services, energy, customers and others, Alotaibi and Hussainey have measured the levels of CSR activity in Saudi listed companies using agency and stakeholder theory. In terms of the factors explaining differences in practices, the results indicate that government ownership harms CSR.²⁹⁶ These results contradict the results of a similar study that suggested that a company's size, age and government ownership are all positively related to CSR disclosure, whereas a company's leverage is negatively related.²⁹⁷ It

²⁹⁰ Algoere Turki Naif sand Hasani Mohd Ali, 'Saudi Arabia Regulations on Corporate Governance' (2019) 9 *International Journal of Asian Social Science* 229, 239.

²⁹¹ Article 3 of the CG.

²⁹² Murya Habbash, 'Corporate Governance and Earnings Management: an Empirical Study of the Saudi Market' (2009) 15 *Journal of American Academy of Business* 301.

²⁹³ Mohammed Naif Alshareef and Kamaljeet Sandhu (n 18) 2.

²⁹⁴ Dima Jamali, Asem M. Safieddine and Myriam Rabbath, 'Corporate Governance and Corporate Social Responsibility Synergies and Interrelationships' (2008) 16 *Corporate Governance: an International Review* 443, 459.

²⁹⁵ Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia,' (2015) 23 *Middle East Journal of Scientific Research* 2388.

²⁹⁶ Khaleed Alotaibi and Khaled Hussainey, 'Quantity Versus Quality: The Value Relevance of CSR Disclosure of Saudi Companies' (2016) 13 *Corporate Ownership and Control* 167, 179.

²⁹⁷ Murya Habbash (n 292).

found that disclosure of CSR by 267 Saudi companies was 24% in 2011.²⁹⁸ The results were significantly better than the rates of CSR disclosure in two samples taken in 2006-2007 and 2008.²⁹⁹ The CG code may have contributed to these improvements.

According to a recent thesis, Saudi companies improved their CSR from 2015 to 2018 by 30%. Various factors have contributed to CSR programmes growing and diversifying in Saudi Arabia, such as 'board size, female hiring, government representatives on the board, royal family members on the board, corporate social responsibility awards, a risk management committee, regulatory sanctions, industry sectors and company size'.³⁰⁰ As an example, Kent and Monem indicate that having women on the board is positively correlated with CSR.³⁰¹ Another study has argued that the CSR governance model has been beneficial for many Saudi corporate leaders who use social and environmental impacts as critical success factors.³⁰² The results also suggest that the board of directors can approach CSR governance in various ways including focusing on monitoring, strategic and service functions and considering stakeholder concerns in CG structure especially family businesses.³⁰³ Another study indicates that CSR is negatively correlated with ownership structure and family ownership.³⁰⁴ Similarly, a study found that the nationality of the CEO is negatively related to CSR reporting in family-controlled firms.³⁰⁵

In sum, the relationship between corporate law and CSR is almost non-existent in the Saudi literature and most of the literature that linked CG and CSR examined the relationship from the perspective of management and accounting. This means that there is a gap in the Saudi literature in linking CSR with corporate law and with a legal analysis of the relationship between CSR and CG.

²⁹⁸ Murya Habbash (n 292).

²⁹⁹ Yaseen Al-Janadi, Rashidah, Abdul Rahman and Abdulsamad Alazzani, 'Does Government Ownership Affect Corporate Governance and Corporate Disclosure?' (2016) 31 *Managerial Auditing Journal* 871-890; Fernando Llena Macarulla and Fernan Mohammad Ahmad Talalweh, 'Voluntary Corporate Social Responsibility Disclosure: A Case Study of Saudi Arabia' (2012) 8 *Jordan Journal of Business Administration*, 815-830.

³⁰⁰ Khalid Mujahid Alharbi, 'The Impact of the 2030 Vision and Firm Characteristics on Corporate Social Responsibility Disclosure in Saudi Arabia' (PhD thesis, Victoria University 2021).

³⁰¹ Pamela Kent and Reza Monem, 'What Drives TBL Reporting: Good Governance or Threat to Legitimacy?' (2008) 18 *Australian Accounting Review* 297, 309.

³⁰² Mohammed Naif Alshareef and Kamaljeet Sandhu (n 18) 2.

³⁰³ *ibid.*

³⁰⁴ Joern Block and Marcus Wagner, 'Ownership Versus Management Effects on Corporate Social Responsibility Concerns in Large Family and Founder Firms' (2014) 5 *Journal of Family Business Strategy* 339, 346.

³⁰⁵ Shaker Dahan AL-Duais et al., 'CEO Characteristics, Family Ownership and Corporate Social Responsibility Reporting: The Case of Saudi Arabia' (2021) 13 *Sustainability* 1.

CSR and Supply chains

While the standard international framework of CSR emphasises labour rights in supply chains, climate change and anti-corruption,³⁰⁶ the Saudi framework places more emphasis on human and social development.³⁰⁷ Unfortunately, there is no study examining the social responsibility of Saudi companies in their supply chains explicitly and there is no laws or regulation that addresses human rights in supply chains in Saudi Arabia. Therefore, the author focused on the rare Saudi literature dealing with supply chains generally.

Although ‘Saudi subjects have higher expectations for corporations’ social responsibility within their supply chains’,³⁰⁸ poorly managed suppliers and poor plans with buyers lead to haphazard work practices in the Saudi market.³⁰⁹ This means that the supplier-buyer relationship, which is a key area of CSR in supply chains,³¹⁰ faces regulatory challenges in the Saudi labour market.

Although over 90% of corporations worldwide are SMEs,³¹¹ the general literature focuses mainly on large corporations that have CSR-related activities in their supply chains.³¹² From the limited literature about SMEs, according to an SAP-sponsored study conducted in 2013, Saudi SMEs have been making a strong push to expand overseas in recent years.³¹³ However, it is more likely for those SMEs to engage in CSR in their supply chains if CSR practices can easily be identified by their customers and CSR practices for SMEs overlook operational issues that their customers are unaware of. The characteristics of SMEs such as lack of resources and

³⁰⁶ Holger Görg, Aoife Hanley and Adnan Seric, ‘Corporate Social Responsibility in Global Supply Chains: Deeds Not Words’ (2018) 10 Sustainability 3675; Valeria Sodano and Martin Hingley, ‘The Food System, Climate Change and CSR: From Business to Government Case’ (2013) 115 British Food Journal 75, 91; Kerstin Lopatta, Reemda Jaeschke, Magdalena Tchikov and Sumit Lodhia, ‘Corruption, Corporate Social Responsibility and Financial Constraints: International Firm-Level Evidence’ (2016) 14 European Management Review 47, 65.

³⁰⁷ Sutan Emir Hidayat and Ahmad Rafiki, (n 267); Samia Magbool, ‘an Overview of CSR Programmes in Saudi Arabia with Reference to Select Organisations’ (2015) 5 International Journal of Human Resource Studies 282.

³⁰⁸ Maurice J. Murphy, Jason B. MacDonald, Giselle E. Antoine and Jan M. Smolarsk, ‘Exploring Muslim Attitudes Towards Corporate Social Responsibility: Are Saudi Business Students Different?’ (2016) 154 Journal of Business Ethics 1103, 1118.

³⁰⁹ Mohamad Miralam, ‘an Exploratory Study into Buyer and Supplier Relationship Problems, Causes, Control Strategies Effects in Saudi Arabian Companies’ (PhD thesis, University of Stirling, Department of Management 2011).

³¹⁰ Craig R. Carter and Marianne M. Jennings, ‘Logistics Social Responsibility: an Integrative Framework’ (2002) 23 Journal of Business Logistics 145, 180.

³¹¹ Krishna Udayasankar, ‘The Foundations of Governance Theory: A Case for The Resource-Dependence Perspective’ (2008) 5 Corporate Ownership and Control 164, 172.

³¹² Androniki Apostolakou and Gregory Jackson, ‘Corporate Social Responsibility in Western Europe: an Institutional Mirror or Substitute?’ 2009 <<https://link.springer.com/article/10.1007/s10551-009-0269-8>> accessed 18 August 2022.

³¹³ Oxford Economics, ‘SMEs: Equipped to Compete Saudi Arabia Fact Sheet’ (*Oxfordeconomics.com*, 2013) <<https://www.oxfordeconomics.com/Media/Default/Landing%20pages/SAP%20SME/Country-fact-sheets/SMEs%20Equipped%20Saudi%20Arabia.pdf>> accessed 4 March 2022.

imbalance of power within their customer relationships may explain the inadequate CSR programmes in their supply chains.³¹⁴

In analysis of case studies of world-renowned building and consulting companies, it has been found that customers do not pay much attention to the comprehensive CSR strategies of construction companies in their supply chains.³¹⁵ Due to its high cost and consumers' lack of concern, it has been suggested that KSA lacks CSR in mega-construction projects.³¹⁶ This study also suggests that this can affect the supply chain of these businesses and that CSR in supply chains should be improved, especially in Saudi construction companies, through a rapid response programme that changes management, develops regulations and develops workforce skills.³¹⁷

Discussion of CSR in supply chains is missing from Saudi literature, and even from a management perspective, it has not been examined. Therefore, there is a clear gap in the literature examining the extent to which Saudi companies promote CSR in their supply chains.

2.5 Limitations of prior studies and research gap

This section analyses the literature on the comparison of CSR-related regulations and their effectiveness in Saudi Arabia and the UK. It identifies the gaps in the literature and thus clarifies the author's contributions. It first considers the problems which previous literature in this area has encountered and then examines how other paradigms might be used to address these weaknesses. The importance of the case study is then examined.

2.5.1 Problems that previous Saudi-UK research has faced

The first major problem which arises in this study is that, although there is increasing interest in CSR practices globally, the literature mainly concentrates on developed countries.³¹⁸ Studies

³¹⁴ Hee-Yong Lee, Dong-Wook Kwak and Jeong-Yang Park, 'Corporate Social Responsibility in Supply Chains of Small and Medium-Sized Enterprises' (2017) 24 *Corporate Social Responsibility and Environmental Management* 646.

³¹⁵ Martin Loosemore, Florence Phua, Kevin Dunn and Umut Ozgu, 'Operatives' Experiences of Cultural Diversity on Australian Construction Sites' (2010) 28 *Construction Management and Economics* 177, 188.

³¹⁶ Ali Alotaibi, Francis Edum-Fotwe and Andrew D.F. Price, 'Critical Barriers to Social Responsibility Implementation within Mega-Construction Projects: The Case of the Kingdom of Saudi Arabia' (2019) 11 *Sustainability* 1755.

³¹⁷ *ibid.*

³¹⁸ Stephen Brammer, Chris Brooks and Stephen Pavelin, 'Corporate Social Performance and Stock Returns: UK Evidence from Disaggregate Measures' (2006) 35 *Financial Management* 97; Lori Holder-Webb, Jeffrey R. Cohen, Leda Nath and David, 'The Supply of Corporate Social Responsibility Disclosures Among U.S. Firms' (2009) 84 *Journal of Business Ethics* 497; Corinne Post, Noushi Rahman and Emily Rubow, 'Green Governance: Boards of Directors' Composition and Environmental Corporate Social Responsibility' (2011) 50 *Business & Society* 189; Kathyayini Rao, Carol Tilt and Laurence Lester, 'Corporate Governance and Environmental reporting: an Australian Study' (2012) 12 *Corporate Governance: The International Journal of*

on developing countries, especially Saudi Arabia, are rare.³¹⁹ This is of course a major problem not only for this study, which is reliant on secondary literature to obtain a strong basis on which to construct and make arguments and recommendations, but also because it is arguable that CSR is just as important, or even more important in developing states. Due to higher poverty levels, environmental degradation and institutional problems, it has been argued that there has been relatively little corporate responsibility research in countries with the greatest pressure for CSR.³²⁰ Pisani et al. noted that since developing countries have so many institutional voids, it is particularly important to study CSR practices there and that, despite the publications in international journals, it is possible to doubt whether CSR research is truly global or even truly ‘international’.³²¹ Even what literature does exist is of dubious value and should not be relied on without supporting evidence.

It follows that there is a gap in the literature in comparative studies of the differences between CSR approaches in the UK and KSA. Because most literature focuses on international law or developed country law, it is even more necessary to highlight how Saudi organisations practice CSR. There is extensive debate about ‘the scope and function of CSR in isolation from the legal framework that governs managerial discretion’.³²² Rühmkorf tried to prove that CSR can be viewed as at least in part a legal concept and that English private law has already played a considerable role in promoting CSR.³²³ One of the main aims of this thesis will be to fulfil this gap.

here is then a significant practical difficulty which arises in researching and writing this thesis which is that there is a gap in the literature about the direct link between CSR and law in Saudi Arabia. For example, Saudi legislation does not deal with human rights in supply chains. Similarly, there are a few sources dealing with the relationship between CG and CSR, but they have two problems. First, these sources deal with the subject in terms of management or

Business in Society 143; Carmelo Reverte, ‘Determinants of Corporate Social Responsibility Disclosure Ratings by Spanish Listed Firms’ (2009) 88 *Journal of Business Ethics* 351-366; Manuel Castelo Branco and Lúcia Lima Rodrigues, ‘Corporate Social Responsibility and Resource-Based Perspectives’ (2006) 69 *Journal of Business Ethics* 111; Branco and Rodrigues, ‘Factors Influencing Social Responsibility Disclosure by Portuguese Companies’ (2008) 83 *Journal of Business Ethics* 685.

³¹⁹ Dima Jamali, and Charlotte Karam. ‘Corporate social responsibility in developing countries as an emerging field of study’ (2016) 20 *International Journal of Management Review* <<https://onlinelibrary.wiley.com/doi/abs/10.1111/ijmr.12112>> accessed 18 August 2022.

³²⁰ Niccolò Pisani, Arno Kourula, Ans Kolk and Renske Meijer, ‘How global is international CSR research? Insights and recommendations from a systematic review’ (2017) 52 *Journal of World Business* 591, 591.

³²¹ *ibid.*

³²² Andrew Johnson (n 232) 1002.

³²³ Andreas Rühmkorf (n 196) 53.

accounting, not law.³²⁴ Second, some of the literature considers CSR as a function under CG and is not an ethical, legal or economic behaviour.³²⁵

Another problem is the scarcity of sources due to the recent changes in the Saudi framework. As a result, a large number of sources have been discarded due to outdated data. Some doctoral theses written on the topic criticise the old CSR rules.³²⁶ The link between CSR and CG in Saudi firms needs to be updated to explore the current strengths and weaknesses of CSR in KSA from a legal perspective.

2.5.2 Use of alternative paradigms

The lack of existing literature is not necessarily a hindrance as traditional black letter legal analysis can be combined with a socio-legal approach to considering KSA law and analysing the extent to which this law might promote or hinder CSR compliance. This type of analysis is not necessarily dependent on there being a significant existing body of secondary literature on which to base these criticisms. Instead, critical analysis of the law itself, taking into account the importance and objectives of CSR and comparing this to the approach adopted in the UK, will be able to mitigate this issue.

The same is true of other areas. The absence of previous literature is not necessarily an insurmountable impediment to the research. There are various ways of approaching such situations. For example, one way of acknowledging the existence of such literature is to acknowledge that has not perhaps been as significant an effort directed towards developing and adopting CSR in these states.³²⁷ This can then operate as a working hypothesis which can then

³²⁴ Mohammed Naif Alshareef and Kamaljeet Sandhu (n 18) 2; Ebrahim El Said Ebeid, 'Accounting Students' Perceptions of Social Responsibility Importance: Empirical Evidence from Saudi Arabia' (2020) 4 *Journal of Finance & Corporate Governance* 61, 78.

³²⁵ Andrea Beltratti, 'The Complementarity Between Corporate Governance and Corporate Social Responsibility' (2005) 30 *The Geneva Papers on Risk and Insurance – Issues and Practice* 373, 386.

³²⁶ Jawhar Ebnmhana, 'Corporate Social Responsibility in a Saudi Arabian Context: Social Development Centres as a Bridge between the Private Sector and Community Needs' (PhD thesis, University of Salford 2018); Khalid Saad Al-habshan, 'Corporate Governance Disclosure Practices and Protection of Shareholders in Saudi Arabia' (PhD thesis, Brunel University, 2015); Waleed Albassam, 'Corporate Governance voluntary disclosure and financial performance: an empirical analysis of Saudi listed firms using mixed-methods of research design' (PhD thesis, University of Glasgow 2014); Abdullatif Mohammed Aleshaikh, 'Towards legal reform of Saudi law of directors' duties and of enforcement by derivative action' (PhD thesis, University of Glasgow 2018); Abdulrahman Mohammad Al-Khuwiter, 'Environmental Accounting and Disclosure in Saudi Arabia' (PhD thesis, Cardiff University, 2005); Anas Alhazmi, 'Exploring the Factors and Effects of Corporate Social Responsibility Disclosure in Saudi Arabia' (PhD thesis, Nottingham Business School, 2017).

³²⁷ Pauline Lesley Cook and John Surrey, 'Energy Technology in Developing Countries: The Scope for Government Policy' (1989) 9 *Technovation* 431, 451. Ammar Ahmad, 'CSR or ISO Certification: What Does Really Matter for Consumer in Developing Countries?' (2019) 15 *IBT Journal of Business Studies* 95, 111.

be tested by consideration of case studies rather than by reference to previous literature in the area.

Another advantage of this programme is that generally speaking, the companies operating within the scope of this study are large, multinational corporations. CG and CSR is a globally important topic and such companies often seek to encourage investment globally.³²⁸ Having an effective CSR policy is a good way of attracting investment worldwide,³²⁹ and national borders are therefore less relevant.³³⁰ Some Saudi companies have CSR policies and this can be examined by the empirical data obtained from the 30 interviews to show that the law has a role in Saudi Arabia in improving CSR and to explore if leading UK laws such as s172 of the Companies Act and s54 of the Modern Slavery Act are effective enough in the UK from a practitioner's point of view to suggest transferring it to the Saudi legal environment, taking into account local constraints.

The lack of sources is also due to the longstanding misinterpretation of CSR as charity.³³¹ As a result, there has been some lack of understanding of what CSR is, even when it is being pursued and applied. Because of this, the perception of what responsible business entails differs greatly from reality. Lu, Wang and Lee demonstrate that Middle Eastern organisations' mentalities have resulted in them only recognising CSR as a charitable programme or donation without properly integrating it into core business strategies.³³² It is important to verify those allegations through interviews. If the interviews demonstrate a similar trend, it will suggest that CSR is not only related to philanthropy but can also lead to changes in practice.

Limitations of previous studies

There are very few studies about CSR practices in Saudi Arabia or the effect of its unique institutional setting on CSR practice. The major problem is that the existing studies were either published before the 2016/17 reforms or focus on specific aspects. For example, there is a PhD

³²⁸ Krista Bondy, Dirk Matten and Jeremy Moon, 'Multinational Corporation Codes of Conduct: Governance Tools for Corporate Social Responsibility' (2008) 16 *Corporate Governance* 294, 294.

³²⁹ Juil Lee, Sang-Joon Kim and Insu Kwon, 'Corporate Social Responsibility as A Strategic Means to Attract Foreign Investment: Evidence from Korea' (2017) 9 *Sustainability* 2121.

³³⁰ Bryan Horrigan, *Corporate Social Responsibility in the 21st Century: Debates, Models and Practices Across Government, Law and Business* (1st edn Edward Elgar 2010) 177.

³³¹ Tahreem Noor Khan, 'Corporate Social Responsibility of Islamic Banks: CSR Website Visibility, CSR Initiatives, CSR Strategy' (2021) 6 *AL-FALAH: Journal of Islamic Economics* 166; Erna Widiastuty and Noorlailie Soewarno, 'CSR Expenditure and Company Performance: Charity or Signal? Evidence from Indonesia' (2019) 23 *Quality Innovation Prosperity* 22.

³³² Wen-Min Lu, Wen-Min Lu and Hsiao-Lan Lee, 'The relationship between corporate social responsibility and corporate performance: evidence from the US semiconductor industry' (2013) 51 *International Journal of Production Research* 5683.

thesis entitled ‘Corporate Governance Disclosure Practices and Protection of Shareholders in Saudi Arabia’,³³³ but it was written in 2015 and consequently before the passing of both the Company Law 2022 and the new Saudi Corporate Governance Regulation and it focuses on CG disclosure practice and not CSR per se. While there is a clear link, the author does not engage with the CSR debate. Many studies focus on one or two aspects of CSR. A good example of sources focusing on specific aspects is the PhD thesis by Al-Shaikh which offers a good analysis of the current framework for directors’ duties and derivative actions in Saudi Arabia compared to the situation in the UK.³³⁴

There are several recent articles on minority shareholders’ protection in Saudi Arabia. For instance, an article by Khalid Saad Al-habshan on minority shareholders is interesting but superficial in certain aspects.³³⁵ He noted that it is highly influenced by the structure of ownership which determines the level of protection provided to minority shareholders; the fewer the shareholders, the softer their protection. In Saudi Arabia, shareholder rights are also protected by the civil litigation system. This has been studied extensively.³³⁶ As a result of the analysis, shareholders and creditors in JSCs are better protected in countries where common law applies. He also cites a 2000 study that does not focus on Saudi Arabia at all.³³⁷

A few have explored the relationship in Saudi Arabia between corporate law, governance and CSR. Good CG leads to good disclosure practices since CG frameworks facilitate corporate transparency and accountability and take into account a broader group of stakeholders.³³⁸ CSR practices are, however, only partially underpinned by these studies. Only a few sources outside of Alotaibi’s thesis have measured the quantity and quality of CSR disclosure. While this thesis is not aiming at measuring such levels, it is important to use such data to answer the main research question.³³⁹

Except for Alotaibi and to a lesser extent Aleshaikh, no studies have been identified that have explored the benefits of participating in CSR in Saudi Arabia in terms of sustainable profits, strengthening the relationship with the community, satisfaction of employees and consumers and participation in social improvements. To fill this gap, it is hoped that the current study will

³³³ Khaled Saad Al-habshan (n 326).

³³⁴ Abdullatif Mohammed Aleshaikh (n 326).

³³⁵ Khalid Saad Al-habshan, ‘The Current Rights of Minority Shareholders in Saudi Arabia’ (2017) 6 International Law Research 185.

³³⁶ *ibid.*

³³⁷ Rafael La Porta, Floencio Lopez-De-Sil Anes, Andrei Shleifer and Robert Vishny (n 23).

³³⁸ Abdullatif Mohammed Aleshaikh (n 326); Mohammed Saad Al-habshan (n 326).

³³⁹ Ali Alotaibi, Francis Edum-Fotwe and Andrew D.F. Price (n 316) 1755.

provide new insights. By raising awareness of the value of CSR and launching CSR initiatives, increasing private sector participation in Saudi Arabia's social and economic development has been a government priority.

The importance of this thesis is that it enriches the literature on analysing the current situation of CSR in Saudi Arabia and compares this with the UK situation, then analyses the role of Saudi and UK laws in improving CSR and proposing legal mechanisms to improve CSR in Saudi firms. This thesis is the first of its kind that explicitly links the law in Saudi Arabia with CSR.

The thesis overcomes the lack of Saudi literature through the critical analysis of I-CSR sources and empirical data obtained by the author during the interviews.

2.6 Conclusion

The history of social CSR has built a strong bridge for legislatures to adopt a tested historical concept. The traditional definition of CSR is facing increasing criticism because it focuses solely on maximising shareholder value over stakeholder capitalism. The discussion reveals that CSR and corporate sustainability are similar concepts, but that CSR is broader. The chapter also provides a short discussion of the definition of CSR to allow a better understanding of the concept discussed in this thesis. One definition is selected to guide the whole thesis. The discussion also suggests that the analysis of the UK and Saudi regulatory frameworks highlight that both systems are deficient regarding CSR but on different levels. This will be discussed in detail in subsequent chapters. This analysis highlights the lack of material on developing countries, particularly Saudi Arabia. It also found that some of the existing sources are outdated due to recent changes in Saudi law and this demonstrates the need for a detailed analysis of the promotion of CSR in KSA.

Finally, the analysis reveals an area of sources focusing on the factors influencing CSR practices such as family ownership, governance structure and government ownership. Although not part of this thesis, they offer some explanation of how CSR works in KSA and the gap in the literature about CSR and the law.

Chapter 3. CSR in UK Law

3.1 Introduction

This chapter examines the effects of the laws and regulations on CSR practices in the UK. Its focus is on the effects of the Companies Act 2006, Modern Slavery Act 2015 and Environment Protection Act 1990 on CSR. It explores the role of the existing legal framework of CSR in improving CSR and The chapter argues that the idea that enhancing shareholder value should be the overriding objective of a company's senior management which is entrenched in the shareholder primacy approach in the literature is damaging to the wider stakeholder body and outdated. This means that shareholder value primacy is limiting the scope for promoting CSR. It will be demonstrated that the law is changing in a direction more aligned with CSR. However, the lack of specific legislation addressing CSR prevents the optimal development of this notion and its genuine application across UK companies.

The chapter contributes to answering the main research question by proving that the function of mandatory CSR laws in the UK is largely symbolic. At best, they might send signals about appropriate corporate behaviour and possibly lead to the reform of labour standards that prioritise economic benefits over social and environmental one.

3.2 General CSR framework in the UK

According to CSR experts, profitable companies promote CSR to realise economic, social and environmental returns.³⁴⁰ CSR in the UK is a fusion of two concepts, each of which refers to a separate stand-alone area. First, the 'social responsibility' part indicates that companies must consider the effect their actions and operations have on society, including the effect on the environment, on those employed by the company and on the wider base of stakeholders.³⁴¹ Not least, the company must take into account its contribution to the community as a whole.³⁴² This brings attention to the so-called 'triple bottom line' (TBL), encompassing people, planet and profit.³⁴³ Although the framework of TBL is to measure the social, environmental and economic impact of a corporation and is a key component of transitioning to sustainability

³⁴⁰ Matt Gavin, '5 Examples of Corporate Social Responsibility | HBS online' (*Business Insights Blog*, 2019) <<https://online.hbs.edu/blog/post/corporate-social-responsibility-examples>> accessed 10 June 2021.

³⁴¹ Kasturi Lisa Chase Rangan and Karim Sohail, 'The Truth About CSR' (*Harvard Business Review* 2015) <<https://hbr.org/2015/01/the-truth-about-csr>> accessed 18 August 2021.

³⁴² For example, see Gov.uk, 'Our commitment to corporate social responsibility (CSR)' (2018) <<https://www.gov.uk/government/news/our-commitment-to-corporate-social-responsibility-csr>> accessed 8 June 2021.

³⁴³ Matt Gavin (n 340).

through companies' CSR activities,³⁴⁴ the absence of a strong executive tool for reporting and accounting has led to limited compliance with social obligations and the high level of disclosure based on TBL has not contributed to raising the quality of accountability within UK companies.³⁴⁵

Second, the 'corporate' element of the term has to do with CG since it is through targeted governance and awareness on behalf of the governing corporate body that any kind of CSR can be carried out by the firm. The debate on CSR has grabbed the attention of the wider public and caused corporate boards across industries in the UK to rethink the relationship of the company with its stakeholders in light of these new developments,³⁴⁶ particularly the need to remain within the framework of CSR requiring changing business strategies and at times sacrificing profitability to retain the company's activities within the boundaries of the socially acceptable.³⁴⁷ UK companies have increasingly transitioned towards dedicating an entire department to the issue of CSR with a dedicated executive being responsible for the company's policy. The title is typically 'chief officer for corporate social responsibility' or 'chief sustainability officer' (CSO).³⁴⁸

The new understanding of CSR in the UK calls for companies that focus on the issue of purpose and working towards the greater good rather than simply making a profit.³⁴⁹ The concept of 'profiting' adopts a new dimension; it is not sufficient to simply create more value, it is much more important to do so while doing good.³⁵⁰ However, given UK society's attention to CSR, engaging in this ultimately proves to be beneficial to the company, including in its profitability, because consumers appreciate the efforts of such companies and elect to purchase their goods or services. This creates a sense of contributing to a vision of the future to which such consumers subscribe and reward the change in policies in those corporations which have

³⁴⁴ John Elkington, 'Towards the Sustainable Corporation: Win-Win-Win Business Strategies for Sustainable Development' (1994) 36 *California Management Review* 90-100.

³⁴⁵ Carol A. Adams, 'The Ethical, Social and Environmental Reporting-Performance Portrayal Gap' (2004) 17 *Accounting, Auditing & Accountability Journal* 731-757.

³⁴⁶ Ramakrishnan Ramachandran, 'Significant Changes in the Business in the Last 30 Years Due to Corporate Social Responsibility' (2008) available at: <https://www.researchgate.net/publication/228320598_Significant_Changes_in_the_Business_in_the_Last_30_Years_Due_to_Corporate_Social_Responsibility> accessed 18 August 2021.

³⁴⁷ Jaakko Siltaloppi, Risto Rajala and Henri Hietala, 'Integrating CSR with Business Strategy: A Tension Management Perspective' (2020) 174 *Journal of Business Ethics* 507-527.

³⁴⁸ Deloitte, 'The rise of the socially responsible business' (2019) available at: <<https://www2.deloitte.com/global/en/pages/about-deloitte/articles/societal-impact-survey-deloitte-global.html>> accessed 10 June 2021, 3.

³⁴⁹ *ibid.*

³⁵⁰ Santi Swarup Kandikonda, 'Profitability at Any Cost? (A Case Study on Business Ethics)' 2013 *SSRN Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2226253> accessed 18 August 2021.

decided to move to greater adherence to CSR principles.³⁵¹ Equally, not adhering to such principles may result in consumers punishing the ‘offender’ company by not purchasing its products. Companies are now under pressure from many directions including charities, ‘special interest groups, activist investors, private equity funds, environmental, ratings firms, consumer groups, trade groups, politicians, regulators and academics’³⁵² to address the new challenges facing the corporate world. This shows that corporations must consider the broader context and that they are vulnerable to all sorts of critiques from many sectors.³⁵³ They must listen attentively to NGOs as they do to formal regulators, which underscores the power such informal organisations have in that they can shape the policies of big companies in a way that will best align with their CSR objectives.³⁵⁴

These new challenges fall into three main categories: environmental, social and governance (ESG). With respect to the environment, climate change and greenhouse gas emissions are the most prominent issues.³⁵⁵ Other notable environmental objectives include sustainability and energy. Companies are called on to consider pressing environmental issues and to keep abreast of developments in the sector. Taking such a proactive approach will inevitably result in extra costs for the company which can only be offset by aggressive advertisement, highlighting the company’s involvement with these issues and engaging with them in such a way that will increase the company’s profit.

With socio-political issues, companies are called on to consider matters of racial, gender and age discrimination, diversity, human rights, inequity in payment, the opioid crisis, gun control, animal rights, political contributions, charity work, drug prices and pension planning.³⁵⁶ The sheer variety of issues demonstrates the scope of the challenge for a corporate board. As with

³⁵¹ Alexandra Zbucea, ‘Are Customers Rewarding Responsible Businesses? An Overview of the Theory and Research in the Field of CSR’ (2013) available at: <https://www.researchgate.net/publication/261797365_Are_Customers_Rewarding_Responsible_Businesses_An_Overview_of_the_Theory_and_Research_in_the_Field_of_CSR> accessed 9 June 2021.

³⁵² Peter A. Atkins, Marc Gerber and Edward Micheletti, ‘Social Responsibility and Enlightened Shareholder Primacy: Views from The Courtroom and Boardroom’ (*Harvard Law School Forum in Corporate Governance* 2019) <<https://corpgov.law.harvard.edu/2019/02/21/social-responsibility-and-enlightened-shareholder-primacy-views-from-the-courtroom-and-boardroom/>> accessed 20 June 2021.

³⁵³ Federica Balluchi, Arianna Lazzini and Riccardo Torelli, ‘CSR and Greenwashing: A Matter of Perception in The Search of Legitimacy’ 2020 SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3721199/> accessed 20 June 2021.

³⁵⁴ Antonis Skouloudis, Konstantinos Evangelinos and Chrisovaladis Malesios, ‘Priorities and Perceptions for Corporate Social Responsibility: an NGO Perspective’ (2013) 22, *Corporate Social Responsibility and Environmental Management* 95-112. Sylvaine Poret, ‘Corporate–NGO Partnerships Through Sustainability Labelling Schemes: Motives and Risks’ (2019) 11 *Sustainability* 2689.

³⁵⁵ Samuel Tang and David Demeritt, ‘Climate Change and Mandatory Carbon Reporting: Impacts on Business Process and Performance’ (2017) 27 *Business Strategy and the Environment* 437.

³⁵⁶ Peter A. Atkins (n 352) 3.

the other legs of the ESG group, addressing the issues in their totality and in a satisfactory way will involve a change in strategy and factoring in the additional costs, both financial and temporal.

The last leg of the ESG group – governance – covers the compensation of directors and other executives and is closely involved with all issues of CG. For example, 78% of CEOs in the UK believe that ‘climate risk management’ will decide whether or not they will continue in their jobs during the next five years.³⁵⁷ This illustrates the pressure corporations are under suggesting that the so-called voluntary adoption of the model is not so voluntary in substance.³⁵⁸ The pressure is not exerted solely by customers but also comes from shareholders in the form of ‘no’ campaigns voting against directors or through submission of proposals, from large shareholders during personal meetings or through personal messages, or from investors divesting from their shares (or simply threatening to do so) and even through ‘exclusion of companies from exchange-traded funds and other investment pools’.³⁵⁹ Looking at these in their totality highlights the seriousness of the problem and the need for the board of directors to consider adjusting the company’s policies to fit into the perceptions of the UK society.

In the West, while CSR goes further than that required by law, even this has changed in the last years with legislatures starting to consider changes in the law to better reflect changes in society’s values.³⁶⁰ Examples of such strategies and their following success stories include Lego’s commitment to CSR, which extends to the company’s partnerships and to the materials it uses in the manufacturing of its toys.³⁶¹ Another example would be Salesforce, a US software company, and its ‘1-1-1-Philanthropic Model’ in which the company gave ‘one per cent of the product, one per cent of equity and one per cent of employees’ time to communities and the non-profit sector’.³⁶² Of interest would be Starbucks ‘Commitment to Ethical Sourcing’, as a result of which in 2015, 99% of the coffee supply chain was ethically sourced.³⁶³ Levi Strauss’s

³⁵⁷ Sue Bonney, ‘In a post-COVID-19 world, what comes first – profit or responsibility?’ (2020) KPMG, available at: <<https://home.kpmg/uk/en/home/media/press-releases/2020/09/covid-19-accelerating-esg-agenda-but-majority-of-businesses-yet-to-implement-board-level-change.html>> accessed 9 July 2021.

³⁵⁸ Michael E. Porter and Mark R. Kramer (n 161).

³⁵⁹ Peter A. Atkins (n 352) 3.

³⁶⁰ Jingchen Zhao, ‘Promoting More Socially Responsible Corporations through a Corporate Law Regulatory Framework’ (2017) 37(1) *Legal Studies* 103-106.

³⁶¹ WWF, ‘LEGO Group builds a more sustainable future’ (2018) available at: <<https://www.worldwildlife.org/magazine/issues/winter-2018/articles/lego-group-builds-a-more-sustainable-future>> accessed 10 June 2021.

³⁶² Matt Gavin (n 340); Salesforce.org, ‘Education Summit: Innovation for Education’ (2021) available at: <<https://www.salesforce.org/>> accessed 11 June 2021.

³⁶³ Starbucks Stories and News, ‘Starbucks Verifies 99% of Coffee Ethically Sourced’ (2015) available at: <<https://stories.starbucks.com/stories/2015/starbucks-ethical-sourcing-program/>> accessed 10 June 2021.

Social Impact strategy goes as far back as 1991³⁶⁴ and is geared towards sustainable and ethical sourcing.

This means that there has been a gradual shift in the West and the UK from the shareholder value approach to an approach that includes a broader set of stakeholders known as ‘Enlightened Shareholder Value’.³⁶⁵

3.3 CSR in UK private law

One of the biggest impediments to the development of the CSR doctrine is found in arguments about its illegitimacy.³⁶⁶ Such a perspective asserts that practising CSR runs against the provision of the law as it effectively steals from the owners of the company – the shareholders.³⁶⁷ This highlights the sensitivity of the issue. Creating new or interpreting old provisions of private law can be interpreted as sanctioning the development of CSR either in the direction of promoting greater CSR at the expense of shareholders or pursuing a lesser CSR, at the expense of society and the broader group of companies’ stakeholders.

To understand the context, one must define private law. However, there is no uniform definition of private law. Rather, it has been defined by reference to what it is not. Private law is all law that is not public.³⁶⁸ The purpose of such a law is to protect the rights of private individuals and public bodies. It protects the individual against the state in cases where there could be an abuse of power by the latter.³⁶⁹ Private and public law can also be distinguished by the function performed by the specific area of the law; if it involves only private individuals, then it is private law. Alternatively, the involvement of a public body makes the case subject to the rules of public law.³⁷⁰ This means that adopting this definition of private law places within its ambit areas of the law such as contract law, tort law and property law, company law, consumer law and commercial law.³⁷¹

³⁶⁴ Levi Strauss, ‘Levi Strauss & Co. Announces New Terms of Engagement for Its Global Supply Chain’ (1991) available at: <<https://www.levistrauss.com/wp-content/uploads/2019/03/Levi-Strauss-Co.-Announces-New-Terms-of-Engagement-for-Its-Global-Supply-Chain-undated.pdf>> accessed 10 June 2021.

³⁶⁵ Andrew Johnston (n 232) 817-843.

³⁶⁶ Doreen McBarnet, ‘Corporate social responsibility beyond law, through law, for law: the new corporate accountability’ in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds) *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2009).

³⁶⁷ Milton Friedman (n 8).

³⁶⁸ Dawn Oliver, *Common Values and the Public-Private Divide* (Butterworths 1999) 15.

³⁶⁹ *ibid*, 14.

³⁷⁰ Lord Woolf, ‘Droit public – English style’ 1995 Public Law 57, 62.

³⁷¹ Andreas Rühmpkorf (n 196) 21.

Considering that modern corporations are often transnational or at least operate cross-border, it is no wonder that businesses started harmonising the applicable CSR requirements long before governments around the world began to make CSR mandatory and began adopting indirect economic strategies which, due to globalisation and other factors, led to the integration of progressive social policies.³⁷² The EU Commission's Green Paper on Promoting a Framework for CSR³⁷³ became a driver for social renovation in the EU and this certainly affected the developments in the UK.³⁷⁴

The framework which existed at the beginning of this century has been repeated across major economies. While compliance with CSR was based on guidelines rather than on obligation, it was successful in the sense that not only were governments able to persuade companies to embrace these CSR-friendly internal policies, but they were also able to achieve market acceptance of this novel corporate behaviour.³⁷⁵ This is significant because transparency is not intuitive for businesses and neither is the desire to think of interests other than profits. The fact that the UK government, along with the governments of the major world economies, was successful at achieving that is not only credit to them but also evidence of the winds of change shaping society at the turn of the century.

The efforts to introduce legislation concerning CSR have been made by the Corporate Responsibility (CORE) Coalition, which introduced two Corporate Responsibility Bills in the UK Parliament in two consecutive years (2003 and 2004).³⁷⁶ The first was aimed at improving transparency and reporting for CSR. The 2003 Bill also suggested 'an extension of directors' duties to take account of the environmental and social impact of their conduct and a statutory obligation to pay compensation to those injured or harmed as a result of group management failure'.³⁷⁷ The 2003 Bill was not passed into law, mainly because of the ongoing review of the Companies Act which was intended to include some of the objectives of the Bill, including

³⁷² Mia Mahmudur Mahmudur Rahim, 'Legal Regulation of Corporate Social Responsibility: A Meta-Regulation Approach of Law for Raising CSR in a Weak Economy' (Springer Science & Business Media 2013) 34.

³⁷³ EU Commission, Green Paper on Promoting a Framework for CSR (2001) available at: <https://ec.europa.eu/commission/presscorner/detail/en/DOC_01_9> accessed 13 October 2021.

³⁷⁴ Mia Mahmudur Mahmudur Rahim (n 372) 34.

³⁷⁵ Prin Shasiharani, 'The Influence of Societal Structure and the Impact of Legal Regulation on Corporate Social Responsibility: A Comparative Perspective' (2016) 1 LSE Law Review 92, 100.

³⁷⁶ Jennifer Zerk (n 2).

³⁷⁷ *ibid.*

those referring to the duty of directors to consider the wider company's stakeholders and enhancing the reporting requirements applicable to companies.³⁷⁸

The 2004 Bill was also unsuccessful; perhaps because it did not offer anything particularly new compared to its 2003 predecessor as it focused on requiring mandatory reporting requirements as to the environmental and social impact of the company's activities.

3.3.1 Companies Act 2006

The purpose of this section is to examine the role that the UK company law plays in promoting CSR. It discusses section 172 of the Companies Act 2006, which is the most prominent law related to CSR in the UK and then it discusses mandatory reporting, which includes the strategic report, which is mandatory for companies in the UK. As part of the analysis, it examines the legal personality of the company and how it relates to CSR. The section concludes by discussing the UK approach to shareholder value.

Section 172

The provision codifying directors' duties under section 172 of the Companies Act 2006 has received much attention since its enactment. There have also been scholarly discussions of the shareholder/stakeholder debate and policy papers that consider how the law should be amended in response to corporate failures.³⁷⁹ In general, the discussion of section 172 focuses on utility and enforcement rather than the limitations it imposes on shareholder interests.³⁸⁰

The concept of 'enlightened shareholder value' introduced by section 172 remains a key issue, as directors need to consider a variety of factors when promoting the company for the benefit

³⁷⁸ Jennifer Zerk (n 2) 169.

³⁷⁹ Georgina Tsagas, 'Section 172 of The Companies Act 2006: Desperate Times Call for Soft Law Measures' 2017 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2996090> accessed 13 October 2021. Adaeze Okoye, 'Reflexive Law and Section 172 Reporting: Evolution of Social Responsibility within Company Law Limits?' (2021) 32 European Business Law Review 501–520. Temitope Omotola Odusanya, 'Directors' Duties: Section 172 of The UK Companies Act' 2021 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3851392> accessed 13 October 2021. Ernest Lim, 'Judicial Intervention in Directors' Decision-Making Process: Section 172 of The Companies Act 2006' 2016 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3103345> accessed 13 October 2021. Amita Chohan, 'Is Section 172 of The Companies Act 2006 Capable of Delivering for All Stakeholders?' 2012 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2139528> accessed 13 October 2021. Victor Ediagbonya, 'The Scope of Director's Duties under the Provision of Section 172 of The Companies Act of United Kingdom' 2017 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2982033> accessed 13 October 2021.

³⁸⁰ *ibid.*

of its members (shareholders).³⁸¹ According to the definition of section 172(1), success is what the members collectively hope the company achieves. For a commercial venture, success is usually measured by long-term value growth. The reform process emphasised the importance of this expression, which, in its current form, ties all of the elements of section 172(1) together. It is important to encourage change in directors' behaviour as many seem to value shareholders' immediate returns over long-term returns.³⁸² The Commission believed that its clarification and improving access to the law on directors' duties would be able to lead to a behaviour change in this regard.³⁸³ To achieve success, it is essential to understand that the ultimate goal is to benefit shareholders. Building successful businesses depends on paying attention to relationships, effects and reputation.³⁸⁴ However, considering more than just financial performance when applying section 172 is important, since other factors also need to be considered. This supports the previous assertion that stakeholder interests should be considered under s263(3)(b), since the statutory framework does not limit success to that which can be evaluated analytically.

Under section 172, a director must 'behave in the manner they think will be most likely, in good faith, to facilitate the company's performance'.³⁸⁵ There are several factors directors need to consider in making decisions as stipulated in the section, but it is not an exhaustive list. It states that section 172 will be a 'stakeholder-sensitive', 'relational' and 'more explicitly long-term' provision.³⁸⁶ The updated CA failed to propose extending to directors the obligation to consider how their conduct affects society and the environment, which would have made it more in line with CSR principles.³⁸⁷ Additionally, the enforceability of the duty has been criticised because as such section 172 has 'enshrined shareholder primacy explicitly in law'.³⁸⁸ This primacy is confirmed by the 2018 UK Corporate Governance Code

³⁸¹ PWC, 'Tackling s172 Reporting – A Brief Guide for Boards' (2019) <<https://www.pwc.co.uk/audit-assurance/assets/pdf/190812-174249-jp-os-v4-board-guide-to-s-172-v2-1-final-web-version.pdf>> accessed 24 June 2022.

³⁸² Luca Cerioni (n 229) 2.

³⁸³ *ibid.*

³⁸⁴ *ibid.*

³⁸⁵ The UK Companies Act 2006, c.172 ; Ernest Lim (n 413).

³⁸⁶ Temitope Omotola Odusanya (n 379); Victor Ediagbonya (n 379); David Russell and Toby Graham, 'Trustee Investment; Non-Financial Considerations; The Development of Directors' Core Fiduciary in s172 Companies Act 2006' (2019) 25 *Trusts & Trustees*, 867, 870.

³⁸⁷ Jennifer Zerk (n 2) 169.

³⁸⁸ Andrew Johnston (n 232) 1001, 1031.

, which requires the inclusion of ‘information enabling shareholders to assess how the directors have performed their duty under section 172 of CA 2006’.³⁸⁹ As Keay noted, this section was never fit for purpose because it only reflects the previous law without going a step further.³⁹⁰

This reform has led to the shrinking scope of CSR in the UK.³⁹¹ CSR, Johnston claims, has lost its effectiveness in internalising externalities as shareholders now have a veto over how much wider interests are considered by companies.³⁹² In addition to noting that the 2006 reforms are predicated on the belief that shareholder engagement will gently guide companies towards long-term strategies, he argues that there is evidence that such engagement undermines such a belief.³⁹³ His criticism is backed by studies by Dallas and by Millon who demonstrate the financial pressure on the management to maximise profits.³⁹⁴ Johnston finally noted that as a result of the reforms that resulted in section 172, CSR is now limited to activities appropriate to shareholders and the capital markets.³⁹⁵ Cerioni has argued that by adopting the strategic management perspective of section 172(1) which defines success as increasing long-term value, directors will be able to use it to learn how to make their decisions much better.³⁹⁶ This means that strategic management perspectives might be helpful to legal analysis and, thus, to a model of operational organisation underpinning UK company law. Consequently, section 172(1) introduced an approach that combined law and strategic management which can be used regardless of the business-friendly jurisdiction.

One study found that none of the 100 largest listed companies in London by market capitalisation referred to enlightened shareholder value (ESV) as required by section 172.³⁹⁷ Neither ESV nor legislation was taken into account when directors performed their duties. The

³⁸⁹ Matthew Findley, Deborah Wilcher and Jo Chattle, ‘The new shorter and sharper 2018 UK Corporate Governance Code’ (July 2018) <<https://www.nortonrosefulbright.com/en-gb/knowledge/publications/93262169/the-new-shorter-and-sharper-2018-uk-corporate-governance-code>> accessed on 25 March 2020.

³⁹⁰ Andrew Keay, ‘The Duty to Promote the Success of the Company: Is It Fit for Purpose?’ (Univ. of Leeds Sch. of Law, Ctr. for Bus. Law & Practice, Working Paper, 2010) 13; Kong Shan HO, ‘Is section 172 of the Companies Act 2006 the guidance for CSR?’ 2010 31 *Company Law* 208.

³⁹¹ Andrew Johnston, (n 232) 1002.

³⁹² *ibid*, 1002.

³⁹³ *ibid*, 1033.

³⁹⁴ David Millon, ‘Shareholder Social Responsibility’ (2013) 36 *Seattle University Law Review* 911, 931; Lynne L. Dallas, ‘Short-Termism, the Financial Crisis, and Corporate Governance’ (2012) 37 *Journal of Corporation Law* 264, 306.

³⁹⁵ Andrew Johnston, (n 232) 1002.

³⁹⁶ Luca Cerioni, *EU Corporate Law and EU Company Tax Law* (Edward Elgar 2007).

³⁹⁷ Taskin Iqbal and Andrew Keay, ‘an Evaluation of Sustainability in Large British Companies’ (2019) 48 *Common Law World Review* 55.

fact that the ESV focuses on long-term success makes this omission noteworthy, since protecting stakeholder interests at the same time is important. Even though the sample companies were engaged in sustainable business practices, they failed to mention ESV.³⁹⁸

Analysis suggests that the shareholder primacy doctrine in the UK is in a crisis caused by two factors: First, the status quo has been strongly impacted by the introduction in UK corporate legislation of the concept of ESV by section 172.³⁹⁹ This provision refers to the directors' duty to promote the success of the company, stating that a director must act in good faith, in considering how a decision will affect the company in the long run,⁴⁰⁰ the interests of those employed by the company,⁴⁰¹ and the need to look after the company's relationship with other stakeholders such as suppliers, creditors and consumers.⁴⁰² In addition, section 172 calls on directors to consider how the company's operation will affect the community,⁴⁰³ the need to establish the company's reputation for conducting its business to the best of standards⁴⁰⁴ and the need to act with fairness with respect to everybody working for the company.⁴⁰⁵

Subsections a, b, d and f appear to promote the principles of CSR and have been interpreted to mean that management of companies in the UK is gradually adopting a more stakeholder rather than shareholder approach.⁴⁰⁶ This is in line with the approach taken in the US where more than half of the states have imposed a requirement on or permission for company directors to consider the interests of the larger stakeholders,⁴⁰⁷ rather than only those of the shareholders.⁴⁰⁸ However, this view is not supported throughout the industry as some analyses argue that the wording of section 172 places greater importance on the interests of the shareholders of a

³⁹⁸ Taskin Iqbal and Andrew Keay (n 397) 55.

³⁹⁹ Companies Act 2006, c.46.

⁴⁰⁰ *ibid*, section 172(1)(a).

⁴⁰¹ *ibid*, section 172(1)(b).

⁴⁰² *ibid*, section 172(1)(c).

⁴⁰³ *ibid*, section 172(1)(d).

⁴⁰⁴ *ibid*, section 172(1)(e).

⁴⁰⁵ *ibid*, section 172(1)(f).

⁴⁰⁶ Sarah Kiarie, 'At Crossroads: Shareholder Value, Stakeholder Value and Enlightened Shareholder Value: Which Road Should the United Kingdom Take?' (2006) 17 *International Corporation and Commercial Law Review* 329; Cynthia A. Williams and John M. Conley, 'an Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct' 38 *Cornell International Law Journal* 493, 500, available at: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=632347> accessed 10 June 2021; Andrew Keay (n 227) 1-312; Andrew Keay, 'Tackling the Issue of the Corporate Objective: an Analysis of the United Kingdom's 'Enlightened Shareholder Value Approach' (2007) 29 *Sydney Law Review* 577.

⁴⁰⁷ Alissa Mickels, 'Beyond Corporate Social Responsibility: Reconciling the Ideals of a For-Benefit Corporation with Director Fiduciary Duties in the US and Europe' (2009) 32 *Hastings International and Comparative Law Review* 271.

⁴⁰⁸ Anthony Bisconti, 'The Double Bottom Line: can Constituency Statutes Protect Socially Responsible Corporations Stuck in Revlon Land?' (2009) 42 *Loyola University of Los Angeles law review* 765.

company rather than on its stakeholders.⁴⁰⁹ This view is based on the observation that the wording of the section refers to the company rather than to its members, which was deemed to have the effect of underlining the importance of shareholder primacy.⁴¹⁰ Whatever the position that has been taken concerning section 172, all commentators seem to agree that ‘the provision reinforces the shareholder primacy model’.⁴¹¹

Second, in a purely practical sense, the contractual relationship between the company and its creditors prevents the use of the shareholder primacy model.⁴¹² When the board of directors must abide by the company’s investment contracts, this may affect the primacy of shareholders, meaning that this commitment may lead to decisions in which the value for investors as a group is not maximised because, with their fiduciary duty, directors must take care of the affairs of the company in good faith. Therefore, shareholders must protect themselves through the powers granted to them by the company’s bylaws.⁴¹³

The term success in section 172 generally refers to the growth of the company’s value over the long run and what the members hope the company will accomplish. Thus, directors’ behaviour has changed since section 172 has encouraged them to prioritise long-term returns. However, the wording of section 172 may favour shareholder over stakeholder interests, which may not be acceptable to the industry. Therefore, section 172 places a greater emphasis on shareholder primacy than on company members. This means that section 172 is not sufficient to promote CSR in the UK.

Mandatory reporting

In the UK, the interest of the legislature in embedding sound CSR-related practices reflects the opinions expressed by numerous non-governmental organisations lobbying on particular environmental or social issues and the concerns expressed by the public who complain about specific company policies.⁴¹⁴ This has led to suggestions to make the practice of making an

⁴⁰⁹ David Collison, Stuart Cross, John Ferguson, David Power and Lorna Stevenson, ‘Shareholder Primacy in UK Corporate Law: An Exploration of the Rationale and Evidence’ (2011) *The Association of Chartered Certified Accountants* 5.

⁴¹⁰ *ibid.*

⁴¹¹ *ibid.*

⁴¹² Frederick Tung, ‘The New Death of Contract: Creeping Corporate Fiduciary Duties for Creditors’ (2008) 57 *Emory Law Journal* 809, 853; Andrew Keay, ‘Shareholder Primacy in Corporate Law: Can It Survive? Should It Survive?’ (SSRN November 10, 2009) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1498065>; accessed January 9, 2023.

⁴¹³ Douglas G. Baird and M. Todd Henderson, ‘Other People’s Money’ (2008) 60 *Stanford Law Review* 1309; Frank Partnoy, ‘Financial Innovation in Corporate Law’ (2006) 31 *Journal of Corporation Law*, 799.

⁴¹⁴ Daniel Arenas, Josep M. Lozano and Laura Albareda, ‘The Role of Ngos in CSR: Mutual Perceptions among Stakeholders’ (2009) 88 *Journal of Business Ethics* 175.

Operating and Financial Review (OFR) compulsory for ‘economically significant’ organisations. This suggestion is important because the OFR was meant to go beyond the ordinary financial report and give the reader a better idea of the dealings and practices of the company. Considering the developments in the next two decades, it is important that the drafters of the Report felt as far back as 2003 that a blanket imposition of an OFR could benefit citizens and the socially responsible investment industry and their customers and employees. Above all, it was considered that making an OFR compulsory would help deal with the many social and environmental issues discussed in the public space.⁴¹⁵

This encouraging development did not appear in a vacuum. Its origins can be found in the Occupational Pensions Schemes Regulations 1999,⁴¹⁶ which imposed a requirement on ‘pension funds to state and explain investment decisions directed towards social, environmental and ethical issues’.⁴¹⁷ Despite the lack of a legal obligation to provide notes, pension funds internalised the call, attempting to project a clearer picture of what they stood for. Since pension funds are related to all industries, the practice has influenced many of their business partners, which have gradually started to embrace it.⁴¹⁸ This demonstrates that the notion of CSR has great potential. For one, it can be persuasive even in conditions of non-regulation either by succumbing to peer pressure or, the better option, by following an example of good practice.

Corporations that chose to embrace CSR at this early stage did so for a mix of reasons; however, the fact that CSR espouses morally defensible objectives certainly helped convince the corporate board that this is a path worth taking.⁴¹⁹ Another reason why many UK corporations elected to follow the example of the pension funds before the government began regulating CSR was the promulgation of similar legislation by other important UK trading partners. Among them, Germany adopted pension fund legislation in 1992. Notably, s294 of Germany’s Insurance Supervision Act (VAG) states that the primary objective of this piece of legislation is to ensure ‘the protection of policyholders and beneficiaries’.⁴²⁰

⁴¹⁵ Nicholas Rowbottom and Marek Schroeder, ‘The Rise and Fall of the UK Operating and Financial Review’ (2014) 27 *Accounting, Auditing & Accountability Journal* 655.

⁴¹⁶ The Occupational Pension Schemes (Investment, Assignment, Forfeiture and Bankruptcy etc.) (Amendment) Regulations 1999, SI 1999/1849.

⁴¹⁷ Prin Shashiharan, ‘The Influence of Societal Structure and the Impact of Legal Regulation on Corporate Social Responsibility: A Comparative Perspective’ (2016) 1 *LSE Law Review* 92, 100.

⁴¹⁸ *ibid.*

⁴¹⁹ Mridula Goel and Preeti E. Ramanathan, ‘Business Ethics and Corporate Social Responsibility – Is There a Dividing Line?’ (2014) 11 *Procedia Economics and Finance* 49.

⁴²⁰ BaFin, ‘Insurance Supervision’ available at: <https://www.bafin.de/EN/DieBaFin/AufgabenGeschichte/Versicherungsaufsicht/versicherungsaufsicht_artikel_en.html> accessed 17 October 2021.

The idea to make OFR compulsory did not come to fruition. After 10 years of research,⁴²¹ the legislation on the OFR was passed in March 2005,⁴²² mandating all ‘UK listed companies to disclose a separate statement of management commentary’.⁴²³ The group of listed companies included ‘1,290 British-based companies listed on the London Stock Exchange, New York Stock Exchange, or NASDAQ’.⁴²⁴

Directors must consider the company’s impact when making decisions as part of CA 2006, which links directors’ duties to company reporting requirements. Sections 415 to 419 deal with preparing, approving and signing a directors’ report.⁴²⁵ For example, under section 417, companies are mandated to publish a business review every year that includes information on social and environmental impacts.⁴²⁶ Based on the scope of fidelity duties, directors were given a list of important areas that should be considered in such a review.⁴²⁷ The directors were also expected to include everything they deemed necessary to give a fair picture.⁴²⁸ With these reports, best ethical practice was assumed to evolve within UK companies.⁴²⁹

Taking the place of the Annual Business Review, a Strategic Report was introduced on 1 October 2013 by section 414 CA. There are three main components to an annual report: the report, financial statements and remuneration statements. Under section 172, a strategic report must inform company members and enable them to decide whether the director has met their duty to promote the success of the company.⁴³⁰ As a result, directors have a responsibility to release information about their company’s long-term prospects. It means accounting is based on a fair review of a company’s business. Therefore, a definition of what is to be reported on those issues is not required, nor is a definition of its nature. However, Parliament was unable

⁴²¹ Cynthia A. Williams and John M. Conley, ‘an Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct,’ (2005) 38 *Cornell International Law Journal* 493.

⁴²² The Companies Act 1985 (Operating and Financial Review and Directors’ Report etc.) Regulations 2005, S.I. 2005/1011.

⁴²³ Nicholas Rowbottom and Marek Schroeder, ‘The rise and fall of the UK operating and financial review’ (2014) 27(4) *Accounting Auditing & Accountability Journal* 655.

⁴²⁴ Cynthia A. Williams and John M. Conley, ‘Triumph or Tragedy? The Curious Path of Corporate Disclosure Reform in the U.K.’ (2007) 31 *William & Mary Environmental Law and Policy Review*. 317.

⁴²⁵ Sections 415 to 418 of CA 2006.

⁴²⁶ Section 417 of CA 2006.

⁴²⁷ Paul Davies and Jonathan Rickford, ‘An Introduction to the New UK Companies Act’ (2008) 5 *European Company and Financial Law Review SSRN Electronic Journal* available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1319639> accessed 15 October 2021.

⁴²⁸ Singapore Law Reform Commission (CLR) Final Report I, paragraphs 8.29– 8.71.

⁴²⁹ *ibid*, paragraphs 8.38, 8.64– 8.67.

⁴³⁰ Irene-Marie Esser, Iain MacNeil and Katarzyna Chalaczkiwicz- Ladna, ‘Engaging Stakeholders in Corporate Decision-Making Through Strategic Reporting: An Empirical Study of FTSE 100 Companies (Part 2)’ 2018 available at: <https://www.researchgate.net/publication/320656811_Engaging_Stakeholders_in_the_UK_in_Corporate_Decision-Making_Through_Strategic_Reporting_An_Empirical_Study> accessed 15 October 2021.

to define the scope and nature of the implied reporting standards through legislation due to a lack of time and expertise.⁴³¹

This report has been criticised for not specifying exactly what companies should report or to what extent it covers all CSR activities. It is a soft disclosure and needs improvement.⁴³² For example, the reporting provisions are hindered by a lack of reporting standards and possible influence on the quality of information. Even so, the competitive nature of the financial market and the large number of intermediaries willing to interpret financial data accurately may mitigate these effects.⁴³³ Thus, companies may initially have to conform to section 417 based on their own disclosure standards until ‘best practice’ reporting standards are developed. Meanwhile, institutional investors who want comparable data across industries will have difficulty making market-sensitive information public without statutory or industry standards. CSR data has generally been regarded by investors as risky due to this rationale.⁴³⁴ Even though institutional investors own 70% of all British listed companies, they are cautious about CSR disclosure. This may be due to a lack of quantifiable metrics. As a result, market intermediaries play an important role in providing common metrics.⁴³⁵

Zhao has noted that the changes to the new strategic report’s business review requirement are minor.⁴³⁶ A positive note, however, comes from increased attention given to workers, environmental issues, human rights and CG guidelines.⁴³⁷

However, only Next plc has been found to use ESV to have the greatest potential for creating shareholder value among the nine companies selected in this study. A primary financial objective stated in the company’s Annual Report and Accounts is to provide adequate financing

⁴³¹ Gordon L. Clark and Eric R. W. Knight, ‘Institutional Investors, The Political Economy of Corporate Disclosure, and the Market for Corporate Environmental and Social Responsibility: Implications from The UK Companies Act (2006)’ 2008 SSRN Electronic Journal available at:

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1123550> accessed 15 October 2021.

⁴³² Jean J. du Plessis, Umakanth Varottil and Jeroen Veldman, ‘Globalisation of Corporate Social Responsibility And Its Impact On Corporate Governance’ (Springer, 2018) <<https://link.springer.com/book/10.1007/978-3-319-69128-2>> accessed 19 August 2022.

⁴³³ Gordn L. Clark, ‘London in The European Financial Services Industry: Locational Advantage and Product Complementarities’ (2002) 2 *Journal of Economic Geography*, 433-453; Gordon L. Clark and Eric R. W. Knight (n 431).

⁴³⁴ *ibid.*

⁴³⁵ *ibid.*

⁴³⁶ Jingchen Zhao (n 360) 124.

⁴³⁷ *ibid.*

to meet its obligations and provide long-term returns to shareholders,⁴³⁸ section 414's failure to specify exactly what a strategic report should contain is the most prominent.

Sections 172 and 414 of the Companies Act explain corporate responsibility as having a dual component of accountability (holding those in charge of businesses accountable for their actions) and enforcement (punishing those who violate the law).⁴³⁹ To hold corporations accountable, the government has taken a broad array of measures that go beyond the law and public policy instead of simply urging them to improve standards and reporting. The 'post-voluntarist' approach calls for direct government regulation to combat neoliberalism thereby enhancing CSR in the UK through legal and extra-legal ways.⁴⁴⁰ Under the Companies Act, directors are required to provide non-financial statements about the company's long-term prospects. Consequently, the Act requires a fair review of the business of a company to determine its accounting.

The separate legal personality of a company

English law considers the subsidiaries of a company as having a separate legal personality.⁴⁴¹ This could potentially make such claims in tort more difficult or rather, the provision of adequate remedy for the alleged tortious acts can be made more difficult, because such acts committed by the subsidiary cannot, in principle, be attributed to the parent company.⁴⁴² However, *Chandler v Cape plc*⁴⁴³ changed the law in this respect.⁴⁴⁴

Various Cape plc UK factories produced asbestos from the late 19th century onwards. Having acquired a majority stake in Cape Products in 1945, Cape acquired the company in 1953. When Cape Products merged with The Cape Group in 1956, the group acquired the asbestos business which it had previously leased from Cape Products. As a result of asbestos exposure, the claimant contracted asbestosis while working for Cape Products from 1959 to 1962. A claimant stacked and loaded bricks at Cape Products while asbestos products were being manufactured. His open-air work was often contaminated with asbestos dust from the buildings where

⁴³⁸ Andrew Keay and Taskin Iqbal, 'The Impact of Enlightened Shareholder Value' (2019) 2019 The Journal of Business Law, 304, 327.

⁴³⁹ Peter Newell, 'From Responsibility to Citizenship? Corporate Accountability for Development' (2002) 33 IDS Bulletin 1-12.

⁴⁴⁰ Renginee G. Pillay (n 217).

⁴⁴¹ *Adams v Cape Industries plc* 1990 BCLC 479.

⁴⁴² But c.f. Radu Mares, 'Defining the Limits of Corporate Responsibilities Against the Concept of Legal Positive Obligations' (2012) 40 The George Washington International Law Review 1157, 1183.

⁴⁴³ *Chandler v Cape plc* 2012 EWCA Civ 525.

⁴⁴⁴ Jennifer Arlen and Reinier Kraakman, 'Controlling Corporate Misconduct: An Analysis of Corporate Liability Regimes' (1997) 72 New York University Law Review 687, 752.

asbestos products were manufactured. Cape continued to run the asbestos business in Uxbridge despite its subsidiary purchasing the business. Although the building was without sides, Cape made no attempt to prevent asbestos dust from escaping. As the parent company made certain decisions about the expansion of the business, Cape Products was not allowed to incur capital expenditure without its approval.⁴⁴⁵ The Court of Appeal upheld a High Court decision that ‘a parent company can be held liable for its subsidiary’s negligence to its employees because of the direct duty of care which the parent company owed to those employees’.⁴⁴⁶

The case established a few key propositions, such as that an enhanced duty of care does not arise by default, but it does so when particular contexts are present. These include situations where: (1) the parent and subsidiary have, or ought to have, the same business; (2) the parent has superior knowledge in the particular industry about some relevant aspects of health and safety; (3) the subsidiary’s way of working is unsafe, and the parent knew; and (4) the parent knew its superior knowledge would be relied on by the subsidiary or its employees for their protection.⁴⁴⁷ The case upheld the notion of the corporate veil and underlined that ‘there was no imposition or assumption of responsibility to the employee by reason only that the defendant was the parent company: parent companies have a separate legal personality’.⁴⁴⁸ The Court held that, in the particular case, the parent company and its subsidiary had parallel duties of care towards the employees of the subsidiary because of the similar businesses of the two entities, the parent company’s real or constructive knowledge of the lack of safety of its subsidiary’s system of work and the parent’s real or constructive knowledge ‘that the subsidiary or its employees would rely on its using that superior knowledge the employee’s protection’.⁴⁴⁹

This decision indicates that courts will interpret issues of parent companies and their subsidiaries holistically rather than sticking to established rules and such an approach would be extended even to subsidiaries of a UK plc incorporated abroad.⁴⁵⁰ In any case, *Chandler* expanded the CSR of companies, which must now consider a wider spectrum of stakeholders, namely, the employees of its subsidiaries and, more broadly, the consequences of the conduct of the subsidiary.

⁴⁴⁵ *Chandler v Cape Plc* 2012 EWHC 951 (QB) 62; Martin Petrin, ‘Assumption of Responsibility in Corporate Groups: *Chandler v Cape Plc*’ (2013) 76 *Modern Law Review* 603.

⁴⁴⁶ *ibid.*

⁴⁴⁷ *ibid.*

⁴⁴⁸ *ibid.*

⁴⁴⁹ *ibid.*

⁴⁵⁰ *ibid.*

As MNEs do not regulate CSR, companies can be sued under either their parent's or subsidiary's domestic laws. Under certain conditions, both subsidiaries and the parent company could be accepted as a whole, despite their separate legal personalities.⁴⁵¹ Because of their behaviour, MNEs present a problem to company law, which is that their directors can be brought before the courts of their home countries to answer for violations of international human rights and international criminal law; although it could also be argued that the courts of the host country are also concerned.⁴⁵²

The shareholder primacy approach

Stakeholder-based approaches have been the source of heated debate since the CG debate began in the UK.⁴⁵³ In terms of law or regulation, it is not clear whether attempts to expressly recognise the role of non-shareholders have been successful.⁴⁵⁴ Aside from new reporting requirements for companies, proposed changes to the statute regarding directors' responsibilities were rejected by the Company Law Review despite some concessions to stakeholder concerns.⁴⁵⁵ As a result of the shareholder value model, scholars of CG argue that corporate ownership and control can now be resolved based on shareholder value.⁴⁵⁶

The neoclassical economic approach to CSR is inappropriate and ultimately inadequate because it calls for the internalisation of external costs only in a scenario where this either does or is expected to lead to increased profitability.⁴⁵⁷ The question facing UK corporations, therefore, is whether they should address the social costs created in the wake of their operation if there is no guarantee that such internalisation will be carried out profitably.⁴⁵⁸

Although sections 172 and 414 of the Companies Act 2006 were introduced to improve CSR in the UK, the Act still follows a shareholder priority approach.⁴⁵⁹ The shareholder primacy

⁴⁵¹ Carla M. Slaughter, 'Corporate Social Responsibility: a new perspective' (1997) *Company Lawyer* 313-330.

⁴⁵² *ibid.*

⁴⁵³ John Kay and Aubrey Silberston, 'Corporate Governance' (1995) 153 *National Institute Economic Review* 84.

⁴⁵⁴ *ibid.*

⁴⁵⁵ Philip Goldenberg, 'UK Company Law Reform' (2001) 22 *Business Law Review* 275.

⁴⁵⁶ Bernard Riemann, 'Does Your Business Create Real Shareholder Value?' (1986) 29 *Business Horizons* 44.

⁴⁵⁷ Emmanuel Adegbite., et al. Tahir 'Financial and Corporate Social Performance in The UK Listed Firms: The Relevance of Non-Linearity and Lag Effects' (2018) 52 *Review of Quantitative Finance and Accounting* 105; Kenneth Amaeshi, 'Different Markets for Different Folks: Exploring The Challenges of Mainstreaming Responsible Investment Practices' (2010) 92 *Journal of Business Ethics* 41; Marc Orlitzky, 'Institutional Logics in The Study of Organisations: The Social Construction of the Relationship Between Corporate Social and Financial Performance' (2011) 21 *Business Ethics Quarterly* 409.

⁴⁵⁸ Andrew Johnston, Kenneth Amaeshi, Emmanuel Adegbite and Onyeka Osuji 'Corporate Social Responsibility as Obligated Internalisation of Social Costs' (2019) 170 *Journal of Business Ethics* 39-52.

⁴⁵⁹ Andrew R. Keay (n 412); Chrispas Nyombi, 'A Critique of Shareholder Primacy Under UK Takeover Law and The Continued Imposition of the Board Neutrality Rule' (2015) 57 *International Journal of Law and*

view on the relationship between externalities and internalities is that negative externalities (meaning social costs) could be offset in two ways. First, via instrumental regulation though calibrating the combined effect of regulation and taxation until the desired effect of offsetting the undesired social costs is achieved.⁴⁶⁰ Second, by bargaining between the ‘victim’ of the social cost and the ‘offender’.⁴⁶¹ Whichever option has been chosen by the regulator must be based on a cost-benefit analysis which must include a consideration of what the costs would be if such negative externalities were covered through governmental regulation and what they would be if they are met by way of transaction costs arising from the contract between the parties.⁴⁶²

The typical response of economists is that the cost of such instrumental regulation would be too high to justify its application.⁴⁶³ Such an analysis assumes that the negative externalities are an acceptable cost given that the alternative would be economically inefficient.⁴⁶⁴ The solution for this is to leave the regulation of such social costs to the market, accepting that ‘leaving the externality where it falls is the most efficient outcome in the circumstances’.⁴⁶⁵ There are two problems with this approach, however. The first is that it assumes that social costs can be calculated in terms of monetary value. The second, which follows from the first, is that the more people are affected by the corporation’s activities, the more likely it is that these negative externalities will be addressed by the corporation or through the legislature. However, this approach ignores the fact that the actions of a corporation may affect real people and cause real injuries,⁴⁶⁶ which would be callous to estimate in monetary terms.

Regardless of these considerations and of the visibility adopted by CSR in recent times, analysis suggests that preoccupation with the market has remained alive and well in the UK.⁴⁶⁷ In addition to that, recent years have borne witness to the increased role of shareholders with regard to the management of the corporation, including an ability to impose a veto over which

Management 235-264; Jonathan Mukwiri, ‘Myth of Shareholder Primacy in English Law’ (2013) 24 *European Business Law Review* 217-241.

⁴⁶⁰ Andrew Johnston, Kenneth Amaeshi, Emmanuel Adegbite and Onyeka Osuji (n 458) 39-52.

⁴⁶¹ Ronald H. Coase, ‘The Problem of Social Cost’ (1960) 3 *The Journal of Law and Economics* 1.

⁴⁶² Andrew Johnston, Kenneth Amaeshi, Emmanuel Adegbite and Onyeka Osuji (n 458) 39-52.

⁴⁶³ Andrei Shleifer, ‘Understanding Regulation’ (2005) 11 *European Financial Management* 439.

⁴⁶⁴ *ibid.*

⁴⁶⁵ Andrew Johnston, Kenneth Amaeshi, Emmanuel Adegbite and Onyeka Osuji (n 458) 39-52.

⁴⁶⁶ Axel Honneth, ‘Recognition and moral obligation’ (1997) 64 *Social Research* 16; Jill E. Fisch and Steven Davidoff Solomon, ‘Should Corporations Have a Purpose?’ (2020)

<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3165&context=faculty_scholarship> accessed 19 August 2022.

⁴⁶⁷ Andrew Johnston (n 232) 1001-1002.

external interests the company may take into consideration.⁴⁶⁸ Since the 1980s, most theorists have supported the view of shareholder primacy,⁴⁶⁹ ‘shareholder value’⁴⁷⁰ or ‘shareholder wealth maximisation’⁴⁷¹ without considering the ‘the social costs this creates and the public demand for a wider scope of corporate law to ensure greater social responsibility’.⁴⁷² The rationale to adopt this approach was that:

[T]he US and UK are liberal market economies that have features, such as a dispersed share ownership, more susceptibility to hostile takeovers and the existence of large institutional investors which are eager for quarterly improvements in the share price and this tends to entrench shareholder primacy in their respective systems.⁴⁷³

Although the 1919 case of *Dodge v. Ford* is from the US, it is perhaps the best articulation of the approach that UK corporations should use to manage shareholder economic value, ‘[A] commercial corporation is founded and carried on largely for the profit of the owners’.⁴⁷⁴ The directors’ powers will be used to achieve this.⁴⁷⁵ This is an isolated case but the judgement can be interpreted to be that if the company is making serial profits then the shareholders should also get some benefit.⁴⁷⁶

This, however, stands in stark contrast to the admittedly fewer number of companies that act in consideration of their moral code and religious beliefs.⁴⁷⁷ It is encouraging, however, that despite their being in the minority; the courts appear to support the view that state law does not impose a profit maximisation duty on corporations.⁴⁷⁸ Such an approach may sway the decisions of the corporate board when, on balance, it is not clear what the best direction of the company should be. Regardless, the input by the courts will remain relatively non-consequential unless there is a law requiring that social costs are taken into account. Although

⁴⁶⁸ Andrew Johnston (n 232) 1001-1002.

⁴⁶⁹ Lawrence E. Mitchell, ‘Groundwork of the Metaphysics of Corporate Law’ (1993) 50 *Washington and Lee Law Review* 1477, 1485; Lisa M. Fairfax, ‘The Rhetoric of Corporate Law: The Impact of Stakeholder Rhetoric on Corporate Norms’ (2006) 31 *Journal of Corporation Law* 675, 676; Gregory S. Crespi, ‘Maximizing the Wealth of Fictional Shareholders: Which Fiction Should Directors Embrace?’ (2007) 32 *Journal of Corporation Law* 381.

⁴⁷⁰ Karel Williams, ‘From shareholder value to present-day capitalism’ (2000) 29 *Economy and Society* 1.

⁴⁷¹ Stephen Bainbridge, ‘Director Primacy: The Means and Ends of Corporate Governance’ (2003) 97 *Northwestern University Law Review* 547.

⁴⁷² Andrew Johnston (n 232) 1003.

⁴⁷³ Andrew Keay (n 412).

⁴⁷⁴ Jill E. Fisch (n 466).

⁴⁷⁵ *ibid.*

⁴⁷⁶ Mark J. Roe, ‘*Dodge V. Ford: What Happened and Why?*’ 2021 *SSRN Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3943559> accessed 19 August 2022.

⁴⁷⁷ Lyman Johnson & David Millon, ‘Corporate Law after Hobby Lobby’ (2014) 70 *Business Law* 1, 7.

⁴⁷⁸ *Paramount Communications Inc v Time Inc* 571 A. 2d 1140, 1150 (Del, 1989); *Burwell v. Hobby Lobby Stores, Inc* 134 S. Ct. 2751 (2014).

instrumental regulation may appear to be burdensome and inefficient, it is only possible to characterise it as such if the only thing to consider is profit and loss. Once the calculation begins including the effect on stakeholders and the environment, the outcome changes.⁴⁷⁹ While it is uncontroversial that not considering negative externalities does not translate into effective management of the social costs caused by corporations, it is bad for long-term profit.⁴⁸⁰

Such arguments should affect future discussions on the state of UK company law. The UK has followed the US example in the area of shareholders' primacy, but with significant delay as far as the questioning of the doctrine was concerned.⁴⁸¹ To the extent there has been some questioning of the status quo, it was silenced with some 'cosmetic changes to the law'.⁴⁸² The result of these was that the transition to the more enlightened stage of development, that is, to a stage where CSR is seriously considered by the corporate board and is acted upon, has been inconsistent and often remained lip service rather than a genuine commitment to CSR's objectives.

This conclusion is supported by a discussion on the company law review (CLR) process carried out in the UK. The CLR process led to the promulgation of the Companies Act 2006 which, although tidying up the existing provisions on UK company law and bringing in some positive developments, reaffirmed that 'shareholder primacy would be maintained as a key principle of UK company law'.⁴⁸³ However, a report on the process of CLR acknowledged the frustration of one steering group member that 'there was never any intention to have a 'meaningful discussion of the issues' [or that] there was little interest in a discussion of principles or 'the bigger picture''.⁴⁸⁴

3.3.2 Corporate governance

Under its listing requirements, the London Stock Exchange Group (LSEG) now requires from listed UK incorporated companies environmental and social disclosure, which includes human rights, environmental performance, social and community engagement and diversity.⁴⁸⁵ It also expects certain statistics related to, for instance, toxic emissions or 'gender diversity at board,

⁴⁷⁹ Andrew Johnston (n 232) 1003.

⁴⁸⁰ *ibid.*

⁴⁸¹ David Collison, Stuart Cross, John Ferguson, David Power and Lorna Stevenson (n 409) 5.

⁴⁸² Andrew Johnston (n 232) 1004.

⁴⁸³ David Collison, Stuart Cross, John Ferguson, David Power and Lorna Stevenson (n 409) 5.

⁴⁸⁴ *ibid.*

⁴⁸⁵ London Stock Exchange, 'Your Guide to Climate Reporting' (*An LSEG Business*)

<https://docs.londonstockexchange.com/sites/default/files/documents/LSE_guide_to_climate_reporting_final.pdf> accessed December 27, 2022.

senior management and whole-company levels'.⁴⁸⁶ It is evident that the UK domestic framework is very heavily geared towards an effective and broadly reaching CSR agenda and it is to be expected that it will produce the desired results. However, the UK appears to have adopted a softer approach to CSR regulation, at least compared to the EU, refraining from excessive intrusion into companies' internal policies.⁴⁸⁷

Soft laws such as CG are useful in addressing performance, transparency and CSR.⁴⁸⁸ Despite this, a common scepticism about soft law is that it is assumed to be voluntary and lacks effectiveness.⁴⁸⁹ A company can edit its CSR report to make it seem more committed to CSR and so will not prevent companies from performing poorly or even collapsing, or failing to conduct themselves responsibly towards their stakeholders.⁴⁹⁰ Good governance should encompass and integrate values and rules and values-driven CSR considers the effect of its activities on stakeholders and the broader operating environment; CG should be enhanced by these impulses.⁴⁹¹ According to Young and Thyil, CSR is inextricably linked to CG based on behaviour, reputation, risk and transparency and its context is vital to its successful integration.⁴⁹² This includes the economic environment, national politics, regulatory system, soft law, shareholder relations, political ideology culture and industry impact.⁴⁹³

The UK has adopted the 'comply-or-explain' principle in its Corporate Governance Code (CG).⁴⁹⁴ It contains ideas for best practice in the area of CG. Companies listed in the LSE's main market are obliged to either adopt these principles or explain why they would not elect to do so.

⁴⁸⁶ David Collison, Stuart Cross, John Ferguson, David Power and Lorna Stevenson (n 409) 5.

⁴⁸⁷ Jean-Pascal Gond, Nahee Kang and Jeremy Moon, 'The Government of Self-Regulation: On the Comparative Dynamics of Corporate Social Responsibility' (2011) 40 *Economy and Society* 640.

⁴⁸⁸ Bede Nwete, 'Corporate Social Responsibility and Transparency in The Development of Energy and Mining Projects in Emerging Markets; Is Soft Law the Answer?' (2007) 8 *German Law Journal* 311, 339.

⁴⁸⁹ Leyla Davarnejad, 'In the Shadow of Soft Law: The Handling of Corporate Social Responsibility Disputes Under The OECD Guidelines for Multinational Enterprises' (2011) 2011 *Journal of Dispute Resolution* 351-385.

⁴⁹⁰ Kerstin Sahlin Andersson, 'Corporate Social Responsibility: A Trend and A Movement, But of What and for What?' (2006) 6 *Corporate Governance: The International Journal of Business in Society* 297.

⁴⁹¹ Peter J. Stevenson, 'Softly-Softly: A Critical Assessment of the Soft-Law Approach to Corporate Social Responsibility' 2010 *SSRN Electronic Journal* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628667> accessed 19 August 2022.

⁴⁹² Suzanne Young and Vijaya Thyil (n 243).

⁴⁹³ *ibid.*

⁴⁹⁴ FRC, 'UK Corporate Governance Code' (*UK Corporate Governance Code | Financial Reporting Council* April 2016) <<https://www.frc.org.uk/directors/corporate-governance-and-stewardship/uk-corporate-governance-code>> accessed December 27, 2022.

The LSEG has also published guidance on how reporting on ESG should be done.⁴⁹⁵ Reporting on these issues is encouraged in the UK through the CGC, which requires principal risks and uncertainties to be reported together with a viability statement.⁴⁹⁶ Smaller companies are under different and often lighter requirements. For example, they are free to adopt any corporate code they wish, even from abroad, the only requirement is that they have to make it very clear to their investors what obligations they are under. This rule could prove useful to companies and it can help promote CSR because it allows them to continue working under the code of their own country (with which it is familiar) instead of adopting the code from the country in which they are listed.⁴⁹⁷

Independent external managers contribute much to a company's social performance, including its employees, customers, suppliers and communities.⁴⁹⁸ Having government shareholders ensures companies fulfil their CSR and enhances social performance.⁴⁹⁹ There has been little empirical research carried out in the UK to determine whether CG approaches are effective, despite the presence of a coherent stream of theoretical approaches that consider the broader environment. An assessment of shareholder and stakeholder theory found that the growing importance of CSR has expanded the scope of CG.⁵⁰⁰ Due to this shift, company-governance practices now look at performance other than financial as a means to create shareholder value.⁵⁰¹ The governance system is evolving to focus more on the short-term financial performance of directors while also considering long-term sustainability based on stakeholder metrics. Increasing numbers of CSR board committees and social, environmental and ethical risk registers indicate that CG and CSR are becoming increasingly aligned.⁵⁰²

⁴⁹⁵ London Stock Exchange Group, 'Your Guide to ESG Reporting' (*London Stock Exchange*2020) <<https://www.londonstockexchange.com/discover/news-and-insights/esg-disclosure-report-oct-2020>> accessed December 27, 2022.

⁴⁹⁶ *ibid.*

⁴⁹⁷ Kevin Money and Herman Schepers (n 244) 1.

⁴⁹⁸ Kuldeep Singh and Madhvendra Misra, 'Linking Corporate Social Responsibility (CSR) and Organizational Performance: The Moderating Effect of Corporate Reputation' (2021) 27 *European Research on Management and Business Economics* 100.

⁴⁹⁹ Annisa Putri Caesari, Abdul Kohar Irwanto and Muhammad Syamsun, 'The Influence Analysis of Corporate Governance Corporate Social Responsibility, and Corporate Financial Performance to Companies in Kompas100 Index' (2015) 5 *Journal Sains Terapan*, 74.

⁵⁰⁰ Kevin Money and Herman Schepers (n 244) 1.

⁵⁰¹ *ibid.*

⁵⁰² *ibid.*

3.3.3 The Modern Slavery Act 2015

Section 54 of the Modern Slavery Act 2015 (the MSA 2015) regulates forced labour and human trafficking in global supply chains and directly overlaps with the scope of CSR.⁵⁰³ Unfortunately, the Act has been criticised for not going far enough to achieve its potential.⁵⁰⁴ It was introduced to consolidate the old offences of trafficking (‘arranging or facilitating the travel of another person with a view that a person is being exploited’) and slavery (now interpreted as ‘servitude or forced labour’).⁵⁰⁵ The Act introduced two new civil orders intended to facilitate placing restrictions on physical and legal persons convicted of the offence of modern slavery. These orders also permit the court to restrict those who have not yet been convicted but for whom there has been sufficient evidence of involvement.⁵⁰⁶ It also established an independent Anti-Slavery Commissioner and provided a mechanism for compensation, making it possible to seize the assets of traffickers and direct some of them towards their victims. The Act applies to any company which carries out at least part of its business in the UK as long as it is engaged in the provision of goods or services.⁵⁰⁷ This means that it has sweeping coverage as this definition includes most of the businesses working in the UK.

The Transparency in Supply Chain Regulations 2015,⁵⁰⁸ which brought into force the MSA’s section 54,⁵⁰⁹ introduced a requirement for businesses with an annual turnover exceeding £36 million to publish an annual statement⁵¹⁰ describing what steps they have taken to guarantee that their business and their supply chains have not benefited from or used slavery or human trafficking. This is significant because this means that UK companies have a reporting duty for human trafficking or slavery perpetrated abroad if the offence has been committed by someone in their supply chain. Including supply chains within the reach of the Act was not the initial intention of the drafters who thought that this would impose an unreasonably heavy burden on

⁵⁰³ The UK Modern Slavery Act 2015.

⁵⁰⁴ Home Office, ‘Independent Review of the Modern Slavery Act: Final Report’ (GOV.UK May 2019) <<https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>> accessed December 27, 2022.

⁵⁰⁵ The UK Modern Slavery Act 2015.

⁵⁰⁶ *ibid.*

⁵⁰⁷ *ibid.*

⁵⁰⁸ The Modern Slavery Act 2015 (Transparency in Supply Chain) Regulations 2015.

⁵⁰⁹ Chris Syder, ‘Modern Slavery Act – transparency in supply chains requirements come into force’ (2015) PMC, available at: <<https://www.penningtonslaw.com/news-publications/latest-news/modern-slavery-act-transparency-in-supply-chains-requirements-come-into-force>> accessed 15 October 2021.

⁵¹⁰ *ibid.*

companies.⁵¹¹ However, the final draft of the Bill included this text due to campaigning in favour of the change.⁵¹²

Alternatively, corporations have to declare that they have made no effort to confirm the existence of slavery or trafficking carried out in connection to their business. Since the declaration must be written on the company's website, it will be visible to the firm's competitors and customers and NGOs working in CSR.⁵¹³ Thus the Act relies on peer shaming in the sense that businesses will feel scrutinised on account of their declarations. This creates expectations that corporations will avoid taking the second option because doing so will raise doubts about their integrity and ethics, ultimately causing reputational damage.

The Act does not impose a legal requirement for due diligence on supply chains and non-compliance does not lead to criminal or financial penalties.⁵¹⁴ This omission has been criticised⁵¹⁵ and the Act has been compared unfavourably to its French counterpart (the duty of vigilance law).⁵¹⁶ The French law goes further than the UK Act since it imposes due diligence and legal liability where there has been 'ineffective implementation resulting in damages'.⁵¹⁷ Notably, the French legislature was influenced, similarly to the UK one, by the Rana Plaza disaster which caused the death of 'over a thousand workers, who were hired by subcontractors including of several global companies including French ones'.⁵¹⁸

It also remains unclear whether the MSA will improve employees' working conditions. It is impossible to determine definitively whether companies are implementing the measures they

⁵¹¹ Home office, Draft Modern Slavery Bill (2013) available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/266165/Draft_Modern_Slavery_Bill.pdf> accessed 18 October 2021.

⁵¹² Michael Pollitt, 'Unfinished abolitionists: Britain returns to the frontline of the war on slavery' (2014) *New Statesman*, available at: <<https://www.newstatesman.com/politics/2014/10/unfinished-abolitionists-britain-returns-frontline-war-slavery>> accessed 18 October 2021.

⁵¹³ Business & Human Rights Recourse Centre and the International Trade Union Confederation, 'Modern Slavery in Company Operation and Supply Chains: Mandatory Transparency, Mandatory Due Diligence and Public Procurement Due Diligence' (September 13, 2017) <<https://www.ituc-csi.org/modern-slavery-in-company>> accessed December 27, 2022.

⁵¹⁴ Sharon Benning-Prince 'A Guide to the Modern Slavery Act for Your Business' *ContractStore Legal Business Blog*, 31 July 2015 available at: <<https://www.contractstore.com/blog/uk-law/a-guide-to-the-modern-slavery-act-your-business-could-be-affected/>> accessed 14 October 2021.

⁵¹⁵ Adam S. Chilton and Galit Sarfaty, 'The Limitations of Supply Chain Disclosure Regimes' (2016) 766 *Coase-Sandor Working Paper Series in Law and Economics 1*; Ernst & Young LLP, 'The UK Modern Slavery Act 2015: What Are the Requirements and How Should Businesses Respond?' (2015) available at: <[https://www.ey.com/Publication/vwLUAssets/ey-the-uk-modern-slavery-act-2015/\\$FILE/ey-the-uk-modern-slavery-act-2015.pdf](https://www.ey.com/Publication/vwLUAssets/ey-the-uk-modern-slavery-act-2015/$FILE/ey-the-uk-modern-slavery-act-2015.pdf)> accessed 17 October 2021.

⁵¹⁶ Li-Wen Lin, 'Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences' (2020) *University of Pennsylvania Journal of Business Law*, available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3678786> accessed 16 October 2021.

⁵¹⁷ *ibid.*

⁵¹⁸ *ibid.*, 8.

have reported by auditing the actions they have reported. UK companies in their supply chains may not involve their workers directly in their operations and grievance mechanisms are still scarce. Employees might be ‘influenced or biased due to a fear of job loss and hence have a limited contribution to transparency, even with employee interviews conducted as part of audits’.⁵¹⁹ A modern slavery statement can also contain aspirations rather than actions.⁵²⁰

ne commendable development in the UK which may help counteract the misgivings over the Act was the 2016 announcement by the Home Office of the Transparency in Supply Chains (TISC) Report.⁵²¹ The registry is public and searchable and by the beginning of 2017 had collected over 10,000 company statements, which made it the largest register of this type in the world.⁵²² Since 2019 the UK government has included itself within the provisions of the Act, committing to making a report under section 54.⁵²³

While campaigners succeeded in including supply chains within the final Bill, not all proposals to amend the Bill were accepted. For example, the proposal to criminalise the purchase of sex did not find its way into the Act, and neither did the proposal on tied visas. While the issue of criminalising prostitution is a complicated one because there is little evidence that criminalising this area will improve the lives of the women working in the profession,⁵²⁴ the issue of tied visas is much more clear-cut.⁵²⁵

This system concerns mostly foreign domestic workers. It was introduced in 2012, resembling, to a large extent, the *kafala* system of the Middle East.⁵²⁶ The House of Commons rejected the

⁵¹⁹ Javed Siddiqui and Shahzad Uddin, ‘Human Rights Disasters, Corporate Accountability and The State’ (2016) 29 Accounting, Auditing & Accountability Journal 679-704.

⁵²⁰ Lars Thøger Christensen, Mette Morsing and Ole Thyssen, ‘CSR as Aspirational Talk’ (2013) 20 Organisation 372.

⁵²¹ TISC is an independent civil society modern slavery register that provides a registry where companies share their MSA statements.

⁵²² TISC Report, ‘World’s largest anti-slavery register reaches 10k milestone, boosting the fight against exploitation’ (2017) available at: <<https://pressreleases.responsesource.com/news/92463/world-s-largest-anti-slavery-register-reaches-k-milestone-boosting-the/>> accessed 18 October 2021.

⁵²³ UK Government, UK Government Modern Slavery Statement, published 26 March 2020, available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875800/UK_Government_Modern_Slavery_Statement.pdf> accessed 17 October 2021.

⁵²⁴ House of Commons (4 November 2014) UK Parliament, available at: <<https://www.parliamentlive.tv/Event/Index/cde7a8c1-edd7-49f3-834e-4a308da91fee?in=17%3A37%3A24.8900000>> accessed 14 October 2021.

⁵²⁵ Tied visas are visas that oblige their holder to continue working for their sponsor without the capacity to legally change their employer.

⁵²⁶ Alastair Sloan, ‘UK tied visa system ‘turning domestic workers into modern-day slaves’ (17 March 2015) *The Guardian*, available at: <<https://www.theguardian.com/world/2015/mar/17/uk-tied-visa-system-turning-domestic-workers-into-modern-day-slaves>> accessed 18 October 2021.

proposal, which would have given such visa holders the right to change employers.⁵²⁷ By rejecting the tied visas proposal, the UK legislature missed a valuable opportunity to protect a minority, which is often exploited and mistreated in the course of their work and life in the UK. To see things in context, it is notable that the supply chain clause was included because of the large number of individuals and groups who campaigned for it. This included ‘a resolute and passionate abolitionist backlash,...from anti-slavery NGOs, human rights lawyers, investigative journalists, members of the public and MPs on all sides’.⁵²⁸

To a large extent, this reaction (and the Government’s eventual willingness to accommodate the proposal) has been informed and inspired by the Bangladesh Rana Plaza factory collapse (mentioned above) where more than 1,130 garment workers were killed during the collapse of a building.⁵²⁹ Notably, some of the victims worked for UK corporations such as Primark and Matalan.⁵³⁰ Also influential was the Thai prawn-fishing industry scandal, exposed by the Guardian.⁵³¹ In the latter, the investigation by the newspaper discovered ‘kidnapping, corporal punishment and summary execution at the bottom of supply chains that led to Tesco, Aldi, Morrisons and the Co-operative’.⁵³²

However, while the horrors that often happen in supply chains of big UK corporations do explain why supply chains were eventually included in the MSA, this does not explain why the UK Government chose to disregard the issue of tied visas. After all, the workers brought into the UK under these visas are often abused by their employers, including sexually and their plight certainly fits the description of modern-day slavery. This has been well-documented by researchers from UCL who, together with the charity Kalayaan, carried out a series of interviews with 400 domestic foreign workers, the majority from the Philippines and Indonesia, mostly brought into the UK by wealthy families from around the world.⁵³³

⁵²⁷ Frances Perraudin, ‘Modern slavery bill amendment rejected by MPs’ (17 March 2015) *The Guardian*, available at: <<https://www.theguardian.com/world/2015/mar/17/modern-slavery-bill-lords-amendment-rejected-mps>> accessed 17 October 2021.

⁵²⁸ Michael Pollitt (n 512).

⁵²⁹ Shahnaz Parveen, ‘Rana Plaza factory collapse survivors struggle one year on’ (23 April 2014) *The BBC*, available at: <<https://www.bbc.com/news/world-asia-27107860>> accessed 16 October 2021.

⁵³⁰ Sarah Butler, ‘UK government tells retailers to pay up in Rana Plaza compensation battle’ (19 June 2014) *The Guardian*, available at: <<https://www.theguardian.com/business/2014/jun/25/uk-government-retailers-matalan-rana-plaza-compensation-bangladesh>> accessed 16 October 2021.

⁵³¹ Kate Hodal, Chris Kelly and Felicity Lawrence, ‘Revealed: Asian slave labour producing prawns for supermarkets in US, UK’ (10 June 2014) *The Guardian*, available at: <<https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>> accessed 17 October 2021.

⁵³² Michael Pollitt (n 512).

⁵³³ Alastair Sloan (n 526).

The analysis of their situation appears to lead to a conclusion that if the ethical problem is of lesser economic magnitude, it will not be taken seriously by the government. This, however, should not be tolerated under the modern understanding of CSR. What makes the issue worse is that the UK demonstrated a desire to lead in the field of CSR – as noted above, it provided the first global registry for company reports on modern slavery and British corporations were willing to embrace the goals of CSR even before these becoming obligatory under the law of the country. Yet, when it had the opportunity to rise to the occasion, the UK Parliament failed to do so.

The issue of tied visas has another and more troubling dimension which is that the exploitation of domestic workers which has been made possible under the regime benefits many wealthy residents of the country. In addition to the abuse of workers that this scheme helps perpetuate, the lack of transparency flies in the face of the government's requirements that corporations report their activities intending to control their CSR impact.⁵³⁴ Not only is this conduct by the UK government inconsistent, but it is also cynical and counterproductive. It is, therefore, unfortunate that the UK government decided against abolishing this system and declined to include proposals to this effect in the final Modern Slavery Bill.

3.3.4 The criminal liability of the company

Corporations may have criminal responsibility concerning breaches of CSR, particularly when they are expressed in behaviour breaching the criminal law of the country.⁵³⁵ For example, physical violence against an employee falls within this bracket although the act must be attributable to an agent or an employee of the company.⁵³⁶ For example, corporate manslaughter is an offence under the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA)⁵³⁷ as long as 'the company's activities are managed or organised in a way that causes a person's death and amounts to a gross breach of a relevant duty of care owed by the company to that person'.⁵³⁸ Under section 1(3) CMCHA, whether a breach of the duty of care

⁵³⁴ See, for instance, Gov.UK, 'Transparency in Supply Chains etc. A practical guide' (n .d.) Guidance issued under section 54(9) of the Modern Slavery Act 2015, available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf> accessed 18 October 2021.

⁵³⁵ Derek French, Stephen Mayson and Christopher Ryan, *Mayson, French & Ryan on Company Law* (28th edn, OUP 2011-2012) para 19.8.4.

⁵³⁶ *Meridian Global Funds Management Asia Ltd v Securities Commission* 1995 2 BCLC 116, PC, elaborating the 'directing mind and will of the company' test, established in *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* 1915 AC 705, 713 and *Tesco Supermarkets v Natrass* 1972 AC 153.

⁵³⁷ Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) c.19.

⁵³⁸ Andreas Rühmpkorf (n 196) 35.

can be established will depend on how the company's senior management has managed or organised the company.⁵³⁹

The Bribery Act 2010 (BA 2010)⁵⁴⁰ could also be used as a basis for making English multinational companies liable in connection to their failure to adhere to CRS objectives. BA 2010 is part of CSR and could also be a law that provides scope for promoting CSR. This Act prohibits to give or accept bribes or fail commercial organisations to prevent bribery.⁵⁴¹ This Act has universal jurisdiction because it applies to an 'individual or company with links to the UK, regardless of where the crime occurred'.⁵⁴² The significance of this is linked to the purpose of bribes. Often, bribes are given so that a Western company carries out certain actions, typically in a developing state, which harm the environment, the social rights of their employees or the local population. By asserting the universal jurisdiction of the BA 2010, the legislature endeavours (not always successfully) to police these practices. The Act goes further by placing a responsibility on employees of the company. This raises the question of whether bribery can lead to civil liability, which is an important point recently addressed by the English courts.⁵⁴³ This wide reach of the Act gives force to arguments that CSR 'is, at least in part, law'.⁵⁴⁴ The Bribery Act 2010 has thus contributed to the strengthening of the CSR framework not only in the UK but also internationally. What is even more significant is that it attempts to regulate the global CSR of UK companies, which is a commendable development.

'A commercial organisation that bribes another person to gain or retain business or take advantage of their position in the market violates Section 7 of the Act',⁵⁴⁵ it is, therefore, criminally liable. Transparency International UK argues that corporations must be held accountable within the legal framework for failure to prevent crime.⁵⁴⁶ 'Failure to prevent' mechanisms could contribute to CSR by establishing legal liability for corporate human rights

⁵³⁹ CMCHA s1(3).

⁵⁴⁰ Bribery Act 2010, c.23.

⁵⁴¹ *ibid*, s7.

⁵⁴² Andreas Rühmpkorf (n 196) 35.

⁵⁴³ *Fiona Trust & Holding Corp v Privalov* 2010 EWHC 3199 (Comm).

⁵⁴⁴ Andreas Rühmpkorf (n 196) 36.

⁵⁴⁵ This is an ancillary offence to the principal offences created by the Bribery Act, including the offences of bribing (section 1) being bribed (section 2) and bribing a foreign public official (section 6) all of which provide for individual criminal liability.

⁵⁴⁶ House of Lords, Select Committee on the Bribery Act, *The Bribery Act 2010: post-legislative scrutiny*, 14 March 2019, available at: <https://publications.parliament.uk/pa/ld201719/ldselect/ldbriact/303/303.pdf>, at para 171.

wrongs where none currently exists.⁵⁴⁷ However, in some cases, this regime is not going to be able to support prosecution to prevent bribery.⁵⁴⁸ For example, companies that implement adequate regulatory compliance controls will be protected from prosecution as an affirmative defence.⁵⁴⁹ The Act does not mandate any procedures or controls, but rather requires those controls to be implemented based on a company's risk of bribery.⁵⁵⁰ Therefore, under section 7 of the Act, debarment is primarily discretionary, and not mandatory as many may expect.⁵⁵¹

It is difficult to assess whether criminal liability for corporate human rights harms is fair and feasible. For criminal liability to be imposed, conduct and scope must be defined proportionately, clearly and precisely, including any consequences for liberty and property.⁵⁵² Criminal sanctions might be appropriate if a company directly violates fundamental rights, such as slavery or torture. In addition to gross violations of human rights, corporate human rights impacts can include a wide range of harms. Third parties, such as suppliers, must also adhere to UNGPs to be aligned. For rights whose definitions and impacts are too vague for the UNGPs to impose criminal liability, it seems less appropriate to impose criminal liability.⁵⁵³

3.4 The UK: CSR in action

3.4.1 Corporate environmental responsibility (CER)

Looking at environmental law provisions in the UK is relevant for several reasons. To begin with, considerations for the planet are a legitimate and non-controversial part of the doctrine of CSR.⁵⁵⁴ Corporate Environmental Responsibility (CER) has appeared as an independent, albeit very influential section of the movement and looks at the practice of the biggest

⁵⁴⁷ British Institute International and Comparative Law, 'A UK Failure to Prevent Mechanism for Corporate Human Rights Harms' (Biicl.org, 2022) <<https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>> accessed 14 July 2022.

⁵⁴⁸ Cecily Rose, 'The UK Bribery Act 2010 and Accompanying Guidance: Belated Implementation of The OECD Anti-Bribery Convention' (2012) 61 *International and Comparative Law Quarterly* 485-499.

⁵⁴⁹ Bribery Act, 2010, s7.

⁵⁵⁰ The Bribery Act Quick Start explains that 'if there is very little risk of bribery being committed on behalf of your organisation [sic] then you may not feel the need for any procedures to prevent bribery. If, having assessed the position, there is a risk of bribery then, if you want to rely on the defence [sic], the procedures you adopt should be proportionate to that risk'.

⁵⁵¹ Julia Lippman, 'Business Without Bribery: Analyzing the Future of Enforcement for The UK Bribery Act' (2013) <<https://www.jstor.org/stable/24430292>> accessed 14 July 2022.

⁵⁵² Linklaters, 'Corporate Criminal Liability. A Review of Law and Practice across the Globe' (September 2016) <https://data.allens.com.au/pubs/pdf/ibo/CorporateCriminalLiabilityPublication_2016.pdf> accessed December 27, 2022.

⁵⁵³ British Institute International and Comparative Law (n 547).

⁵⁵⁴ Carol Newman, John Rand, Finn Tarp and Neda Trifkovic 'Corporate Social Responsibility in A Competitive Business Environment' (2020) 56 *The Journal of Development Studies* 1455-1472.

companies that purport to uphold CSR's objectives to see that a big part of the place of sustainability and sustainable sourcing at the core of their CSR platforms.⁵⁵⁵

This has not been always the case because, although the debate on CSR started almost a century ago, it focused almost exclusively on the issue of the corporation, looking for an answer to 'what (or who) the corporation is for'.⁵⁵⁶ The debate contemplated the question of whether corporations should be run in the interest of their shareholders or the interest of the broader group of stakeholders.⁵⁵⁷ Going forward a few decades, proponents of CSR began advocating in its favour, relying strongly on the business case argument, which is to say that engaging in CSR practices enhances shareholder value and contributes to the long-term financial success of the company.⁵⁵⁸ While it seems uncontroversial that such a correlation exists,⁵⁵⁹ it is still not clear whether adherence to CSR would improve financial performance in more general terms.⁵⁶⁰ A classic example of how CER can exist simultaneously with its variability is measures aimed at reducing corporate waste. Environmentally friendly recycling is beneficial for organisations.⁵⁶¹ By reducing the demand for raw materials, we reduce the need for environmentally harmful disposal and the environmental damage associated with the sourcing and disposal of waste. Transporting virgin materials is also reduced by reducing waste. Resource efficiency plays a significant role in energy and water consumption. Businesses often see waste reduction as an inherent advantage; however, wasting materials is just as costly as disposing of them.⁵⁶²

For CER supporters, it would matter whether the measures taken by a Companies Act support the company's bottom line and do not harm its financial interests because doing otherwise would necessarily involve a decision to discard all CER-related initiatives further down the

⁵⁵⁵ Neil Gunningham, 'Shaping Corporate Environmental Performance: A Review' (2009) 19 *Environmental Policy and Governance* 215.

⁵⁵⁶ Carrie Julia Bradshaw, 'Corporations, Responsibility and the Environment' (2013) UCL, available at: <[https://discovery.ucl.ac.uk/id/eprint/1414312/1/Carrie%20Bradshaw,%20Corporations,%20Responsibility%20and%20the%20Environment%20\(UCL,%202013\).pdf](https://discovery.ucl.ac.uk/id/eprint/1414312/1/Carrie%20Bradshaw,%20Corporations,%20Responsibility%20and%20the%20Environment%20(UCL,%202013).pdf)> accessed 11 June 2021, 12.

⁵⁵⁷ E. Merrick Dodd, 'For Whom Are Corporate Managers Trustees?' (1932) 45 *Harvard Law Review* 1145; Adolf A. Berle Jr, 'For Whom Corporate Managers Are Trustees: A Note' (1932) 45 *Harvard Law Review* 1365.

⁵⁵⁸ Keith Davis, 'The Case for and Against Business Assumption of Social Responsibilities' (1973) 16 *Academy of Management Journal* 312-322; David J. Vogel, 'Is There a Market for Virtue? The Business Case for Corporate Social Responsibility' (2005) 47 *California Management Review* 19-45.

⁵⁵⁹ Johan Classon and Johan Dahlström, 'How can CSR affect company performance?' (2006) available at: <<https://www.diva-portal.org/smash/get/diva2:6476/FULLTEXT01.pdf>> accessed 11 June 2021.

⁵⁶⁰ Carrie Julia Bradshaw (n 556) 14.

⁵⁶¹ Forest Reinhardt, 'Environmental Product Differentiation: Implications for Corporate Strategy' (1998) 40 *California Management Review* 43.

⁵⁶² Mahmoud M. El-Halwagi, 'Optimal Design of Membrane-Hybrid Systems for Waste Reduction' (1993) 28 *Separation Science and Technology* 283.

line.⁵⁶³ Considering the importance of environmental protection for the health of the planet and the well-being of its people, it is clear that this is not a working solution. This is, even more so, the case considering that:

Enterprises are increasingly contributing to the progressive degradation of existing ecosystems by emitting huge amounts of hazardous pollutants and excessive use of available natural resources, causing a serious threat to our planet's biodiversity.⁵⁶⁴

There is a longstanding conflict between the economic interests of a company and society's environmental goals and this conflict has become deeply embedded in our social and business practices.⁵⁶⁵ To introduce meaningful change, legislation must address the behaviour of stakeholders more generally and do so in a holistic rather than piecemeal manner. The task may be made more complicated because the effect of business activities on the environment is so wide-ranging that it cannot be estimated in monetary terms with ease or certainty.⁵⁶⁶ Perhaps this is why CER depends so much on the input of customers who drive it forward. At the same time, however, reliance on third parties to 'enforce' strategies that are not embedded in legislation makes for confusing, inconsistent and ultimately ineffective CER policies.⁵⁶⁷ This is further complicated by the propensity of businesses to pay greater attention to the market than they do to political pressure, unless, of course, such pressure comes in a more formalised legislative way.⁵⁶⁸

The Environmental Protection Act 1990⁵⁶⁹

The Environmental Protection Act 1990 (EPA 1990) is wide-ranging and consists of a great number of provisions relating to air and pollution, focusing on prevention and reducing the release of substances into the environment;⁵⁷⁰ It places a duty of care on the entity concerned to prevent of the escape of harmful substances⁵⁷¹ and statutory nuisances and clean air requirements addressed to Local Authorities, which are under an obligation 'to regularly inspect the area and to deal with problems such as smoke, fumes, dust, smell, noise and

⁵⁶³ Anna Żelazna, Matylda Bojar and Ewa Bojar, 'Corporate Social Responsibility Towards the Environment in Lublin Region, Poland: A Comparative Study of 2009 and 2019' (2020) 12 Sustainability 4463.

⁵⁶⁴ *ibid.*

⁵⁶⁵ Carrie Julia Bradshaw (n 556) 14.

⁵⁶⁶ *ibid.*

⁵⁶⁷ *ibid.*

⁵⁶⁸ *ibid.*

⁵⁶⁹ UK Environmental Protection Act 1990 (EPA 1990) c.43.

⁵⁷⁰ *ibid.*, Part I.

⁵⁷¹ *ibid.*, Part II.

animals’.⁵⁷² It is evident that the EPA 1990 is a wide-ranging instrument and its provisions concern many issues that are of interest to environmental protection.

The objectives of EPA 1990 were reaffirmed in the Environment Act 1995 (EA 1995),⁵⁷³ which contributed to the creation of the Environment Agency⁵⁷⁴ and it also addresses issues of air⁵⁷⁵ and water quality,⁵⁷⁶ contaminated land⁵⁷⁷ and waste.⁵⁷⁸ The UK Environmental Permitting Regulations (England and Wales) 2010⁵⁷⁹ came into force in 2010, replacing the 2007 Regulations. Their objective was to govern ‘the storage, treatment, transport and disposal of hazardous waste’.⁵⁸⁰ This is relevant to the topic of this thesis because how waste should be disposed of is an issue that most companies must consider regularly. This is particularly the case for big companies or at least for those with a larger output; as for the latter, their waste disposal management is an issue with direct relevance to the broader community. As such, it is connected to other issues governed by the spectrum of environmental legislation, such as issues of clean air, clean water and the health of the population and animal health.

The Regulations defined hazardous waste as waste that ‘might be harmful to human health or the environment’.⁵⁸¹ It is clear from the wide range of EU legal instruments which the UK Regulations domesticated that the provisions were intended to be comprehensive and far-reaching. However, it was also clear that the EU had produced too much legislation on the matter, which could have perhaps imposed confusing and contradicting instructions as to what corporations are expected to do in certain defined situations.⁵⁸² To consolidate the law in the area, the EU produced two better-focused pieces of legislation which were subsequently translated into UK law. These legal instruments were the Waste Electrical and Electronic Equipment (WEEE) Directive and the RoHS Directives.

⁵⁷² UK Environmental Protection Act 1990 (EPA 1990) (n 569); The Xenon Group, ‘7 key pieces of sustainability related legislation that you should be aware of’ (2005-2021) available at: <<https://www.xenongroup.co.uk/knowledge-centre/csr-and-sustainability/6-key-pieces-of-sustainability-related-legislation-that-you-should-be-aware-of>> accessed 12 June 2021.

⁵⁷³ Environment Act 1995 (EA 1995) c.25.

⁵⁷⁴ *ibid.*, s1.

⁵⁷⁵ *ibid.* s5.

⁵⁷⁶ (EA 1995) s6.

⁵⁷⁷ *ibid.* s57.

⁵⁷⁸ *ibid.* ss92-95.

⁵⁷⁹ UK Environmental Permitting Regulations (England and Wales) 2010, ISBN 978-0-11-149142-3.

⁵⁸⁰ The Xenon Group (n 572).

⁵⁸¹ *ibid.*

⁵⁸² John Gerard Ruggie, ‘Multinationals as Global Institution: Power, Authority and Relative Autonomy’ (2017) 12 *Regulation & Governance* 317-333.

Linked to these, the Energy Savings Opportunity Scheme (ESOS) administered by the Environment Agency was established by the Energy Savings Opportunity Scheme Regulations 2014 (ESOS Regulations).⁵⁸³ The Regulations impose an obligation on almost 14,000 UK companies from the private and third sectors to audit their energy use. Public sector organisations are excluded from the scope of the scheme. The ESOS applies to entities employing more than 250 staff or with an annual turnover exceeding £42.5m. Government guidance indicates that the scheme reaches ‘large undertakings and groups containing large undertakings in the UK’,⁵⁸⁴ with ‘undertaking’ being defined by the Companies Act 2006 as a ‘corporate body or partnership [and/or] an unincorporated association carrying on a trade or business, with or without a view to profit’. The scheme covers also ‘partnerships, limited liability partnerships, joint ventures and in many cases charities’.⁵⁸⁵ These audits must be performed by an independent third party, who will assess the energy use of the enterprise and make non-binding recommendations to implement energy-saving strategies. While carrying out the audit, the auditor must consider the use of energy in buildings, transport and industrial operations.

The scheme’s focus on large businesses suggests that the UK government believes that large corporations are better prepared to withstand the costs related to CSR and are complicit in ineffective and excessive energy use. In any case, it appears that the ESOS Regulations are likely to have a very positive effect on the environment. However, the effectiveness of these regulations is undermined by the complexity of societal actors in the UK. The UK community is extraordinarily diverse, standardising standards that are applied in the UK, therefore, is not considered the best solution.⁵⁸⁶

ESOS is a great example of how the goals of environmental protection may benefit the bottom line of companies, thus reinforcing the business case for CER. For instance, the scheme is expected to deliver huge savings, most of which will be immediately felt by the audited companies.⁵⁸⁷ In addition, the scheme is estimated to have delivered around £1.6 billion in net

⁵⁸³ UK Energy Savings Opportunity Scheme Regulations 2014 (ESOS Regulations) No. 1643.

⁵⁸⁴ Environment Agency, ‘Comply with the Energy Savings Opportunity Scheme (ESOS) (2021) Gov.uk, available at: <<https://www.gov.uk/government/publications/comply-with-the-energy-savings-opportunity-scheme-esos/complying-with-the-energy-savings-opportunity-scheme-esos>> accessed 11 June 2021.

⁵⁸⁵ *ibid.*

⁵⁸⁶ Christine Willmore, ‘Environmental Protection, Law and Policy’ (2007) 20 *Journal of Environmental Law* 153.

⁵⁸⁷ Environment Agency (n 584).

benefits to the UK.⁵⁸⁸ This demonstrates that pursuance of CSR goals can go hand-in-hand with business profit thus countering possible arguments that companies engage in CSR to the disadvantage of their shareholders.

3.4.2 The UK: meeting CSR's socio-political goals

The lack of an accepted definition of CSR may be why the UK companies often struggle to align their policies with the expectations of progressive members of society.⁵⁸⁹ The confusion on companies' boards is prompted by concern for their business bottom line and the inconsistent response from the government and the legislature.⁵⁹⁰ The lack of a definition results in confusion over possible socio-political outcomes from the application of the concept. Simply put, UK company leadership has no social-political benchmark by which to measure success or failure. While such uncertainty can generate some positive social developments such as those discussed earlier, it can also lead to chaotic actions which can be unhelpful regarding the entrenchment and promotion of the CSR agenda.⁵⁹¹

Identifying objectives which could enter the discussion on CSR could be very useful because it would give a practical direction to businesses and an incentive to comply. For example, the UK company could identify the link between its operations and possible human rights infractions, tax avoidance and corruption.⁵⁹² This would help to corporation improve its performance. Another approach would be to focus on the conceptual aspects of CSR which may assist UK company leadership in their better understanding of the socio-political challenges presented by the CSR agenda.

Having a robust framework underpinned with a solid theoretical understanding is vital because UK companies do not always operate in fully ideal conditions. They may experience socio-political crises.⁵⁹³ Given the cyclical nature of such crises and the possibility of other types of systemic shocks such as pandemics, it is clear that the UK companies should be prepared to have a CSR agenda, which will withstand the fluctuations of the market borne out of these

⁵⁸⁸ Department of Energy & Climate Change, 'Consultation outcome Energy Savings Opportunity Scheme' (2013-2014) Gov.uk, available at: <<https://www.gov.uk/government/consultations/energy-savings-opportunity-scheme>> accessed 12 June 2021.

⁵⁸⁹ Dan Beare, Ruvena Buslovich and Cory Searcy, 'Linkages between Corporate Sustainability Reporting and Public Policy' (2013) 21 Corporate Social Responsibility and Environmental Management 336-350.

⁵⁹⁰ Madhavi Venkatesan, 'Addressing Sustainability' (2021) 14 Sustainability and Climate Change 201.

⁵⁹¹ *ibid.*

⁵⁹² Shane Darcy, (2016) 'the elephant in the room: Corporate tax avoidance & business and human rights' (2016) 2 Business and Human Rights Journal 1.

⁵⁹³ Andreas Scherer and Guido Palazzo, 'The new political role of business in a globalized world: A review of a new perspective on CSR and its implications for the firm, Governance, and democracy' (2011) 48 Journal of Management Studies 899.

crises.⁵⁹⁴ This is important because in times of crisis, companies slim down to the bare necessities to make a profit. It is possible, therefore, that in such a situation, CSR may be easily forgotten or suspended until better times return. While this may be the sensible solution, at least from the perspectives of shareholders, employees, business partners and subcontractors, it would be unfortunate from the perspective of the long-term benefits to society flowing from a proper application of CSR strategies.

3.4.3 The stance of the EU commission of CSR

The developments in the EU are relevant, as they have affected the regulatory response in the UK. Even though the UK has now left the EU, its policies are at least informed by, if not still fully in line with, the EU regulatory agenda.⁵⁹⁵ Given the globalisation of business and the fact that the biggest companies are multinational, analysis of just one country is inadequate and it is at the heart of CSR that the issues are tackled with the bigger picture in mind, which further justifies the chosen approach. This section analyses the relevant EU legislation and compares it to the way it was transposed into the UK regulatory framework.

The movement toward CSR began at the beginning of the century and the question of whether CSR should be regulated was met by businesses with negativity.⁵⁹⁶ The main argument advanced by its critics was that making CSR mandatory would be detrimental to national competitiveness and innovation⁵⁹⁷ and would burden corporations with a ‘stealth tax’ because CSR was costly and the measures taken went beyond what was strictly necessary for the company’s bottom line.⁵⁹⁸ The proposal that the European Commission outlined in its 2001 Green Paper seemingly agreed with this position, emphasising the voluntary approach to CSR.⁵⁹⁹ The Commission was motivated by the belief that companies would internalise the need to change their policies without external prompting if only the European Community

⁵⁹⁴ Hongwei He and Lloyd Harris, ‘The Impact of Covid-19 Pandemic on Corporate Social Responsibility and Marketing Philosophy’ (2020) 116 *Journal of Business Research* 176-182. Kristina Sergeevna Plis and Nataya Leonidovna Yaroslavtseva, ‘Features of Corporate Social Responsibility during an Emergency, Impact of the covid-19 pandemic on corporate social responsibility’ (2020) 2 *Nedelya nauki Sankt-Peterburgskogo gosudarstvennogo morskogo tekhnicheskogo universiteta*, 37; Nataliia Riabets, ‘Developing Corporate Social Responsibility in the Face of the COVID-19 Pandemic’ (2021) 11 *Social and Labour Relations: Theory and Practice* 31.

⁵⁹⁵ Michael Keating, ‘Common frameworks after Brexit’ (2022) Scottish Parliament Website, available at: <<https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-constitution-europe-external-affairs-and-culture-committee/correspondence/2022/common-frameworks-after-brex-it>> accessed 2 January 2023.

⁵⁹⁶ Jennifer Zerk (n 2) 33.

⁵⁹⁷ *ibid.*

⁵⁹⁸ Jingchen Zhao (360) 103, 141.

⁵⁹⁹ European Commission ‘Prompting a European Framework for Corporate Social Responsibility’, Green Paper and COM 366, Brussels (2001).

succeeds in raising its industrial standards more generally.⁶⁰⁰ The Commission expected that corporate leadership will be influenced by the attitude of their shareholders, which was hoped to be supportive of the changes, and by the financial benefit of introducing more socially beneficial business strategies. This soft approach was a reflection of the Commission's desire to respect national sovereignty, particularly in an area where national governments interacted with their domestic companies. It is possible, however, that globalisation (among other things) affected the stance of the EU legislation, which has changed over the course of the last two decades.⁶⁰¹

The Commission maintained its stance for a while although, as it noted in one of its 2011 Communications, CSR has demands that went 'over and above [the companies'] legal obligations towards society and environment' and that 'an environment more conducive to enterprises voluntarily meeting their social responsibility' can be achieved through regulatory measures.⁶⁰² The assessment of the Commission, although equivocal, was gradually followed by a more determined effort to introduce a 'smart mix of voluntary and mandatory actions to promote CSR/RBC⁶⁰³ and implement the UN guiding principles on business and human rights (UNGPs) and the UN 2030 agenda for sustainable development'.⁶⁰⁴ This indicates that the Commission had internalised the need to be more proactive in legislating on the matter of CSR.

It called for national and international regulation and a blended model of self-regulation and governmental regulation after its 2011 Communication.⁶⁰⁵ A particularly appropriate move was its decision to combine the horizontal promotion of CSR with sector and policy-tailored approaches. This strategy proved to be successful and was followed in 2019 by another Commission policy document, outlining the progress achieved by the Commission so far.⁶⁰⁶ The emphasis on international issues highlights the Commission's appreciation of the more global character of the companies operating in the EU. At the very least, it was an admission

⁶⁰⁰ Jingchen Zhao (n 360) 103, 141.

⁶⁰¹ Francis Snyder 'Globalisation and Europeanisation as friends and rivals: European Union law in global economic networks' (1999) Researchgate, available at: <https://www.researchgate.net/profile/Francis-Snyder/publication/30528988_Europeanisation_and_Globalisation_as_Friends_and_Rivals_European_Law_and_Global_Economic_Networks/links/56d6781108aee1aa5f73193d/Europeanisation-and-Globalisation-as-Friends-and-Rivals-European-Union-Law-and-Global-Economic-Networks.pdf> accessed 2 January 2023.

⁶⁰² European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Renewed EU Strategy 2011–14 for Corporate Social Responsibility, Brussels 2011 COM (2011) 681 final.

⁶⁰³ Responsible Business Conduct.

⁶⁰⁴ EU Commission, 'Corporate social responsibility & Responsible business conduct' (n .d.) available at: <https://ec.europa.eu/growth/industry/sustainability/corporate-social-responsibility_en> accessed 22 June 2021.

⁶⁰⁵ European Commission (n 602) 146.

⁶⁰⁶ EU Commission (n 604).

many large companies registered in one Member State had branches or subsidiaries in the others. The ‘blended’ approach to regulation was reminiscent of the Commission’s original less invasive approach which relied more on self-regulation and self-discipline than on top-down regulatory measures.

In the area of sustainable finance, the Commission reported a number of legislative instruments which had a direct effect on CSR. For example, in the area of tax avoidance, the Commission published the 2015 Communication on Tax Transparency to Fight Tax Evasion and Avoidance which called on companies to engage in more transparent and fairer tax practices.⁶⁰⁷ The instruments addressing tax evasion had a potentially strong effect on the community and because of that, are of high CSR value. For example, the tax contributions of large companies are large and so make it possible for national governments to carry out a wider variety of community-friendly measures and projects; something, which would be very difficult to do without these contributions. The Commission’s proposal for the exchange of information between Member States on tax rulings and advanced pricing agreements is relevant to this. It was intended to prevent preferential tax treatment from being offered to some corporations and led to the 2015 Directive on automatic exchange of tax rulings and advance pricing agreements (in force from 2017).⁶⁰⁸ The ultimate effect of this legislative instrument was to guarantee a level playing field for taxation for firms operating cross-border within the EU.

This initiative was followed by the Commission by entering a proposal on corporate tax avoidance and aggressive tax planning,⁶⁰⁹ which was another step in the right direction. The purpose of this proposal was to ensure that corporations operating in the EU paid their taxes where their activity lay. This resulted in the adoption of the Anti-Tax Avoidance Directives⁶¹⁰ and the proposals to re-launch the Common Consolidated Corporate Tax Base (CCCTB). This Directive linked the activity of a corporation to its tax obligations and provided for fairer wealth distribution within the EU. Considering that many big corporations establish branches in poorer Member States where their overheads are lower, it makes sense to require them to share some of their profits with the host state. The tax obligation lying with activity suggests that such

⁶⁰⁷ COM (2015) 136, ‘Communication on Tax Transparency to Fight Tax Evasion and Avoidance’.

⁶⁰⁸ Directive 2015/2376/EU on automatic exchange of tax rulings and advance pricing agreements.

⁶⁰⁹ EU Commission, ‘Action Plan on Corporate Taxation’ (2015) available at:

<http://ec.europa.eu/taxation_customs/business/company-tax/action-plan-corporate-taxation_en> accessed 23 June 2021.

⁶¹⁰ Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

poorer countries will have at their disposal a larger amount of money which could then be used in socially and environmentally friendly initiatives.

The Commission also published a Directive on corporate tax transparency, which was intended to oblige multinational companies to produce annual profit and tax reports which would be accessible to the public. This has the potential to be a powerful legal instrument since it will allow citizens to scrutinise the behaviour of big multinational corporations, including in the area of CSR. It will show whether the leadership of the corporation pays only lip service to CSR rather than genuinely embracing its values. The Directive addresses the responsibilities of tax advisers, accountants and lawyers, all now falling under the heading of ‘intermediaries’.⁶¹¹ Under the provisions, any intermediary who assists their client with a scheme that could potentially help them avoid taxes must report this scheme to the tax authorities. The Directive also envisions that the Member States will exchange the information obtained to ensure coverage of companies operating across borders.⁶¹² The Directive reaffirmed the regulatory control over companies’ financial decisions, particularly those involving taxes, by imposing obligations on accountants and other advisers. This suggests that the Commission is determined to ensure that taxes that are due to the respective governments will not be funnelled elsewhere. This is relevant to the objectives of CSR because it guarantees that a certain amount of companies’ profit will be dedicated to socially useful projects.

The establishment in 2012 by the Commission of the Platform on Tax Good Governance assists in carrying out these legislative initiatives and it is particularly helpful for the objectives of CSR because it provides an opportunity for stakeholders including ‘businesses, NGOs and the Member States to discuss key issues related to corporate taxation’.⁶¹³ The Platform aims to help with the fight against tax avoidance and to ensure that companies are paying what they owe in tax, regardless of whether they earn profits in the EU or beyond.

Reporting key tax information is covered by the Directive in automatic exchange of information in the country report, addressing multinational companies which have their tax residence or are tax subjects in one Member State, having a permanent establishment there.⁶¹⁴

⁶¹¹ Directive 2018/822/EU on automatic exchange of cross-border arrangements.

⁶¹² EU Commission, ‘Corporate Social Responsibility, Responsible Business Conduct, and Business & Human Rights’ (2019) available at: <<https://ec.europa.eu/docsroom/documents/34963>> accessed 23 June 2021.

⁶¹³ *ibid.*

⁶¹⁴ Directive 2016/881/EU on automatic exchange of country-by-country report.

The purpose of this instrument is to assist local tax authorities in discovering tax avoidance schemes by comparing data on the tax practices of such companies in other EU countries.

However, the focus then shifts to governments, which are scrutinised with respect to how they perform their responsibilities under the EU regulatory framework, assisting them in the adoption of the Extractive Industry Transparency Initiative.⁶¹⁵ The change of focus is appropriate because, from the perspective of the EU, it is much easier to scrutinise the governments of Member States than individual corporations or their support networks. The Initiative is of particular relevance to the goals of CSR because it has a specific environmental and social focus. For instance, the Commission has stated it was intended to create ‘transparency and accountability in the area of natural resources and the extractive industry to ensure that countries obtain a fair deal from the exploitation of their natural resources and increase the volume of domestic resources needed to reach development goals’.⁶¹⁶ This includes mandatory disclosure for listed and large unlisted industries operating in the oil, gas, mining and forestry sectors ‘to disclose their payments to governments on a country and project basis (Country-by-Country Reporting)’.⁶¹⁷

As regards tax transparency in the banking sector, of interest is the 4th Capital Requirements Directive (CRD IV),⁶¹⁸ which imposes an obligation on banks operating in different countries to report the tax paid in each location. Under the new transparency rules introduced by this Directive, banks must disclose relevant financial information on a country-by-country basis.⁶¹⁹

In 2019, the EU published legislation to implement the CRD V⁶²⁰ and Capital Requirements Regulation (CRR) II,⁶²¹ amending CRD IV and CRR⁶²² respectively. This was meant to have an effect within the EU and to complete the implementation of the prudential reforms agreed upon by the Basel Committee on Banking Supervision (BCBS) still outstanding in Basel III. The Bank of England implemented elements of CRD V⁶²³ and the final policy was published

⁶¹⁵ EU Commission, ‘Broader engagement with the governance issues in natural resources’ (n.d.) available at: <<https://eiti.org/supporter/european-commission>> accessed 23 June 2021.

⁶¹⁶ *ibid.*

⁶¹⁷ *ibid.*

⁶¹⁸ Directive 2013/36/EU.

⁶¹⁹ Deloitte, ‘Country-by-Country reporting for the financial services industry Capital Requirements Directive IV’ (2013) available at: <<https://www2.deloitte.com/content/dam/Deloitte/nl/Documents/financial-services/deloitte-nl-country-by-country-reporting-for-the-financial-services-industry.pdf>> accessed 22 June 2021.

⁶²⁰ Directive (EU) 2019/878.

⁶²¹ Regulation (EU) 2019/876.

⁶²² Regulation (EU) 575/2013.

⁶²³ Bank of England, ‘PS29/20 ‘Capital Requirements Directive V (CRD V)’ (2020) available at: <<https://www.bankofengland.co.uk/prudential-regulation/publication/2020/capital-requirements-directive-v->

in PS29/20 ‘Capital Requirements Directive V (CRD V)’. The EU bank regulation initiatives are of utmost importance to CSR’s objectives because bank stability has direct relevance to the quality of life of EU citizens. It suffices to recall the devastating effect of the latest financial crisis, which was due to failures of banking regulation and self-regulation (i.e. corporate governance failures). The crisis was of such a magnitude that it diminished the ability of corporations and governments to address many of the existing environmental and social issues, instead of channelling all available resources to the most pressing challenges of the day.

As a then-member of the EU, the UK reflected the EU initiatives in its domestic regulations. For example, in financial regulation, the Financial Conduct Authority (FCA) is the agency responsible for the supervision of a great part of UK financial regulation including securities regulation. It has three main objectives: ‘to protect consumers, enhance market integrity and promote competition’.⁶²⁴ The FCA achieves its objectives together with the LSE, which is both the biggest UK security exchange and a leading global market.⁶²⁵ While the latter two objectives are only generally linked to CSR, consumer protection is at the core of the CSR framework and so the introduction of the FCA was a necessary step in the right direction. A proposal for a Directive on corporate sustainability due diligence was adopted by the Commission on 23 February 2022. In it, human rights and environmental considerations are anchored in companies’ operations and CG to foster sustainable and responsible corporate behaviour. Through the new rules, businesses will be required to address the adverse effects of their actions, both inside and outside Europe.⁶²⁶

This discussion shows that CSR has a deep connection to the law and can easily become translatable into binding obligations. This emphasises the need to have well-thought-out CSR goals which consider the wider legislative and regulatory context within which companies operate. CSR practices are regarded as one of the top priorities by European countries. Fortunately, governments are taking an active role in the implementation of these policies and there is a high level of compliance from EU companies. There is no doubt that CSR practices will continue to flourish and grow in the future. For EU organisations to be successful in the future, they need to implement green practices and responsible behaviours to succeed.

further-implementation> accessed 24 June 2021, where the Bank of England published its final policy on the matter.

⁶²⁴ FCA, ‘About Us’ (2021) available at: <<https://www.fca.org.uk/about>> accessed 22 June 2021.

⁶²⁵ Alan S. Gutterman, *Sustainability and Corporate Governance: A Practice Guide to Implementing a Sustainability Governance System (European Company Law)* (Kluwer 2018) 3.

⁶²⁶ Directive (EU) 2019/1937.

3.5 Conclusion

This chapter focuses on CSR in the UK, examining the ways it operates and how it can be improved in law. It discusses the predominance of shareholder primacy in the literature, arguing that this has been at the core of companies' lack of desire to engage more fully with the objectives of CSR. It also acknowledges the contributions of private law of the Companies Act 2006 (ss172 and 417) which relate to the directors' duty to promote the success of the company and the obligations to report, including on the company's CSR objectives. The chapter acknowledges that the legal framework provides several avenues to make CSR more anchored in law. For example, s54 of the Modern Slavery Act protects human rights in supply chains, which is a pillar of CSR. The analysis establishes that breaches related to CSR may be examined under criminal law, most notably the Bribery Act 2010.

The chapter argues that measures required by UK laws to support CER should not harm a company's financial interests and bottom line of the company. Providing a conceptual framework that accommodates socio-political challenges may be in the company's long-term interests. The chapter also deals with the position of the EU on CSR, which is a fundamental pillar in many European legislations, and these laws affect the regulatory framework in the UK even after Brexit.

The general conclusion is that the UK has taken steps to make CSR a part of the country's legislative framework by calibrating its laws in a way that is CSR-friendly and by welcoming and fostering internal private regulation, including by third parties. However, for CSR to be fully effective in the UK, it should take more stringent measures which will not confuse the various stakeholders and which will promote CSR along with other relevant policy considerations in a manner that will not be harmful to the economy.

Chapter 4. CSR in Saudi Arabia

4.1 Introduction

This chapter explores the research question on the effects of the current legal framework on CSR practices in KSA. It finds that due to the voluntary nature of CSR practices, many Saudi companies have developed CSR plans that are not comprehensive enough to accommodate all of CSR's characteristics. Similarly, CSR regulations remain underdeveloped in KSA, and major reforms are not enacted. The primary objective of this chapter is to assess how is CSR handled in Saudi law.

The history of CSR in Saudi Arabia is considered in this chapter, looking at its development over time alongside the strong influence of the Islamic principle of *Zakat* and associated Islamic principles in the development of Saudi corporate culture. The chapter finds that the current regulations of CSR in KSA are insufficient especially corporate and corporate governance law, human trafficking law, and environmental law. Therefore, Saudi companies act CSR without plans or strategies. CSR outcomes in KSA have also not been modified to meet the government's goals because Saudi companies have not yet apply a bespoke framework for CSR. The chapter also argues that Islamic CSR is a conduit or at least a framework for implementing CSR in Saudi Arabia. Although the slow adoption of CSR may be one of its failings and may have created obstacles to switching from *Zakat* to CSR, the cultural effect of CSR has been incorporated into the Saudi psyche. For generations, Saudis have understood the religious and spiritual nature of *Zakat* obligations, which has led to an increased awareness of individual, societal and institutional responsibilities.

effect on the implementation of CSR in Saudi Arabia. The religious roots of human practices are considered the most prominent challenges facing CSR in Saudi Arabia as some Saudi companies persist with religious practices such as *Zakat* and charity as synonyms for CSR. The cultural specificity of Saudi society makes the application of a Western vision of CSR difficult and insufficient understanding of the value flowing from the adoption of these principles hampers the effective practice of CSR in Saudi Arabia.

4.2 An outline of economic structure of Saudi Arabia

Saudi Arabia's key sectors include oil, gas, chemicals and pharmaceuticals, basic metal manufacturing, transportation and storage and other business sector services. They all contribute significantly to revenue and job creation. Manufacturing of basic metals is a significant source of income; however, the most important employment sectors are chemicals and pharmaceutical products, transportation and storage and other business sector services.⁶²⁷

Second: The five types of companies that can be established in Saudi Arabia are: Joint Stock Company (JSC), Partnership Company (PC), Limited Partnership Company (LPC), Simplified Stock Company (SSC), Limited Liability Company (LLC) and Non-Profit Company.⁶²⁸ According to a Saudi study, the descriptive statistics of ownership variables show that 'families own 15% of the sample firms' outstanding shares, followed by institutional investors at 13% and government agencies at 8%. Furthermore, the maximum values for family ownership are 95%, state ownership is 83%, and institutional ownership is 66%'.⁶²⁹ This means that families own the majority of businesses in Saudi Arabia.⁶³⁰

'Saudi Arabia now has a formal, well-established system for approving foreign investments in private companies.⁶³¹ Since the launch of Vision 2030, the government has implemented several legal and regulatory changes to improve the business environment, such as allowing companies to be owned entirely by foreigners.⁶³² This helped greatly in the growth of foreign investment in Saudi Arabia. For example: the Saudi Arabia Foreign Direct Investment - Net Inflows is projected to trend around \$500 million in 2023 and \$1 billion in 2024.⁶³³ Since the Kingdom's Vision 2030 launch, foreign investment flows have quadrupled, reaching SR72 billion. The majority of these investments have been acquired by the United States, Japan, Europe and East Asian countries. The energy sector, petrochemicals, aviation and defense are

⁶²⁷ Said Khalfa Mokhtar Brika, Brahim Adli and Khalil Chergui, 'Key Sectors in the Economy of Saudi Arabia' (Frontiers June 16, 2021) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8353109/pdf/fpubh-09-696758.pdf>> accessed December 13, 2022.

⁶²⁸ Saudi Company Law 2022.

⁶²⁹ Murya Habbash (n 292).

⁶³⁰ Yaseen Al-Janadi, Rashidah Abdul Rahman and Normah Haj Oma (n 13) 25; See also: Waleed Albassam (n 335).

⁶³¹ Saudi Foreign Investment Law 2021.

⁶³² *ibid.*

⁶³³ Trending Economics (2022) Saudi Arabia foreign direct investment - NET INFLOWS 2022 data - 2023 forecast, Saudi Arabia Foreign Direct Investment - Net Inflows - 2022 Data - 2023 Forecast. Available at: '<https://tradingeconomics.com/saudi-arabia/foreign-direct-investment>' (Accessed: December 18, 2022).

all appealing investment sectors, while mining is also appealing, but is still in its early stages.⁶³⁴

CSR Frameworks

One of the major debates surrounding the proliferation of CSR concerns the degree to which the base of the requirement should be legislative or voluntary.⁶³⁵ While some advocates of the voluntary approach point to the sophisticated nature of CSR as it currently stands on a global scale, the vast majority of which has been adopted voluntarily by companies, others argue that real change cannot take place without some degree of legislative effort.⁶³⁶ This discussion of voluntary versus legislative strikes at the very heart of what CSR is and what it should try and be, which has become a more prevalent topic of academic discussion in recent years.⁶³⁷ The latter argument is particularly prevalent among those who agitate for greater adoption of CSR in developing economies, many of which have little to no CSR pedigree.⁶³⁸ Where CSR has been adopted at a legislative level, this has primarily taken place in developing countries such as China, Indonesia, India and Mauritius. The nature of CSR as being a voluntary or an obligatory undertaking has been given.⁶³⁹ According to Zerk, ‘each business enterprise, as a member of society has a responsibility to operate ethically and in accordance with its legal obligations and to strive to minimise any adverse effects of its operations and activities on the environment, society and human health’.⁶⁴⁰

Such a conception reduces the dichotomy that businesses pursue profit and the interests of shareholders without regard to social objectives as a default standard, with CSR initiatives therefore not a part of this standard.⁶⁴¹ While it is beyond the scope of this thesis to consider

⁶³⁴ Saudi Gazette (2022) FDI posts 9.5% growth, reaching Sr7.4 billion in first quarter of 2022, MSN. Available at: <https://www.msn.com/en-ae/news/featured/fdi-posts-95-growth-reaching-sr74-billion-in-first-quarter-of-2022/ar-AAZ0RFn> (Accessed: December 18, 2022).

⁶³⁵ Lucia Gatti, Babitha Vishwanath, Peter Seele and Bertil Cottier, ‘Are We Moving Beyond Voluntary CSR? Exploring Theoretical and Managerial Implications of Mandatory CSR Resulting from the New Indian Companies Act’ (2019) 160 *Journal of Business Ethics* 961.

⁶³⁶ *ibid.*

⁶³⁷ Mallika Tamvada, ‘Corporate Social Responsibility and Accountability: A New Theoretical Foundation for Regulating CSR’ (Springer, 2020) <<https://jcsr.springeropen.com/articles/10.1186/s40991-019-0045-8>> accessed 20 August 2022.

⁶³⁸ Lars Isaksson and Nayan Mitra, To Legislate or Not: That Is the Question—Comparing CSR Intent and Effects in Economies with Voluntary CSR and Legislated CSR, in *International Dimensions of Sustainable Management* (Springer, London, 2019) <<https://www.springerprofessional.de/en/to-legislate-or-not-that-is-the-question-comparing-csr-intent-an/16739114>> accessed 20 August 2022.

⁶³⁹ Hui Situa and Carol Tilt, ‘Mandatory? Voluntary? A Discussion of Corporate Environmental Disclosure Requirements in China’ (2018) 38 *Social and Environmental Accountability* 131.

⁶⁴⁰ Jennifer Zerk (n 2).

⁶⁴¹ Valentin Jesch, ‘Corporate Social Responsibility and the Law: International Standards, Regulatory Theory and the Swiss Responsible Business Initiative’, EUI Working Papers: MWP 2018/05.

this in-depth, such a construction is important as it reflects a modern reality that engaging in CSR activities is no longer simply a desirable option but instead is a necessity in contemporary business.⁶⁴² A result of a legal framework which mandates CSR activities alongside the pursuit of profit and shareholder interest is that it becomes a part of the societal conception of a business operation.⁶⁴³ It also considers the modern nature of business regulation, particularly concerning CSR. Several legal frameworks around the globe have built on the voluntary CSR integration which has taken place in recent decades to put in place legal requirements for companies to follow. This is considered to be a progressive legal approach that, although growing in popularity, is still considered controversial.⁶⁴⁴ Advocates of establishing a legal CSR framework argue that the approach allows for the setting of a range of minimum standards which should be pursued as societal priorities rather than being left to the voluntary whims of companies. As Adhikari has noted expressly:

They believe that business is primarily concerned with profit and thus should not be trusted to develop solutions for important social issues on their own. According to those with this view, business involvement in CSR efforts can become merely a branch of public relations instead of effectively addressing social problems. As a result, they feel that governments should move to mandate CSR.⁶⁴⁵

Such an approach requires a degree of strong leadership from government rather than being reliant on the initiative coming from the business community.⁶⁴⁶ According to Biswas and Tortajada ‘as powerful as public pressure is, it is no substitute for regulations’.⁶⁴⁷ Advocates of such an approach argue that setting up a legal framework for CSR enables the establishment of minimum standards according to which businesses must operate.⁶⁴⁸ The implementation of a legally founded framework of CSR would therefore remove any advantages that a company may have by disregarding CSR.⁶⁴⁹ This does not prevent companies from engaging in their

⁶⁴² Saud Mandurah, Jamal Khatib and Saleh Al-Sabaan (n 1) 1049.

⁶⁴³ Tineke Lambooy, ‘Legal Aspects of Corporate Social Responsibility’ (2014) 30 *Utrecht Journal of International and European Law* 1.

⁶⁴⁴ Li-Wen Lin (n 516).

⁶⁴⁵ Arjun Adhikari, ‘Corporate Social Responsibility: Voluntary or Mandatory?’ (2014) *NJA Law Journal* 195.

⁶⁴⁶ International Council on Human Rights Policy, *Beyond Voluntarism, Human Rights and the Developing International Obligations of Companies* (Switzerland: Versoix, 2002) 2.

⁶⁴⁷ Asit Biswas and Cecilia Tortajada, ‘The evolution of CSR in China’, *The Bangkok Post*, January 2020, Available at <<https://www.bangkokpost.com/business/1829654/the-evolution-of-csr-in-china>> Accessed November 19, 2020.

⁶⁴⁸ Fanny Calder, *Following Up the World Summit on Sustainable Development Commitments on Corporate Social Responsibility, Options for Action by Governments* (Chatham House: Royal Institute of International Affairs, February 2005) 36.

⁶⁴⁹ Ramon Mullerat and Daniel Brennan, *Corporate Social Responsibility, The Corporate Governance of 21st Century* (The Hague, the Netherlands: Kluwer Law International and International Bar Association, 2005).

own CSR activities, as the drivers for companies to adopt more responsible practices – consumer pressure – still remain.⁶⁵⁰ Instead, it ensures that even businesses which have little interest in CSR must abide by a set of minimum standards. Finally, considering the role of a legally supported CSR regime is appropriate in Saudi Arabia due to its lack of CSR pedigree.⁶⁵¹

Saudi Arabia, like other parts of the Middle East, has seen less penetration of CSR than in other parts of the world; this applies both to companies that do not embrace CSR and to governments that do not pass laws on it.⁶⁵² For a variety of reasons, including a relatively well-developed sense of philanthropic responsibility among companies alongside a degree of reluctance to adopt some aspects of CSR due to concerns about their Western-centric nature and origin, CSR is still developing in the Middle East.⁶⁵³ That said, a significant percentage of companies, particularly those which have a greater degree of engagement in the international business community, have begun to adopt some CSR measures.⁶⁵⁴ However, these steps have been relatively minor and are far less extensive than those seen, for instance, in Europe or Asia.⁶⁵⁵ This is the situation in Saudi Arabia, the wealthiest and most influential country in the Gulf Cooperation Council (GCC),⁶⁵⁶ the course towards adopting CSR has been a balancing act which reflects the country's traditional values and its gradual emergence on the global stage.⁶⁵⁷ According to Ali and Al-Aali:

Since the early 1970s, the government has espoused comprehensive economic plans aimed at achieving economic and technological progress for its citizens, while integrating its economy into the global market.⁶⁵⁸

While the KSA has gradually adopted a range of economic policies which have allowed the country to develop significantly, the state of CSR remains underdeveloped in the Kingdom, particularly from a legislative perspective. Companies that have embraced CSR have tended to

⁶⁵⁰ Ramon Mullerat and Daniel Brennan (n 649).

⁶⁵¹ Asit Biswas and Cecilia Tortajada, 'The evolution of CSR in China', *The Bangkok Post*, January 2020, Available at <<https://www.bangkokpost.com/business/1829654/the-evolution-of-csr-in-china>> Accessed November 19, 2020.

⁶⁵² Ahmed Al-Abdin, Taposh Roy and John D. Nicholson, 'Researching Corporate Social Responsibility in the Middle East: The Current State and Future Directions' (2017) 25 *Corporate Social Responsibility and Environmental Management* 47.

⁶⁵³ Kjetil Selvik, 'Business and Social Responsibility in the Arab World: The Zakat vs. CSR models in Syria and Dubai' (2013) 12 *Comparative Sociology* 95.

⁶⁵⁴ Ahmed Al-Abdin (n 652) 47.

⁶⁵⁵ Belaid Rettab and Kamel Mellahi, *Practising CSR in the Middle East* (Springer, Switzerland, 2019).

⁶⁵⁶ Gregory Gause, *Saudi Arabia in the New Middle East* (Council on Foreign Relations, New York, 2011).

⁶⁵⁷ Sami Kahn, Khalid Maimani and Wafa Al-Yafi, 'Exploring Corporate Social Responsibility in Saudi Arabia: The Challenges Ahead' (2013) 10 *Journal of Leadership, Accountability and Ethics* 65.

⁶⁵⁸ Abbas J. Ali and Abdulrahman Al-Aali, 'Corporate Social Responsibility in Saudi Arabia' (2012) 29 *Middle East Policy Council* 5.

have an international presence⁶⁵⁹ and the nature of CSR that has been embraced has only some parallels with those adopted elsewhere in the world.⁶⁶⁰ This is for a variety of factors including that the underlying cultural influence in Saudi Arabia means that some aspects which could be described as within the purview of CSR such as philanthropy are common, whereas others related to gender equality are not.⁶⁶¹ In addition, the strong and pervasive influence of *Zakat* – a concept which is prevalent in the region and has several parallels with CSR – has meant that CSR has taken on a character of *Zakat* rather than evolving to more closely resemble that in the west.⁶⁶² *Zakat*, which is focused primarily on charitable giving and philanthropy, is a key pillar of Islam and therefore is relatively widespread in Saudi Arabia.⁶⁶³ While some authors argue that this will make the overall transition to CSR easier,⁶⁶⁴ others argue that it is likely to be more difficult because companies may not feel the desire or the compulsion to engage more extensively in CSR-related activities due to their existing *Zakat* commitments.⁶⁶⁵ As a result of these factors, CSR in Saudi Arabia is recognised as being ‘in its infancy’.⁶⁶⁶

CSR in the Middle East and North Africa

One aspect which has become apparent through a comparative analysis of CSR schemes is the degree to which these are regionalised. CSR may have flourished in central and western Europe through greater corporate integration, trade and globalisation and Asia has seen a growth in CSR due to these international ties and links.⁶⁶⁷ According to Mahjoub and Ntim, this has grown and evolved to a point where companies are now implementing CSR from a ‘bottom up’ approach:

Certainly, the current growth in CSR is more marked in Europe and in some Asian countries) e.g. ,Japan ,Taiwan ,etc (.and the growth of India and China as main actors in the global economy has included CSR. The existence of large businesses in the developed world is contended by many as being one of the most solid drivers of CSR ,not only in Western multinationals but also in indigenous firms.⁶⁶⁸

⁶⁵⁹ Sami Khan, Maimani and Wafa Al-Yafi, (n 657) 65.

⁶⁶⁰ Magnus Gravem (n 283).

⁶⁶¹ *ibid.*

⁶⁶² Husam-Aldin Nisar Al-Malkawi and Saima Javaid, ‘Corporate social responsibility and financial performance in Saudi Arabia: Evidence from Zakat contribution’ (2018) 44 *Managerial Finance* 648-664.

⁶⁶³ General Authority of Zakat and Tax, *Zakat General Guideline* (GAZT, 2019).

⁶⁶⁴ Sami Kahn, Khalid Maimani and Wafa Al-Yafi (n 657) 65.

⁶⁶⁵ Husam-Aldin Nisar Al-Malkawi and Saima Javaid (n 662) 648.

⁶⁶⁶ Sami Kahn, Khalid Maimani and Wafa Al-Yafi (n 657) 65.

⁶⁶⁷ Kjetil Selvik (n 653) 95.

⁶⁶⁸ Lassaad Ben Mahjoub and Collins G. Ntim, ‘Disclosure about corporate social responsibility through ISO 26000 implementation made by Saudi listed companies’ (2019) 6 *Cogent Business Management* 1.

In many European jurisdictions, CSR is seen as a valuable component of corporate identity, while the demands for CSR among members of society – from suppliers to customers – are far greater.⁶⁶⁹ Compared to Europe, Asia and North America, other regions have seen stagnation. This is the case in the Middle East and North Africa where the take-up rate has historically been lower. Where CSR has been adopted, this has tended less to be in a manner rolled out by the government and held in place through specific CSR-focused legislation; rather, CSR policies have been adopted by individual companies and entities, especially those which engage in world markets or who are positioned along a supply chain where it is deemed important.⁶⁷⁰

Where CSR has been adopted, this has tended not to be in the comprehensive fashion that it has spread in the West and Asia, but in a relatively select set of areas.⁶⁷¹ For instance, companies in the Middle East have been receptive to efforts to pursue CSR objectives consistent with environmental protection, water conservation and improved health outcomes.⁶⁷² The Middle East is particularly susceptible to the challenges of climate change, which has rendered regional organisations supportive of pursuing environmental sustainability as a broad objective. The Arab Forum for Environment and Development (AFED) explained that ‘transitioning to the Green Economy is not only an option for the Arab region; rather it is an obligation to secure a proper path to sustainable development’.⁶⁷³ Similarly, efforts to tackle corruption have been prevalent in the Middle East both before and after the wave of CSR swept around the world.⁶⁷⁴ Another prominent area in which CSR objectives are pursued and achieved in the region is concerning charitable and philanthropic activity which was a significant and enduring part of corporate culture in the region long before CSR gained popularity as a concept.⁶⁷⁵

Conversely, there are several other areas in which CSR has failed to gain a significant foothold in the region, many of which are in the human rights and labour law areas. For instance, labour

⁶⁶⁹ Marwa E. Tourky, Philip Kitchen and Ahmed Shallan, ‘The role of corporate identity in CSR implementation: an integrative framework’ (2019) *Journal of Business Research* <https://usir.salford.ac.uk/id/eprint/50395/1/Acceptance_Manuscript%20Without%20Authors%20Details.pdf> Accessed November 19, 2020.

⁶⁷⁰ Jeffery Avina, ‘The Evolution of Corporate Social Responsibility’ (CSR) in the Arab Spring (2013) 67 *Middle East Journal* 77.

⁶⁷¹ Hussein Abaza, Najib Saab and Bashar Zeitoun, eds., *Arab Environment: Green Economy: Sustainable Transition in a Changing Arab World* (Arab Forum for Environment and Development, 2011) <file:///C:/Users/moj/Downloads/Green_economy_Sustainable_Transition_in.pdf> accessed 19 November 2020.

⁶⁷² Abbas J. Ali and Abdulrahman Al-Aali (n 658) 40.

⁶⁷³ Hussein Abaza, Najib Saab, and Bashar Zeitoun (n 671).

⁶⁷⁴ Belaid Rettab and Kamel Mellahi, *Practicing CSR in the Middle East* (Palgrave Macmillan, London, 2019).

⁶⁷⁵ *ibid.*

rights have not been incorporated as a prominent component of CSR efforts in the Middle East as much as they have in other parts of the world.⁶⁷⁶ Gender rights also lag far behind.⁶⁷⁷ Finally, there are some structural aspects of CSR which have been adopted differently in the Middle East; for example, while efforts to curb corruption are prevalent, they tend to take on a different conception than those in the west which focuses on the fiduciary of directors.⁶⁷⁸

Some such as Selvik are broadly critical of CSR in the Arab world, saying that it consists of charitable giving and little else which can be described as constructive. He argues that this is because it has not become a significant component of contemporary business in the region:

In Arab countries, CSR is often reduced to donations of money or food, or to planting trees and shrubbery in public parks. Measures like these do not satisfy the ambitions of CSR promoters, who would like to see systematic changes in how companies are operating. The failure to be something beyond *Zakat* indicates that CSR in most instances has not been institutionalised. CSR does not affect the modus operandi in the companies that have adopted it.⁶⁷⁹

The current state of CSR in the Arab world can at least partially be explained with reference to the traditional practice of *Zakat*, which is deeply ingrained in Islamic culture. Merriam-Webster defines *Zakat* as ‘an annual alms tax or poor rate that each Muslim is expected to pay as a religious duty and that is used for charitable and religious purposes’.⁶⁸⁰ *Zakat* obligations do not only accrue to individuals, they are also frequently paid by companies and other organisations and entities.⁶⁸¹ *Zakat* is particularly common in the oil-rich societies of the Middle East due to the belief that it cleanses accumulated wealth: ‘Those eligible to pay *Zakat*, must pay 2.5 per cent of their cumulative wealth to charity each year. This payment is said to ‘purify’ a Muslim’s wealth’.⁶⁸² *Zakat* is an enduring and prevalent concept in Islamic culture and has become a central part of the operations of many businesses in the region.⁶⁸³

⁶⁷⁶ Charlotte M. Karam and Dima Jamali, ‘Gendering CSR in the Arab Middle East: An Institutional Perspective’ (2013) 23 *Business Ethics Quarterly* 31.

⁶⁷⁷ *ibid.*

⁶⁷⁸ Ramez Shehadi, Salim Ghazaly, Dima Jamali and Mounira Jamjoom, *The Rise of Corporate Social Responsibility a Tool for Sustainable Development in the Middle East* (Booz and Company, Beirut, 2015).

⁶⁷⁹ Kjetil Selvik (n 653) 95.

⁶⁸⁰ Merriam Webster, ‘*Zakat*’, Merriam Webster, 2020, Available at <<https://www.merriamwebster.com/dictionary/zakat>> accessed online 27 November 2020.

⁶⁸¹ *ibid.*

⁶⁸² Salam Al Amir, The five pillars of Islam: what is *Zakat*? *The National News*, June 2019, Available at <https://www.pcrf.net/president-s-blog/what-is-zakat.html?gclid=EAIaIQobChMIgoOP1pO28wIVGe3tCh3TzgadEAAYASAAEgJHbPD_BwE> Accessed online November 27, 2020.

⁶⁸³ Kjetil Selvik (n 653) 95.

Although the existence of *Zakat* may appear to be positive in CSR by showing a pre-existing acknowledgement among companies of the importance of playing a role in social actions and being active in the community, some scholars have argued that this has in effect hindered the development of CSR throughout the region.⁶⁸⁴ The primary reason for this is that while CSR was able to spread throughout the West and later to Asian nations relatively quickly, this quick-fire proliferation could only take place because there was in effect somewhat of a prescriptive and regulatory vacuum when it came to corporate interactions of a social nature.⁶⁸⁵ When the notion of CSR was originally brought to the Middle East by multinational companies, Middle Eastern companies and entities thought it unnecessary to embrace it because they already had a degree of social involvement through adherence to the principles of *Zakat*.⁶⁸⁶ According to Dunn, many companies of Middle Eastern origin have experienced a degree of tension when it comes to the implementation of CSR due to a perceived inconsistency with *Zakat*, or in some cases a perception that CSR is in effect replacing traditional *Zakat* principles.⁶⁸⁷

For the ownership families there is often a close personal and family connection with the causes supported and the charities and organisations that are involved. New partners and external investors seldom have the same connections with the charities and causes and look to see more strategic, mutually beneficial approaches to social responsibility and community engagement.⁶⁸⁸

As CSR has become more commonplace and more studied in the Middle East, it has become clear that a gap has emerged between the conception of what CSR is and Arab perceptions of the practice. The major reason for this, as has been noted by commentators such as Talal Alsharif, is that CSR is frequently confused with other forms of charity and giving; for instance, those with their origins in *Zakat*.⁶⁸⁹ This means that companies which may believe they are adhering to or discharging their CSR obligations are in practice adhering to the traditional principles of *Zakat* but while philanthropy and charitable giving – two core aspects of *Zakat* – are commonplace in much of the Arab world, other aspects such as a commitment to gender equality, racial diversity and labour rights are lacking.

⁶⁸⁴ Kjetil Selvik (n 653) 95; Wayne Dunn, Middle East CSR: *Zakat*, *Sadaqah* and Ownership Structure (14 May 2016) CSR Training Institute <<https://www.csrraininginstitute.com/2016/05/14/middle-east-csr-zakat-sadaqah-and-ownership-structure-2/>> Accessed online November 28, 2020.

⁶⁸⁵ Kjetil Selvik (653) 95.

⁶⁸⁶ *ibid.*

⁶⁸⁷ Wayne Dunn (n 684).

⁶⁸⁸ *ibid.*

⁶⁸⁹ Dimah Talal Alsharif, 'Why there is much more to CSR than just corporate charity', *Arab News* (28 August 2018) Available at <<https://www.arabnews.com/node/1363341>> Accessed online November 28, 2020.

4.2 CSR in Saudi Arabia

Like many nations outside Europe, Asia and North America, the western conception of CSR is a relatively new concept in Saudi businesses and corporate culture.⁶⁹⁰ The growth of CSR in the KSA has mirrored that in some other emerging economies outside Europe whereby companies have put in place measures which are consistent with the Western-centric notion of CSR on an organic, ground-up basis due to a desire to participate in markets where CSR is prioritised. This has taken place both as a consequence of Saudi Arabia opening itself up to international companies and Saudi companies wanting to engage in the regional and global business landscape.⁶⁹¹ However, the legal framework surrounding CSR in Saudi Arabia is non-existent. While there are some legal frameworks which act to simultaneously pursue the aims of CSR – for instance, laws which seek to prevent corruption – these have evolved independently as part of Saudi Arabia’s legal system.⁶⁹² In that sense, the legal framework surrounding CSR in Saudi Arabia mirrors that which has been adopted in the vast majority of countries which have seen CSR policies and objectives adopted by companies unilaterally rather than being a consequence of government action.⁶⁹³ However, while CSR is a relatively recent phenomenon in Saudi Arabia in the Western-centric conception of it, many of the hallmarks of a culture of responsible corporations which are community-focused can be seen in Saudi corporate culture.⁶⁹⁴

Although the advent of the Western-centric notion of CSR in Saudi Arabia is a relatively recent phenomenon, that does not mean Saudi companies neglect to engage in socially focused or community-focused activities. Saudi corporate culture exhibits many of the tenets which would usually be attributed to companies with a rich commitment to CSR. The companies mirror those in the West in the sense that they operate largely to pursue profit and to boost shareholder interests but there is also a strong and resilient corporate culture of giving and philanthropy that pre-dates modern Western notions of CSR.⁶⁹⁵ Maqbool argues:

A strong and deeply embedded culture of giving already exists in the corporate sector in Saudi Arabia... The social infrastructure is mainly driven by cultural and religious causes, a fact that fosters a culture conducive for philanthropy. Company leadership has been spending huge amounts on charity for so long that now making the business case for CSR is about swaying them from their

⁶⁹⁰ Abbas J. Ali and Abdulrahman Al-Aali (n 658) 40.

⁶⁹¹ Jeffery Avina (n 670) 77.

⁶⁹² *ibid.*

⁶⁹³ Dima Jamali and Walaa El Safadi, ‘Adaptations of CSR in Globalisation the Case of the GCC’ (2019) *Globalisation* 123.

⁶⁹⁴ *ibid.*

⁶⁹⁵ Samia Maqbool (n 306) 286.

well-trodden path of ad hoc community initiatives towards strategic CSR, rather than convincing them to spend money in the first place.⁶⁹⁶

This comes from the Islamic notion of *Zakat*,⁶⁹⁷ a feature of the corporate landscape in the region.⁶⁹⁸ The existence of *Zakat* means that Saudi corporate culture already embraces conduct of a social and charitable nature, which some scholars argue contributes to Saudi reluctance to adopt CSR.⁶⁹⁹ Unlike that in the West, the primary characterisation of CSR in the KSA is based on the notion of charity through religious practice.

It has been noted that there are in effect three phases in the evolution of CSR in the KSA which has led to the current situation where it differs markedly from that in Europe and in particular in the UK. The first, which took place in the late 1960s, focused broadly on three areas: charity, environment and philanthropy.⁷⁰⁰ Several companies took steps to integrate a commitment to these areas into their corporate mission objectives. The highly influential Saudi Aramco adopted a suite of environmentally-focused mission objectives in 1963, while simultaneously adopting a set of charitable objectives.⁷⁰¹ These actions served as a foundation for further CSR integration across the company, including the development of an extensive set of environmental protection standards which were adopted in 1986 to boost ecological hygiene.⁷⁰² The Arab Forum for Environment and Development (AFED) has identified Saudi Arabia as a 'pioneering country' concerning environmental issues in the Middle Eastern region.⁷⁰³

The second stage of the KSA's CSR integration moved beyond charitable activities and environmental protection to focus on improving access and opportunities for workers in the private sector. The creation of the Saudi General Investment Authority (SAGIA) in 2000 through a partnership between government and industry sought to target investment into specific industrial sectors and to improve economic performance with a focus on institutionalising CSR in Saudi society.⁷⁰⁴ According to Ali and Al-Aali:

⁶⁹⁶ Samia Maqbool (n 306).

⁶⁹⁷ *ibid.*

⁶⁹⁸ Izlwanie Muhammad, 'Analysis of *Zakat* System in High-Income Islamic Countries' (2019) 16(2) *Journal of Maumalat and Islamic Finance Research* 1-11.

⁶⁹⁹ Samia Maqbool (n 306).

⁷⁰⁰ Abbas J. Ali and Abdulrahman Al-Aali (n 658) 40; Mesfer Alsubaie, 'The Effectiveness of Corporate Social Responsibility in Saudi Arabia' (2016) 16 *Global Journal of Human Social Science* 51.

⁷⁰¹ *ibid.*

⁷⁰² *ibid.*

⁷⁰³ Hussein Abaza, Najib Saab and Bashar Zeitoun (n 671).

⁷⁰⁴ Abbas J. Ali and Abdulrahman Al-Aali (n 658).

One of SAGIA's major responsibilities is to supervise the establishment of economic cities around the kingdom. At a cost of more than \$60 billion, Saudi Arabia's economy is being boosted by the construction of several of these integrated sites designed to promote economic diversification, create over a million new job opportunities and foster contributions to GDP by the private sector, while minimising negative environmental effect and maximising energy conservation and sustainability.⁷⁰⁵

In addition to encouraging corporate participation in CSR, SAGIA launched the Saudi Arabia Responsible Competitive Index (SARCI) in the first few years of the new millennium to encourage private sector participation in CSR by evaluating and monitoring the CSR policies of leading companies. SARCI establishes a range of 'social, environmental, economic, management and stakeholder participation metrics' to measure CSR.⁷⁰⁶ One of the major consequences of this second phase was a period of rapid economic growth and diversity for the country. As a result of these changes a 'great number of jobs were created in the private sector with attractive packages; there was sustainable and rapid economic growth as a result of increases in productivity which not only strengthened the concerned industries but also the economy of Saudi Arabia as a whole'.⁷⁰⁷ These efforts were lauded for their broad approach which sought to improve economic outcomes across the economic and geographical spectrum of the country, rather than allowing the vast majority of the existing opportunities to be concentrated in the oil sector.⁷⁰⁸ However, these efforts are not comprehensive as they do not take into account human rights, labour rights, corruption and environmental standards to the same degree as has been seen as fundamental in CSR efforts in Europe and North America.⁷⁰⁹ This has been a common criticism of Saudi CSR efforts, with critics arguing that despite the progress that has been made, it has largely been on a patchwork, inconsistent basis.⁷¹⁰

The third phase of Saudi integration of CSR began in 2010.⁷¹¹ It was aimed at boosting social cohesion domestically, while also providing a more stable environment in the Kingdom from which the country could take on a greater leadership role in the GCC countries and the region. The first aspect of this did not encourage CSR in a corporate setting generally but resulted in the adoption of a range of socially progressive policies by the government, including a greater degree of support for poorer citizens. This included financial assistance and the building of half

⁷⁰⁵ Abbas J. Ali and Abdulrahman Al-Aali (n 658).

⁷⁰⁶ Sami Khan, Khalid Maimani and Wafa Al-Yafi (n 657) 65.

⁷⁰⁷ Mesfer Alsubaie (n 700) 51.

⁷⁰⁸ *ibid.*

⁷⁰⁹ *ibid.*

⁷¹⁰ *ibid.*

⁷¹¹ Dima Jamali and Walaa El Safadi (n 693) 123.

a million housing units which could be accessed by lower-income Saudis.⁷¹² In this third phase, the government took on a more active role in seeking to develop CSR as a part of corporate culture in Saudi Arabia, although it stopped short of producing widespread, sweeping CSR rules at a legislative level like those which have been seen abroad.⁷¹³ Instead, it sought to oversee the creation of several ‘partnerships between the public and private sectors’ whereby CSR was an express element.⁷¹⁴ In 2011, a greater desire for beneficial social outcomes including those which could be brought about by changes in the corporate sector spread across the region.⁷¹⁵ Alsubaie has pointed out that these efforts were largely successful, with the result being a strengthening of the ties between businesses and the government around CSR action:

During this time, political-business relations grew stronger and new economy friendly reforms were made in laws related to industries. Companies showed more interest in political strengthening which increased political stability, leading to a more prosperous and stable Saudi Arabia.⁷¹⁶

In addition, the government helped to facilitate the development of CSR institutional knowledge among representative bodies in the country, including for instance the Makkah Chamber of Commerce and Industry which hosted seminars and other events targeted at improving awareness and understanding of CSR in the broader corporate community.⁷¹⁷

Although these advances have in some areas been significant, they have been limited to certain companies and entities, particularly those which have a more considerable integration on the international business landscape where CSR is more common. According to Saudi commentators:

Although Saudi Arabia implemented the CSR properly and many companies adopted it [...] it was not implemented properly [...] Apart from two to three well-established companies, all other companies who implemented CSR were either not able to afford it or did not properly fulfil the needs of CSR, instead of executing it diligently so that partnership between government and private sector can be institutionalised.⁷¹⁸

Jamali and Safadi expand on this point to illustrate which areas need the most work:

⁷¹² SPA, ‘The King orders to spend SR1.3 billion for social security beneficiaries’, *Aleqt*, 6 August 2012, Available at <https://www.aleqt.com/2012/08/06/article_680880.html> Accessed online November 20, 2020.

⁷¹³ Jeffery Avina (n 670) 77.

⁷¹⁴ Abbas J. Ali and Abdulrahman Al-Aali (n 658) 40.

⁷¹⁵ Jeffery Avina (n 670) 77.

⁷¹⁶ Mesfer Alsubaie (n 700) 51.

⁷¹⁷ CSR Middle East, Saudi CSR Forum to honour top CSR achievers, *CSR Middle East*, 1 April 2013, Available at <<http://csrmiddleeast.org/profiles/blogs/saudi-csr-forum-to-honor-top-csr-achievers>> accessed 12 November 2020.

⁷¹⁸ Mesfer Alsubaie (n 700) 51.

Governmental and legislative factors including high bureaucracy, labour laws, corruption, legal systems and investment regulations are major challenges for CSR implementation (in Saudi Arabia).⁷¹⁹

In some areas, the effect of the CSR objectives which have been developed has been minimal or insignificant. Despite the environment being one of the major areas that has been in place for decades in Saudi CSR, there have been a range of devastating environmental consequences for Saudi Arabia, particularly as a result of the actions of the oil industry.⁷²⁰ Chemical waste pollution is a major problem across the country and has caused environmental harm and in some cases damaged other industries; for instance, efforts to improve Saudi agriculture.⁷²¹ Damage to mangroves along the Saudi coastline in the Arabic Gulf has harmed biodiversity efforts considerably.⁷²² The areas which have not been the focus of Saudi efforts at improving CSR have differed dramatically from those seen in Europe and North America. Labour rights and gender protection – long devalued by Saudi society – have seen only very modest improvements in recent decades.⁷²³

This harms the KSA's international competitiveness and undermines the efforts of those companies who have actually made steps in following CSR implementation and can be seen as a part of the CSR structures generally. Bodies such as SARCI were not set up to take many of these issues into account. While SARCI established several 'social, environmental, economic, management and stakeholder participation metrics' to measure CSR,⁷²⁴ they do not take into account human rights, labour rights, corruption and environmental standards.⁷²⁵ Not only does this represent a less than comprehensive commitment to CSR, but it also illustrates where the specific policy objectives lie when it comes to the embrace and proliferation of CSR in society.

Perhaps the most notable observation from the literature is the extent to which CSR differs from company to company and from industry to industry in Saudi Arabia. This has been acknowledged by Jamali and Safadi who put together an extensive literature review on the

⁷¹⁹ Dima Jamali and Walaa El Safadi (n 693) 123.

⁷²⁰ *ibid.*

⁷²¹ *ibid.*

⁷²² Fatin Samara, Nadia Solovieva, Thouraya Ghalayini, Zaina Anwar Nasrallah and Maria Saburova, 'Assessment of the Environmental Status of the Mangrove Ecosystem in the United Arab Emirates' (2020) 12 *Water* 2.

⁷²³ Mesfer Alsubaie (n 700) 51.

⁷²⁴ Sami Khan, Khalid Maimani and Wafa Al-Yafi, (n 657) 65.

⁷²⁵ *ibid.*

topic.⁷²⁶ The authors note that the result of the efforts has been an inconsistent patchwork in which only some sectors or corporate cultures reflect the stated objectives of the government.⁷²⁷

It has been mentioned in the literature that there is a lack of legislation or an institutionalised system for CSR; this has resulted in fragmented efforts with a low level of overall strategic strength.⁷²⁸

Some companies, whether Saudi or international, have spent decades prioritising CSR both as a means of pursuing moral objectives and a point of competitive difference to engage in markets where CSR is popular, whereas others have either paid lip service to the efforts at securing CSR or largely ignored the efforts completely. Compared to Europe and North America where CSR spans the corporate sector largely regardless of industry type, this lack of broader CSR saturation is a problem. These inconsistencies show the degree to which a broader legislative effort at entrenching CSR in Saudi culture would be more effective and beneficial than the ongoing voluntary efforts in both the public and private sectors. CSR has also found a foothold in the education sector, particularly in universities. Recent studies have indicated that universities are willing and early adopters of CSR and have become some of the most enthusiastic practitioners of CSR in modern Saudi Arabia.⁷²⁹

4.2.1 CSR and *Zakat*: a traditional vehicle to contemporary CSR?

One way in which CSR could be pursued more effectively in Saudi Arabia is to have reference to the traditional principles of *Zakat*.⁷³⁰ Muslim believers are required by *Sharia* law to pay *Zakat*,⁷³¹ intended to ‘act as a social safety net for those in need and a means to uplift the entire community and help Muslims and Islam thrive’.⁷³² The concept has a *Tabarru*⁷³³ corporate social aspect which helps businesses to balance their corporate activities with their religious obligations.⁷³⁴ Under the obligation of *Zakat*, the faithful must donate money, food or anything

⁷²⁶ Dima Jamali and Walaa El Safadi (n 693) 123.

⁷²⁷ *ibid.*

⁷²⁸ *ibid.*

⁷²⁹ Bandar Khalaf Alharthey, ‘Role of Corporate Social Responsibility Practices in Saudi Universities’ (2016) 6 *International Journal of Business and Social Research* 32.

⁷³⁰ Sami Kahn, Khalid Maimani and Wafa Al-Yafi (n 657) 65.

⁷³¹ Adnan Trakic and Tun Abdul Hamid Mohamad, ‘Critical Appraisal of the Companies’ Obligations to Pay *Zakat* in the Malaysian Context’ (2013) available at: <https://www.researchgate.net/publication/292514446_Critical_Appraisal_of_the_Companies'_Obligations_to_Pay_Zakat_in_the_Malaysian_Context> accessed 25 September 2021.

⁷³² National Zakat Foundation, ‘Purpose of *Zakat*’ (2021) available at: <<https://nzf.org.uk/about-zakat/purpose-of-zakat/>> accessed 25 September 2021.

⁷³³ *Tabarru*’ is an Arabic word that describes a voluntary donation or gift which is given by someone to meet the requirement in Islam to provide mutual help to others.

⁷³⁴ Fristina Anisa, Veni Soraya Dewi and Nur Hidayah, ‘How Much Does Islamic Corporate Social Responsibility Affect *Zakat* Performance? Data Processing Using Eviews’ (2019) 436 *Advances in Social Science, Education and Humanities Research* 429, 429.

else that is needed to recipients of charity known as *Mustahik*.⁷³⁵ These categories of people include the needy and the poor, strangers, the homeless and debtors who require relief from their debt.⁷³⁶ Another more elaborate classification of the categories refers to ‘the poor, the destitute, those who collect it, reconciling people’s hearts, freeing slaves, those in debt, spending in way of Allah and travellers’.⁷³⁷

This charitable obligation is owed to the broader Muslim community (the *Ummah*). By asking the people whose income is above a certain threshold to help those less fortunate, *Shari’a* law aims to expand the givers’ vision of the world and connect members of the community. The practice resembles CSR because of some Islamic countries’ requirement that a certain sum of money is dedicated periodically for the achievement of socially positive goals of the CSR agenda.⁷³⁸

Despite that, *Zakat*, which is given just once a year to charitable causes in the form of a percentage of the business’s earnings,⁷³⁹ does not and could not properly answer the CSR call as understood by the Western tradition because CSR refers to a host of issues, not all of which concern the poor. Quite the contrary; CSR engages with climate change and with issues of diversity and equality within but also outside the immediate environment of the company.

Some scholars have pointed out the degree to which CSR has struggled to gain a foothold in the Middle East due to the influence of *Zakat*, arguing that its failure to become widely adopted in the Middle East is due to *Zakat* filling the vacuum where CSR might otherwise have been in other countries.⁷⁴⁰ This does not, however, mean that CSR and *Zakat* need to be looked at in a mutually exclusive fashion and several scholars have noted that there is a need to change the narrative surrounding CSR in the Middle East to ensure that it does not appear to be ‘replacing’ *Zakat* or altering how *Zakat* functions.⁷⁴¹ Al-Malkawi and Javaid have argued that Saudi authorities pushing for a greater degree of CSR integration should do so using *Zakat* as a proxy, expanding on existing *Zakat* principles rather than giving an indication that they are being

⁷³⁵ *Mustahik* is an Arabic word that describes a Deserver.

⁷³⁶ *ibid*, 430; Quran (9:60).

⁷³⁷ Wan Sulaiman bin Wan Yusoff, ‘Modern Approach of Zakat as an Economic and Social Instrument for Poverty Alleviation and Stability of Ummah’ (2008) 9 *Jurnal Ekonomi dan Studi Pembangunan* 105, 109.

⁷³⁸ Law Number 40 of 2007 article 74, further stipulated in Government Regulation No. 47 (2012) in Indonesia.

⁷³⁹ Daniel Liberto, ‘What is Zakat’ (2021) Investopedia, available at:

<<https://www.investopedia.com/terms/z/zakat.asp>> accessed 25 September 2021.

⁷⁴⁰ Kjetil Selvik (n 653) 95; Wayne Dunn (n 684).

⁷⁴¹ Mohammed Ilyas, ‘Islamic Work Ethics and Corporate Social Responsibility in Business Organisations: Issues and Challenges’ (2018) 22 *Academy of Accounting and Financial Studies Journal*

<https://www.researchgate.net/publication/324827166_Islamic_work_ethics_and_corporate_social_responsibility_in_business_organizations_Issues_and_challenges> accessed 30 September 2021.

restricted or changed.⁷⁴² Alfakhri et al. completed an extensive study of the opinions of members of the Saudi public in a variety of different industries and professions to see the degree to which they supported CSR practices, finding that there was widespread support for CSR provided that the definition fits within Saudi culture and that the concept was well explained.⁷⁴³ They found that contributions to the community were considered to be more important than the three other pillars of Carrol's CSR pyramid – ethical responsibility (doing what is right), legal responsibility (obeying the law) and economic responsibility (ensuring that the company is profitable).⁷⁴⁴ The authors noted expressly that Saudi respondents were less enthusiastic about marketing campaigns that trumpeted a company's CSR credentials than they were about real and effective efforts to make changes at the ground level:

This finding also raises challenges for western multinationals which are more oriented toward public displays. The findings have some implications for future study. For example, CSR managers should understand the local values in implementing CSR strategy. In particular, multinational companies' managers should stress the value orientation of CSR in a country where the business operates. This is because one strategy may not fit for all countries.⁷⁴⁵

This shows that there is an appetite and a desire for greater CSR integration in Saudi Arabia, but care must be taken to ensure that it is tailored and adapted to Saudi interests, many of which are heavily influenced by *Zakat*.⁷⁴⁶ One clear step which can be taken, and ideally needs to be taken at a legislative level, is to lay out an effective definition of CSR which has utility and application in Saudi Arabia. This should incorporate the key tenets of CSR more broadly, but also have some relevance to Saudi society and underlying cultural norms.

Finally, effort must be expended to provide an understanding of the differentiation between CSR and *Zakat* lest companies operate in a fashion where they believe they are adhering to CSR obligations but are realistically only following traditional *Zakat* principles. Alsharif notes that a better understanding of the difference between CSR and other forms of charitable engagement such as *Zakat* needs to be established in the Middle East. As CSR has become more commonplace in the Middle East, a gap has emerged between charitable giving and CSR as a whole. Forms of charitable giving are often thought of to be consistent with CSR, which can lead to a failure to adopt or fully consider CSR completely.⁷⁴⁷ This means that companies

⁷⁴² Husam-Aldin Nisar Al-Malkawi and Saima Javaid (n 662) 648.

⁷⁴³ Mohammad Nurunnabi, Yazeed Alfakhri and Demah H. Alfakhri (n 281) 874, 895.

⁷⁴⁴ *ibid.*

⁷⁴⁵ *ibid.*

⁷⁴⁶ Mohammed Ilyas (n 741).

⁷⁴⁷ Dimah Talal Alsharif (n 689).

which may believe they are adhering to or discharging their CSR obligations are in practice adhering to the traditional principles of *Zakat*. This is likely to have hampered the further extrapolation of CSR measures in Saudi Arabia, as companies feel less inclined to reform their operations in pursuit of CSR objectives when they already believe they are making valuable and enduring contributions concerning philanthropic and charitable activities.⁷⁴⁸ Saudi Arabia's lack of a contemporary CSR framework can therefore be seen as a product of the relatively strong existing culture of *Zakat* rather than a general corporate disdain or disregard for taking up a more important role in the community. As a result of this, authorities must work to provide a clearer differentiation between *Zakat* activities and CSR if it is to be encouraged in Saudi society.

4.2.2 Corporate regulations and CSR

An outline of Saudi's current Company Law 2022

There are various laws and agencies Various laws and agencies regulate the operation of companies in Saudi Arabia. The first regulatory agency was established in 1984 and was called the Saudi Arabian Monetary Agency (SAMA). The Ministry of Commerce and Industry (MOCI) is the regulatory authority for all types of companies except joint stock companies listed on the Saudi Stock Exchange which are under the supervision of the Capital Market Authority (CMA) created in 2003. Under Royal Decree M/30 which established the CMA, it has full power to impose rules to protect investors and maintain fairness. It was the CMA that first issued the Corporate Governance Regulation in 2006.⁷⁴⁹

On an international comparative basis, corporate law in Saudi Arabia is relatively thin. Several areas are not directly regulated, with the legal framework not having many of the limitations which are usually seen in other jurisdictions. One of the foundation instruments which regulates company law in Saudi Arabia is the SCL which was originally passed in 1965 and was the 'first law to regulate firm behaviour in Saudi Arabia'.⁷⁵⁰ Then the Companies Law 2015 was issued by Royal Decree No. (M/3). The law covers a wide variety of areas relevant to carrying out business in Saudi Arabia including rules surrounding the creation of businesses, the sharing of profit and loss, capital levels, audit processes, the make-up and rules relating to a board of

⁷⁴⁸ Dimah Talal Alsharif (n 689).

⁷⁴⁹ Which will be discussed in the next section

⁷⁵⁰ Anthony Shoult, *Doing Business with Saudi Arabia* (GMB Publishing, London, 2006) 34.

directors, reporting and accounting requirements and registration processes.⁷⁵¹ Commentators note that while the SCL has allowed for the expansion of the Saudi corporate sector and has resulted in creating a business environment which has produced economic prosperity for the nation, there are several areas where greater regulation is needed.⁷⁵²

which replaced the Saudi Companies Act 2015 and was based on the UK's Companies Act.⁷⁵³ Like its predecessors, the main aim of the NCR is to regulate companies, both domestic and foreign. The new act brought some changes which have been described as a step towards reforming the corporate sector in Saudi Arabia. The law is designed not only to meet the contemporary needs of companies but also to create a motivating environment to increase their contribution to the national economy. The NCR recognises a limited number of companies types compared to its predecessor. Indeed, the types of companies passed to five, namely the Joint Stock Company (JSC), Partnership Company (PC), Limited Partnership Company (LPC), Simplified Stock Company (SJSC), Limited Liability Company (LLC) and Non-Profit Company.⁷⁵⁴ Certain types of business must be carried out through a JSC, including banking, insurance and finance. The issued capital of the JSC must not be less than SR500 thousand and the paid-up of it upon incorporation must not be less than one-quarter. The Shareholding Company must have an issued capital representing the subscribed shares, and the company's articles of association may specify an authorised capital. By a decision of the company's board of directors, the issued capital may be increased within the limits of the authorised capital provided that the issued capital has been paid in full.⁷⁵⁵

Unlike the LLCs where the board of managers may appoint a general manager or a board of managers, the JSC is managed by a board of at least three directors.⁷⁵⁶ Their terms of office

⁷⁵¹ Mohamed Aly Ramada, *The Saudi Arabian Economy: Policies, Achievements, and Challenges* (Springer, Washington, 2010).

⁷⁵² Youseif al-Qassam al-Zahrani, 'Examination of the Legal Ambiguities of Remedies for Shareholders under the Saudi Company Law No. 1965' (2015) 29 *Arab Law Quarterly* 343-377; Faisal Bin Hammad, 'The Vision 2030: Corporate Governance Perspective in Saudi Arabia' (2019) 9 *Journal of System and Management Sciences* 48.

⁷⁵³ Khalid I. Falgi, 'Corporate governance in Saudi Arabia: A stakeholder perspective'. (PhD Thesis, University of Dundee, 2009); Salim A. Alghamdi, 'Investigation into earnings management practices and the role of corporate governance and external audit in emerging markets: Empirical evidence from Saudi listed companies.' (PhD Thesis, Durham University, 2012); Douglas M. Branson, 'Initiatives to place women on corporate boards of directors – a global snapshot' (2012) 37 *Journal of Corporation Law* 793; Bryan Hill, Michael Lunn, William Morrison, Jonathan Mueller and Caitlin Robertson 'Saudi Arabia: An overview of executive compensation, board structure, and sustainability' (2015) 4 *Drake Management Review* 20

⁷⁵⁴ Saudi Company Law 2022.

⁷⁵⁵ Articles 59 and 60 of the Saudi Companies Act 2022.

⁷⁵⁶ Article 67 of the Saudi Companies Act 2022.

cannot exceed four years but can be renewed.⁷⁵⁷ The remuneration of directors can be a particular amount, an allowance for attending sessions, in-kind benefits, a certain percentage of the net profits, or a combination of the above, and the company's articles of association may determine the upper limit for these rewards.⁷⁵⁸ The Ordinary General Assembly determines the amount of these remunerations, taking into account that the remunerations are fair, motivating and commensurate with the member's and the company's performance. The directors are jointly liable to the company, shareholders or third parties for damages resulting from their failure to provide adequate management, breach of the law or the by-laws. Unless they can prove that they opposed the resolution that led to damages.

LLCs are the equivalent of private limited companies and generally managed by one or more managers from among the partners or from others. The partners appoint the manager or managers in the company's Memorandum of Association or a separate contract for a specified or indefinite period. A board of directors may be formed by a decision of the partners. The LLC's Memorandum of Association or the partners' decision determines the method of managing the company, and the necessary majority for issuing decisions when appointing more than one manager or forming a board of directors. LLCs are represented by their manager before the judiciary, arbitral tribunals and third parties, who have the right to delegate some of their powers to third parties to undertake a specific business or works. An LLC is committed to the work of the manager that falls within the purpose of the company.⁷⁵⁹

PC is a company established by two or more persons of natural or legal capacity who are personally and jointly responsible in all their funds for the company's debts and obligations, and a partner in it acquires the status of a merchant. The management of PC shall be undertaken by the partners, and the legal person shall designate their representative in the management. If there is more than one manager without specifying the competence of each and without stipulating that none of them may be alone in management, each may individually carry out any management work. The rest of the managers have the right to object to any work before it becomes binding on others. The manager undertakes all management activities that fall within the objectives of the company and represents it before the judiciary, arbitral tribunals and third

⁷⁵⁷ Article 68 of the Saudi Companies Act 2022.

⁷⁵⁸ Article 76 of the Saudi Companies Act 2022.

⁷⁵⁹ Articles 160, 161 and 162 of the Saudi Companies Act 2022.

parties, unless the company's Memorandum of Association expressly stipulates a restriction of those powers.⁷⁶⁰

An LPC is a company consisting of two teams of partners. One team includes at least one partner of natural or legal capacity who is personally responsible and jointly responsible for the debts and obligations of the company. Another team includes at least one partner of natural or legal capacity who is a testator and is not responsible for the company's debts and obligations, except within the limits of his share in the company's capital. LPC partner does not acquire the status of a merchant. The partners in LPC are subject to the provisions applicable to the partners in PC.⁷⁶¹

The provisions of JSC shall apply to SJSC unless a special provision is made. The shareholders of an SJSC have the right to organise the company's structure and method of operation in the company's Articles of Association. Shareholders replace the ordinary and extraordinary general assembly of JSC within the scope of the provisions that apply to SJSC. Shareholders have the right to determine who will assume these functions in the company's Articles of Association. The chairman of SJSC, its manager or its board of directors shall exercise all the powers prescribed for the chairman and members of the board of directors of a JSC and replace them. The minimum share capital requirement for a joint stock company does not apply to S.J.S.C.⁷⁶²

The NCR strengthenedstrengthens the position of minority shareholders by introducing cumulative voting for the election of members of the board. This allows shareholders to cast all their votes for a single nominee instead of having to divide the total value of their votes amongst different candidates for board membership. As a result, minority shareholders can appoint their own board members and improve their representation. However, this possibility depends on how majority shareholders have allocated their votes. The right to nominate board members is according to the shareholder's ownership percentage. There is an obligation to establish an audit committee independent of the board. Finally, JSC board members who have a direct or indirect interest in any of the JSC's business are prevented from voting at board or shareholder meetings. Where a board member fails to disclose such interest, the relevant contract could be nullified. The new law addresses the shortcomings of its predecessor and brings a more modern view on company law. The new law removes several restrictions while

⁷⁶⁰ Articles 35 and 37 of the Saudi Companies Act 2022.

⁷⁶¹ Article 51 of the Saudi Companies Act 2022.

⁷⁶² Articles 183 and 139 of the Saudi Companies Act 2022.

enhancing good practices of corporate governance. It reduces the costs and procedures for the establishment of a firm and recognises the role of modern communications technology at its centre. For instance, general assemblies can be conducted via modern means of communication in an attempt to maximise shareholder participation. The new law also renders several principles of corporate governance mandatory.

Finally, it is important to keep in mind that the ten biggest companies represent almost half of the Saudi market⁷⁶³ and are mainly owned by the government. Major companies that are not governmentally owned often have governmental institutions as shareholders, particularly the banking sector. For instance, governmental institutions are among the major shareholders of various banks.⁷⁶⁴

The three main governmental organisations that recurrently appear as shareholders are the Public Investment Fund of Saudi Arabia, the General Organisation for Social Insurance and the Public Pension Agency.⁷⁶⁵ However, the current picture might be changed by Vision 2030 and the privatisation programmes of state-owned companies which, coupled with the possible relaxation of ownership limits for foreign investors, will attract foreign companies.⁷⁶⁶ For instance, there is already an increasing trend towards Chinese inward investment. To attract a greater number of foreign investors, compliance with sustainability is an important factor.

The new Company Law expanded the power of the board of directors and removed obstacles that may prevent the board from fulfilling its duties. However, the duties of care and loyalty must be further clarified to avoid any unnecessary restriction. The inclusion of proper rules dealing with shadow directors is necessary and would increase CG practices. As a standalone piece, the new Company Law does not really offer any incentive to comply with CSR as understood in the western world. However, combined with the provisions of the Saudi Corporate Governance Regulation (SCGR), a sort of compliance with CSR practices starts to emerge.

⁷⁶³ Tadawul, 'Market summary' (2019) Available at: <https://www.tadawul.com.sa/wps/portal/tadawul/home> [Accessed 29 October 2019].

⁷⁶⁴ Flandersinvestmentandtrade, 'New Saudi Companies Law' Available at: https://www.flandersinvestmentandtrade.com/export/sites/trade/files/news/846151221093911/846151221093911_2.pdf [Accessed 27 October 2019]

⁷⁶⁵ Tadawul, 'Major Stake Holder.' (2019) Available at: <https://www.tadawul.com.sa/wps/portal/tadawul/markets/reports-%26-publications> [Accessed 29 October 2019].

⁷⁶⁶ Saeed Azhar, and Stephen Kalin, 'Saudi Arabia considers relaxing ownership limits for foreign investors' (2019) Available at: <https://www.reuters.com/article/us-saudi-investment-regulator/saudi-arabia-considers-relaxing-ownership-limits-for-foreign-investors-idUSKCN1S11EU> [Accessed 29 October 2019].

Regarding the duties of the directors, uUnder the new Company Law, a director of an unlimited liability company must act within the purpose of the company when the articles of incorporation specifically allow it or the partners to decide to do so. This means that donations will be restricted except for small, regular donations.⁷⁶⁷ If the sale is not within the company's purposes, then the property cannot be sold or pledged by directors. It is required that the Board of Directors obtain the approval of the General Assembly when selling assets of the company whose value exceeds fifty per cent of the value of its total assets. The value of the assets must be approved by the General Assembly.⁷⁶⁸ Upon violation of the articles of incorporation or negligence or omission in the performance of his duties, the director shall be liable for damages to the company, partners or third parties.

UExcept for powers granted to the general assembly by special provisions in the law or the Articles of Association, the board of directors of a JSC has full authority to manage the company.⁷⁶⁹ All acts of the board shall be binding on the company, even if they exceed the board's power unless the stakeholder breaks the law or knows the acts exceed the power of the board.⁷⁷⁰ The new Company Law does not explicitly provide any section for non-financial reporting and so no provision in Saudi law calls on companies to publish their non-financial reports.

It is perhaps unsurprising that the new Company Law contains very little of relevance to the principles of CSR. There is also no direct reference to stakeholders. This means that there is no direct link between the new Company Law and CSR and few protections for minor shareholders. Al-Zahrani notes that the framework which allows shareholders to enforce their rights from the minority is poorly developed, with the result that minority shareholders are not effectively protected. He concludes that the statutory remedies under the new Company Law are not effective in protecting minority shareholders in listed companies and allowing them to defend their interests.⁷⁷¹

With shareholder rights being an increasingly important part of CSR globally both in being legally required as part of CSR frameworks and CG structures, the failure of the Saudi framework to account for ever-important minority shareholder interests is indicative of the broader neglect that the framework has for CSR principles. Many of the regulatory steps in the

⁷⁶⁷ Article 77 of the Saudi Companies Act 2022.

⁷⁶⁸ Article 76 of the Saudi Companies Act 2022.

⁷⁶⁹ Article 77 of the Saudi Companies Act 2022.

⁷⁷⁰ *ibid.*

⁷⁷¹ Youseif al-Qassam al-Zahrani (n 752) 343.

area, whether relevant to CSR or not, exist either in the CG or have been adopted voluntarily by Saudi companies.

Saudi Corporate Governance

The development of corporate governance in Saudi Arabia is divided into two phases. The first started with the recognition of CG after the enforcement of the Disclosure and Transparency standards in 1985.⁷⁷² Before then, adherence to the disclosure requirements was very low. The creation of the Supreme Economic in 1999 was one of the earliest steps in the development of CG by the Saudi authorities.⁷⁷³ The enactment of the Capital Market Law of 2003 and the creation of the Board of the CMA mark the beginning of the second phase.⁷⁷⁴ In 2006, Regulations on corporate governance, referred to as the Saudi Corporate Governance Regulation (SCGR), was launched. The Regulation was greatly influenced by the 2004 ‘Organization for Economic Co-operation and Development (OECD) Principles’. Its main aim was to ensure that Saudi-listed companies comply with the best practices guaranteeing the protection of shareholders’ and stakeholders’ rights.⁷⁷⁵ The 2006 Regulation followed the English approach by endorsing the ‘comply or explain’ practice for all listed companies. Under Article 1(c) of the Corporate Governance Regulations 2006, this approach means that ‘a company must disclose in the board of directors’ report, the provisions that have been implemented and the provisions that have not been implemented as well as the reasons for not implementing them.’ It seems that the reformed SGCR abandoned the ‘comply or explain’ approach and replaces it by compulsory rules for all listed companies.⁷⁷⁶

Over time, tThe 2006 Regulation has undergone revisions to make some elements mandatory, as the requirements in Article 9 for the disclosure in the Board of Directors’ Report. To ensure compliance with international practice, the Regulation was amended in 2009. With the enactment of the 2016 Saudi Companies Law it became clear that the SCGR 2006 needed further revision and the Capital Market Authority (CMA) enacted the new SCGR in 2017 for companies listed on Saudi Arabia Exchange. In addition to the SCGRs, there are a dozen of regulations that have been passed, such as the Merger and Acquisition Regulations, Listing Rules, the Resolution of Securities Disputes Proceedings Regulations, Market Conduct

⁷⁷² Mohamed Meteb Alotaibi ‘The importance of corporate governance in Saudi Arabia economy’ (2015) 4 Journal of WEI Business and Economics 14.

⁷⁷³ Faleh Salem Al Kahtani, ‘Current practices of Saudi corporate governance: A case for reform.’ (A Thesis Submitted for the Degree of Doctor of Philosophy in School of Law, Brunel University, 2013).

⁷⁷⁴ Mohamed Meteb Alotaibi (n 772).

⁷⁷⁵ *ibid.*

⁷⁷⁶ Article 2 (c) Corporate Governance Regulations 2017.

Regulations, Investment Funds Regulations, Securities Business Regulations, Offers of Securities Regulations, Credit Rating Agencies Regulations and Investment Accounts Instructions.⁷⁷⁷ The combination of these regulations with the SCGR 2017 can help the board of directors to conduct their duties to the highest possible standards.

The new regulation replaced the 2006 version and tackled some of its shortcomings. The major change was that the SCGR 2017 is much more in line with the Company law which was not the case with its predecessor. This change creates a stronger framework with the provisions supplementing each other instead of conflicting with each other. Moreover, the SCGR 2017 is more extensive than its predecessor demonstrating a wish to create a regulation that supplement the Company law. SCGR 2017 includes better rights to board members and shareholders but also transparency about their own duties and tasks.⁷⁷⁸ It promotes accountability, transparency and stewardship of investors' capital and enhance corporate performance. It also aims to protect the rights of shareholders and stakeholders and to create a healthier environment for more foreign investment.

The SCGR 2017 contains various provisions on the board of directors which is one of the cornerstones of corporate governance. The board plays a key role on behalf of the shareholders and has extensive powers to manage and oversee the company's business. Companies operating in Saudi Arabia must have a board of at least two directors elected by shareholders. Article 78 of the Company Law 2016 stipulates that the directors are jointly responsible for the method of administration and are accountable for all damages sustained by the company arising from their misconduct, violation and breach of any provisions of the law or the company's bylaws. Therefore, it was important that the SCGR 2017 contains extensive provisions regulating the conduct of the Board of Directors.

Articles 16 to 41 of the SCGR 2017 contains detailed rules applicable to the Board of Directors, such as appointment, board formation or responsibilities and duties. The SCGR 2017 filled the gaps present in the SCGR 2006. For instance, Article 17(d) obliges companies to notify the competent authority of the names of the board members within five working days. Another important change is found in Article 18 which now requires boards members 'to be professionally capable' and have 'the required experience, knowledge, skill and independence, which enable him/her to perform his/her duties efficiently.' Article 18 also listed five

⁷⁷⁷ Capital Market Authority, Available at: <http://www.cma.org.sa/en/Regulations/Pages/default.aspx> [Accessed 27 October 2019].

⁷⁷⁸ Article 3 of CG.

mandatory conditions to become a board's member: ability to lead, competency, ability to guide, financial knowledge and physical fitness.

One of the main concerns of the SCGR seems to be the board independence. Unlike its predecessors, the SCGR 2017 contains an extensive provision on issues affecting the independence of the board.⁷⁷⁹ Article 28 prohibits the appointment of 'the Chief Executive Officer, during the first year following the end of his/her service, as the chairman of the Board.' Articles 16(2) and (3) provide that 'the majority of the Board members shall be Non-Executive Directors' and 'the number of Independent Directors shall not be less than two members or one-third of the Board members, whichever is greater'.

The SCGR 2017 also greatly improve the rights of shareholders, especially in relation to fair treatment (Article 4), rights related to shares (Article 5) and access to information (Article 6). Article 9 also provides a clear mechanism for the distribution of dividends. However, despite reforms to the company law and corporate governance regulations, the legal system as it stands does not afford adequate protection for minority shareholders. There are no specific provisions on minority shareholders but instead some mechanisms have been introduced to protect minority shareholders in a JSC. For instance, voting rights in listed companies are based the number of shares shareholders hold instead of a single right.⁷⁸⁰

Furthermore, despite the introduction of Company Law and SCGR, derivative action still suffer serious deficiencies. Both the old and the new Company Law have failed to adopt a clear regime of derivative actions which, consequently, undermines directors' accountability. It is still debated whether the Company Law 2016 contains provisions on derivative actions or not. Article 80 stipulates that a shareholder is entitled to bring a legal action 'against members of the board of directors on behalf of the company if the wrongful act committed by them is of a nature to cause him personal prejudice.' From the wording of the provision it is clear that to initiate any action, the companies' right to litigate must still be veiled and the shareholder must notify the company of his intention of bringing a lawsuit.⁷⁸¹ The main area of confusion is that from the language of Article 80, it appears that a claim is only permitted when a wrongful act has resulted in a personal prejudice to a shareholder. The provision seems to suggest that corporate relief is not available, even if the claim was brought on its behalf.

⁷⁷⁹ Article 20 of CG.

⁷⁸⁰ Article 95(1) of the Company Law 2016 and Article 8(b) CSGR 2017.

⁷⁸¹ In relation Article 78 of the Company Law 1965. See: Youseif A. M. Al-Zahrani, 'Rights of Shareholders under Saudi Company Law 1965' (PhD Thesis, Brunel University 2013) 195.

In the previous SCGRs, the scope of the conflict of interest was limited to the board. In the SCGR 2017, the scope has been extended to executive management or any other employees of the Company dealing with the Company or other Stakeholders, Article 43. Article 43 also mandates the Board to ‘develop an explicit and written policy to deal with actual and potential conflicts of interest situations which may affect the performance of Board members, the Executive Management or any other employees of the Company when dealing with the Company or other Stakeholders’. The SCGR also includes policies and procedures for conflicts of interest.⁷⁸² The relationship of the board with stakeholders is regulated by Article 83. The SCGR also obliges companies to develop the necessary policies and procedures for stakeholders to report violations or to complain.⁷⁸³ Article 85 requires the companies to establish ‘programmes for developing and encouraging the participation and performance of the Company’s employees.’

A final development relates to disclosure and transparency found in Part 9 of the SCGR 2017. Article 89 stipulates that the ‘Board shall set forth in writing the policies, procedures and supervisory rules related to disclosure pursuant to the disclosure requirements provided for in the Companies Law and the Capital Market Law.’ The SCGR 2017 provides shareholders and board members with greater clarity and more transparency as to their roles and responsibilities, such as enhancing shareholder rights, clarifying board, committee and exclusive management roles and responsibilities, clarifying decision-making mechanism, achieving greater openness, competitiveness, transparency and disclosure, and improving accountability and control over employees. The Capital Market Law (CML) describes the information that companies must disclose to list their securities in the stock market. The law also obliges listed companies to issue periodic reports. The CML disclosure rules meet international standards set by IOSCO and Basel Committee on Banking Supervision.

The SCCR 2017 cures some defects of the earlier SRCRs but there are still pending issues that are not in conformity with the international best practices. For instance, the definition of relative is extremely narrow and does not include cousins. Such failure is even more important than in Saudi Arabia as family relationships are strong and there are plenty of family run businesses. The role of women is also overlooked by the SCGR 2017. The government could

⁷⁸² See Chapter 6.

⁷⁸³ Article 84 of CG 2017.

have used this opportunity to impose a minimal level of female representation on the board which could have attracted other types of investment.

The SCGR promotes sustainability to a certain extent, through the provisions on directors' duties and obligations. However, SCGR still falls short of international standards. Compared to its predecessors, most of the provisions in the SCGR 2017 are mandatory, which could lead to better compliance with sustainability provide that swift perception of sustainability occurs. For instance, while the SCGR clarifies the powers and tasks of the board of directors and the audit committee, it does not impose a two-tier system to enhance minority shareholder protection. Instead, these two committees only carry, to a limited extent, similar task as a supervisory board in a two-tier system.

The CG requires the board of directors to represent all shareholders, undertake all actions in the interests of the company and develop it and maximise its value under its duties of care and loyalty.⁷⁸⁴ In addition, even if some of its powers are delegated to committees, individuals or other third parties, the board is still accountable for the company's business.⁷⁸⁵ Under the Companies Law and its Implementing Regulations, the board has broad powers over the company's management and activities. In addition to developing, overseeing and reviewing the company's plans, policies, strategies and main objectives, the board is also responsible for training the company's employees, establishing a comprehensive business plan, key policies and risk management mechanisms and reviewing and guiding them. As a result, selecting an appropriate capital structure, approving the expected budgets and supervising capital expenditures and the acquisition of assets are also required. Lastly, the company is responsible for setting performance indicators, monitoring their implementation and making decisions regarding the organisational structure and human resources needed to achieve its objectives.⁷⁸⁶

The CG requires directors to define specific policies, standards and procedures for membership without compromising the mandatory requirements of these regulations and set policies and implement them after getting approval from the general assembly and develop a written policy regulating the relationship with stakeholders. They must also ensure compliance with the company's laws and regulations and ensure that executive management complies with the

⁷⁸⁴ Article 21: Responsibility of the Board of the CG.

⁷⁸⁵ Article 21 of the CG.

⁷⁸⁶ Article 22: Responsibility of the Board of the SCL.

company's policies and procedures for communicating material information to shareholders and stakeholders.

4.2.3 4.5.3 Human Trafficking Law and CSR

The Saudi Anti-Human Trafficking Law was passed in 2009 and there is a project to amend it in 2022. However, the old and amended law do not specifically mention human rights in global supply chains. For example, the law defines human trafficking without reference to workers' rights in supply chains as follow; 'the use of a person [...] for the purpose of abuse.'⁷⁸⁷

The law also specifies cases considered human trafficking:

It is prohibited to traffic in any person in any way, including coercion, threat, fraud, deception, kidnapping, abuse of position or influence, abuse of power over him, or exploitation of his weakness. the giving or receiving of payments or benefits to achieve the consent of a person having control over another for sexual abuse, forced labor or services, begging, slavery or practices similar to slavery, servitude, the removal of organs, or medical experimentation.'⁷⁸⁸

HoweverThe law also 'intensified the prescribed penalties [...] if the crime transnational borders.'⁷⁸⁹

Overall, although the law protects human rights to some degree from slavery, it is still very weak in protecting human rights from modern slavery in global supply chains. The law does not specify the criminal responsibility of companies or how to pursue them, and does not require a report from companies about human rights in their supply chains. Thus, Saudi Arabia's human trafficking law does not sufficiently promote CSR.

4.2.4 Environmental law and CSR

The Saudi Environmental Law was issued in 2020 and canceled the Saudi Wildlife Authority's Law, issued by Royal Decree No. (M/22), the Law of hunting wild animals and birds, issued by Royal Decree No. (M/8), the law of trading in endangered wild organisms and their products, issued by Royal Decree No. (M/9), General Law for the Environment, issued by

⁷⁸⁷ Article 1 of the Saudi Anti-Human Trafficking Law.

⁷⁸⁸ Article 2 of the Saudi Anti-Human Trafficking Law.

⁷⁸⁹ Article 4 of the Saudi Anti-Human Trafficking Law.

Royal Decree No. (M/34), the Pastures and Forests Law, issued by Royal Decree No. (M/55), and Wildlife Protected Areas Law, issued by Royal Decree No. (M/66).⁷⁹⁰

The law defines environmental activity as any operational or technical activity related to the environment sector.⁷⁹¹ The law also clarifies that the environmental impact is every negative or positive change that affects the environment as a result of any activity.⁷⁹²

The environment/environmental circles, according to the law, are all that surrounds a person, animal, plant, or any living organism; Water, air, land, soil, organisms, biodiversity, gases in the atmosphere and water bodies, and what these media contain of inanimate objects, different forms of energy, environmental habitats, natural processes and their interaction with each other.⁷⁹³ The law also explains natural resources as all living and non-living materials found in nature and their products which are directly exploited or invested by man such as air, water, land, soil, biodiversity, and geological formations of environmental value.⁷⁹⁴

Although the law aims to protect, develop and sustain the environment, adhere to environmental principles and regulate the environment sector and related activities and services,⁷⁹⁵ it does not specify the responsibility of environmental companies in terms of making environmental pledges or their actual observance to stakeholders. However, the law covers everyone who engages in activities (companies for example) that may emit emissions or pollutants, or that may affect the environmental community:

"Compliance with environmental requirements, controls, procedures, standards; and take the necessary actions and measures when approaching environmental standards; Developing programs and devices for monitoring, measuring and controlling the quality of environmental media, providing the competent authority - on a regular basis - with data and reports related to emissions or pollutants emanating from its activities.⁷⁹⁶

The law also prohibits the import, export, re-export circulation, manufacture or use of substances that deplete the ozone layer without obtaining a permit or license.⁷⁹⁷ Anything that

⁷⁹⁰ Royal Decree No. (M/165) dated 10/07/2020.

⁷⁹¹ Article 1 of Saudi Environmental Law.

⁷⁹² *ibid.*

⁷⁹³ *ibid.*

⁷⁹⁴ *ibid.*

⁷⁹⁵ Article 2 of Saudi Environmental Law.

⁷⁹⁶ Article 8 of Saudi Environmental Law.

⁷⁹⁷ Article 10 of Saudi Environmental Law.

may harm the lands of vegetation cover, or upset the natural balance therein, or damage protected areas or disturbing the natural balance therein is also prohibited, in particular:

"Cutting down trees, shrubs, herbs or plants, or uprooting, transporting or stripping them of their bark, leaves or any part thereof, or moving or bulldozing their soil, or trading in them. Leaving waste inside it, burying it, burning it, or throwing it in places other than those designated for it that are determined by the competent authority. Setting fire inside it in places other than those designated for this.⁷⁹⁸

Although the law aims to protect the environment in general, it does not adequately promote CSR as it does not urge companies to adopt the principles of preventive measures nor encourage the institutional culture that allows for the promotion of environmental values. The law does not require companies to adopt and implement correct production systems, nor to prepare performance appraisals to incorporate total environmental costs and benefits. It also does not oblige companies, according to the principles of priority, to disclose their past, present and future environmental responsibility: in terms of obligating it to submit periodic reports to stakeholders on its effects of its activities on the environment.

4.2.5 CSR: Saudi Arabia and international law

One area where attempts have been made to make inroads into CSR in Saudi Arabia has been through international law. International legal agreements and supranational instruments have played a crucial role in furthering CSR aims around the globe in a variety of areas, particularly in relation to human rights.⁷⁹⁹ While the results have so far been relatively modest, some Saudi companies have shown a desire to implement international legal standards on CSR.

One example which illustrates the degree to which international law and regulations can have a domestic influence in Saudi Arabia is in relation to standards. The International Organisation for Standardisation sets standards in relation to a variety of fields from product quality to food safety.⁸⁰⁰ One such standard which has relevance to CSR and has been implemented in companies in Saudi Arabia is the ISO 26000, a social responsibility standard published in 2010

⁷⁹⁸ Articles 19 and 32 of Saudi Environmental Law.

⁷⁹⁹ Robert McCorquodale, 'Corporate Social Responsibility and International Human Rights Law' (2009) 87(2) *Journal of Business Ethics* 385.

⁸⁰⁰ ISO, 'The ISO Story, International Organisation for Standardisation', 2020, Available at <<https://www.iso.org/about-us.html>> Accessed November 26, 2020.

which seeks to improve the operations of businesses and organisations on CSR. The standard lays out seven ‘key principles of socially responsible behaviour: accountability, transparency, ethical behaviour, respect for stakeholder interests, respect for the rule of law, respect for international norms of behaviour and respect for human rights’.⁸⁰¹

In a study focusing on the implementation of ISO 26000 in Saudi corporate society, Mahjoub and Ntim showed an increase in CSR reporting as a result of the international standard.⁸⁰² Using a CSR reporting index to determine the degree to which ISO 26000’s seven core subjects were being achieved at a domestic level in Saudi Arabia, they found that all companies surveyed had referred to the ISO standard to some extent, although they did acknowledge that in some instances ‘reporting levels were weak’.⁸⁰³ This indicates that international law has had some effect, albeit modest. This is supported by other researchers in the field. Alotaibi and Hussainey found that while the standard has had an effect, it was minimal⁸⁰⁴ and while the results of the international integration have been ‘acceptable [...] showing an increase in CSR reporting’, there was a large scope for further integration to be pursued.⁸⁰⁵ Similarly, in 2016 Habbash found improvements in CSR disclosure which were higher than average, an indication of the effectiveness of the standard in Saudi corporate culture.⁸⁰⁶ These standards are voluntary and do not have the character of ‘international law’. The ISO standard 26000 explicitly states that it provides ‘guidance rather than requirements unlike some other well-known ISO standards’.⁸⁰⁷ However, they represent a useful and illustrative example of where CSR norms have been established at an international level and have found their way into Saudi domestic use through ISO standards.

4.2.6 Challenges to the adoption of CSR in Saudi Arabia

An assessment of the corporate landscape in Saudi Arabia shows that there is a degree of reluctance within the corporate community to implement CSR frameworks, whether this is at a legal level or in the individual practices of specific companies. One major reason for the reluctance is the degree to which it is seen as representative of Western values, even where one

⁸⁰¹ ISO (n 800).

⁸⁰² Lassaad Ben Mahjoub and Collins G. Ntim (668) 23.

⁸⁰³ *ibid.*

⁸⁰⁴ Khaleed Omair Alotaibi and Khaled Hussainey, ‘Determinants of CSR disclosure quantity and quality: Evidence from non-financial listed firms in Saudi Arabia’ (2016) 13(4) *International Journal of Disclosure and Governance* 364.

⁸⁰⁵ *ibid.*

⁸⁰⁶ Murya Habbash (n 292).

⁸⁰⁷ ISO, ISO 26000: Social Responsibility, ISO, Available at <<https://www.iso.org/iso-26000-social-responsibility.html>> Accessed November 26, 2020.

or more component of CSR operates under the notion that it is ‘universal’. Saudi companies are concerned by the idea of adopting Western values, particularly where these values would become a core part of a company’s operations.⁸⁰⁸ Gravem draws parallels with the way Saudi society has been reluctant to embrace other purportedly ‘universal’ concepts which are increasingly viewed as having originated in the West, such as human rights and labour rights.⁸⁰⁹

Several further challenges have been identified which have hampered the development of CSR in Saudi Arabia. The most significant moment in the recognition of these challenges took place at Saudi Arabia CSR Leadership Meeting in Riyadh in 2008 at which four broad categories of challenges were identified by the participating parties. These were:

- ‘1. A lack of awareness of CSR in Saudi Arabia, both in the overall ‘business case’ for CSR and in concrete CSR practices, implementation tools and methodologies,
2. Lack of institutionalisation of CSR in Saudi Arabia within companies and within the business communities i.e., relatively few CSR organisations, consultancies, business leadership initiatives, etc.
3. A mismatch between the need for CSR practices and the skills taught by local colleges and universities in Saudi Arabia and
4. A lack of resources available in Arabic’.⁸¹⁰

While these findings were handed down in 2008, a study from 2013 found that they were largely still relevant.⁸¹¹ In 2020, Pinto and Allui looked into the major barriers to the adoption of CSR in Saudi corporate culture and found that the primary problem was a lack of awareness within the corporate sector, whether management, employees, investors or shareholders, and an overall lack of competency with CSR matters.⁸¹² They found that ‘a lack of management commitment to CSR was the primary barrier, followed by a lack of investor interest, a lack of economic resources and a lack of employee competencies’.⁸¹³

⁸⁰⁸ Magnus Gravem (n 283).

⁸⁰⁹ *ibid.*

⁸¹⁰ Report of the First Leadership Dialogue (2008), Corporate Social Responsibility (CSR) in Saudi Arabia and Globally: Key Challenges, Opportunities and Best Practices, Dialogue hosted by Harvard Kennedy School CSR Initiative, Saudi Arabian Investment Authority (SAGIA) and King Khalid Foundation held on 10 November 2008 at Riyadh, Saudi Arabia.

⁸¹¹ Report of the First Leadership Dialogue (2008) (n 810).

⁸¹² Luisa Pinto and Alwiya Allui, Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organisations (2020) 7 *Journal of Asian Finance, Economics and Business* 265.

⁸¹³ *ibid.*

Despite this, there have been some recent suggestions of a desire to adopt CSR-relevant policies among the Saudi leadership. This came in November of 2020 at the G20 Summit, which took place in Riyadh, Saudi Arabia (but was held virtually due to the coronavirus pandemic).⁸¹⁴ Other than being the host, the summit was significant for Saudi Arabia because the country was set to take over the presidency of the G20.⁸¹⁵ While Saudi Arabia's official presidency overview was silent on the issue of CSR, it pledged to oversee the pursuit of collective goals of equality and sustainability on behalf of the G20.⁸¹⁶ The organisation pledged to pursue these goals in a statement, saying the country was committed to 'coordinated global action, solidarity and multilateral cooperation [...] by empowering people, safeguarding the planet and shaping new frontiers'.⁸¹⁷ As the summit took place only relatively recently, it remains to be seen whether it will influence domestic Saudi policy and, in particular, whether steps will be taken to encourage CSR through legislative action. The statements made at the summit do, however, indicate a desire among the Saudi leadership to take greater action in the pursuit of social and environmental goals, a desire which may be harnessed by advocates of CSR in pushing for a legislative solution.

CSR v Islamic practices

The analysis conducted in the first part of this work suggested that Saudi Arabia tackles the issue of CSR differently, often from religious perspectives, concepts and practices due to an alignment between the fundamentals of CSR and the values of Islam. Saudi Arabia's 'cultural and religious history [...] is consistent with the goals of its private sector's CSR work'.⁸¹⁸ The tradition of *Zakat* is a good example of how this consistency may be demonstrated in practice.⁸¹⁹ Other good examples would be the *Waqf*,⁸²⁰ *Sadaqa*⁸²¹ and *Qard-ul-hassan*.⁸²²

⁸¹⁴ European Commission, G20 Summit: G20 leaders united to address major global pandemic and economic challenges, European Commission, November 2020: Press Release available at: <<https://www.consilium.europa.eu/en/press/press-releases/2020/11/22/g20-summit-g20-leaders-united-to-address-major-global-pandemic-and-economic-challenges/>> accessed November 27, 2020.

⁸¹⁵ Lojien Ben Gassem, King Salman confident Riyadh G20 summit will deliver 'significant and decisive results', *Arab News*, November 2020, Available at <<https://www.arabnews.com/node/1766431/saudi-arabia>> accessed November 27, 2020.

⁸¹⁶ Saudi Arabia, Overview of Saudi Arabia's G20 Presidency (Saudi Arabia, Riyadh, 2020) available at: <http://www.g20.utoronto.ca/2020/2020-Presidency_Agenda-V5.pdf> accessed November 27, 2020.

⁸¹⁷ G20 Riyadh Summit, Leaders Declaration, 2020 available at: <<http://www.g20.utoronto.ca/2020/2020-g20-leaders-declaration-1121.html>> accessed November 27, 2020.

⁸¹⁸ Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia' (2015) 23 Middle-East Journal of Science Research 2388, 2388.

⁸¹⁹ *ibid.*

⁸²⁰ *Waqf* is an Arabic word that describes philanthropic trust.

⁸²¹ *Sadaqh* is an Arabic word that describes charity.

⁸²² *Qard-ul-hassan* is an Arabic word that describes interest-free loans; Rahayu Abdull Razak (n 900).

The difference between CSR and *Zakat* is best seen in their respective purposes. *Zakat* has the intention to ‘purify’ the wealth accumulated by traders. While this in itself could be interpreted as intimating that making wealth is a bad thing,⁸²³ this would be an inaccurate reading of Islam because Islam respects commerce and sees it as an invaluable contribution to society.⁸²⁴ This approach is certainly in line with the Western understanding of profit.⁸²⁵ In distinction, the Western theory of CSR is unconcerned with how pure the specific business’ profit is and it is more technical in its interpretation. To the extent that there is a place for emotive messaging in the Western-type of CSR, it is done through carefully studying the effect of emotion-filled messages on the targeted customer group and choosing between a more utilitarian or rational and more emotional message.⁸²⁶

This indicates that the notion of CSR proper adopts a more scientific approach to the way the effect of businesses on the wider community and the environment is measured.⁸²⁷ It could also be argued that CSR does not work with the same terminology and even when its goals resemble those of *Zakat*, they are motivated by a desire to limit any harm to society and not by a motivation to judge one’s morality.⁸²⁸ This is an important distinction because businesses around the world including in the Islamic ecosystem often earn their profit in a non-CSR compliant way. This is evident by the constant activity in the area by Western regulators who increasingly engage with the promotion of greater CSR, including by the adoption of further-reaching legislative measures.⁸²⁹

Considering that such regulatory flurry is not yet apparent in Saudi Arabia and adding to this lacuna of legislation the limited range of *Zakat*, adopting only the latter in dealing with CSR

⁸²³ Rahayu Abdull Razak (n 818) 2388.

⁸²⁴ Shouvik Sanyal and Mohammed Wamique Hisam, ‘A study on the impact of Islamic thought on global commerce and trade’ (2016) available at: <https://www.researchgate.net/publication/309104300_A_study_on_the_impact_of_Islamic_thought_on_global_commerce_and_trade> accessed 3 October 2021.

⁸²⁵ Abbas J Ali, ‘Profit Maximization and Capitalism’ (2006) available at: <https://www.researchgate.net/publication/256438476_Profit_Maximization_and_Capitalism> accessed 1 October 2021.

⁸²⁶ Luisa Andreu, Anna Mattila, Suzanne C. Beckmann and Joaquín Aldás-Manzano ‘Effects of Message Appeal on Corporate Social Responsibility initiatives’ (2010) available at: <https://www.researchgate.net/publication/276410361_Effects_of_Message_Appeal_on_Corporate_Social_Responsibility_initiatives> accessed 30 September 2021, 3.

⁸²⁷ *ibid.*

⁸²⁸ Patrick Maclagan and Tim Campbell, ‘Focusing on Individuals’ Ethical Judgement in Corporate Social Responsibility Curricula’ (2011) 20 *Business Ethics a European Review* 392.

⁸²⁹ European Parliament, ‘Corporate social responsibility (CSR) and its implementation into EU Company law’ (2020) Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE 658.541 – November 2020, available at: <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU\(2020\)658541_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541_EN.pdf)> accessed 3 October 2021, 10.

could make it possible for corporations to start or continue engaging in harmful business practices.⁸³⁰ This outcome appears likely because *Zakat* resembles CSR sufficiently well to placate those advocating for CSR. The ensuing problem becomes even greater if one is to consider the benefits for businesses engaging in both *Zakat* and CSR in conjunction.⁸³¹

Evidence from the yearly account reports produced by some of the big Islamic banks indicates that not all Islamic banks deduct *Zakat* from their earnings.⁸³² While surprising, this could be explained by looking at the example of Indonesia where it has been noted that ‘disclosure of CSR funds [by Indonesian banks] negatively affected the *Zakat* Performance Ratio’.⁸³³ The companies in question chose to donate less *Zakat* than they were supposed to because they assumed that they have already discharged their duties by complying with their CSR obligations. The rationale for this conduct was based on the argument that ‘[m]aximising the value of the company is the main goal of all activities carried out by the company’.⁸³⁴ This is perhaps informed by the thinking that company leadership is under a responsibility not to spend anything beyond the strictly necessary on such goals. The reasoning goes that, so long as the firm’s social responsibilities have been discharged, their obligations related to profit maximisation take precedence.

While seeing profitability as paramount is not wrong in itself, Islamic companies should concern themselves with objectives that go above and beyond the simple material goal. In practical terms, this means they should comply with their CSR and *Zakat* obligations without favouring one at the expense of the other. This should be done precisely because Islamic companies are supposed to espouse Islamic values⁸³⁵ and because doing so can prove beneficial.⁸³⁶ For example, not fully complying with *Zakat* would certainly put the Islamic firm in a precarious position vis-à-vis its *Shari’ah*-based obligations and cause friction between such

⁸³⁰ George E. Halkos, Stylianos N. Nomikos, ‘Reviewing the status of corporate social responsibility (CSR) legal framework’ (2021) 32 *Management of Environmental Quality* 700.

⁸³¹ Ichwan Sidik and Reskino Reskino ‘Zakat and Islamic Corporate Social Responsibility: Does It Take Effect to the Performance of Shari’ah Banking?’ (2016) 1 *Shirkah Journal of Economics and Business* 161.

⁸³² Fristina Anisa, Veni Soraya Dewi and Nur Hidayah, ‘How Much Does Islamic Corporate Social Responsibility Affect Zakat Performance? Data Processing Using Eviews’ (2019) 436 *Advances in Social Science, Education and Humanities Research* 429, 430.

⁸³³ *ibid.*, 429.

⁸³⁴ *ibid.*

⁸³⁵ Siti Anisah Atan, Norjariah Arif and Kamilah Ahmad, ‘Incorporating Islamic Values into Business Towards Holistic Shari’ah Compliance’ (Researchgate2017) <https://www.researchgate.net/profile/Siti-Atan-7/publication/322098978_Incorporating_Islamic_Values_into_Business_Towards_Holistic_Shariah_Compliance/links/5c47c42592851c22a3897741/Incorporating-Islamic-Values-into-Business-Towards-Holistic-Shariah-Compliance.pdf?origin=publication_detail>; accessed January 10, 2023.

⁸³⁶ Robiatul Auliyah and Basuki, ‘Ethical Values Reflected on Zakat and CSR: Indonesian Shari’ah Banking Financial Performance’ (2021) 8 *Journal of Asian Finance Economics and Business* 225.

companies and their Muslim customers who would and indeed, should, expect them to stay true to *Shari'a* law.

The company leadership may see the concepts of CSR and *Zakat* as having overlapping objectives. This is supported by a study indicating that 20% of the businesses operating in the UAE 'reported that they implement CSR to comply with *Zakat*'.⁸³⁷ While the study reflects the experience of UAE businesses, the situation in Saudi Arabia will doubtless be similar.

Perhaps this explains why CSR has often been shunned in favour of *Zakat* but the two concepts should be approached as two separate, albeit similar obligations. Admittedly, such companies could also argue that the notion of *Zakat* is sufficiently flexible to accommodate expansion, in line with the times, to include a broader spectrum of needs and recipients,⁸³⁸ however, this is something that has not yet been introduced. Even if the concept does get expanded, it is unlikely that it will fully overlap with CSR because *Zakat* is only loosely connected with poverty and the redistribution of wealth⁸³⁹ and remains much better aligned with other issues.

The closeness between CSR and *Zakat* helps Saudi Arabia adopt CSR practices more easily⁸⁴⁰ because its corporations are not challenged by the idea of CSR as they have already internalised it in the course of their compliance with *Shari'a* law. Despite this, some aspects of CSR have proven more problematic for the Saudi reality. This is to be expected. While CSR embraces goals that are quite similar to those of Islam, it is nevertheless the product of a liberal Western society⁸⁴¹ and contains references that are not easily translatable into the Saudi cultural and social vocabulary.⁸⁴² This is an issue that should not be underestimated.

While CSR is a work in progress and countries are free to pick and choose the aspects of the concept that most suit their cultural and social make-up, the globalisation of the modern world and particularly the globalisation of business necessitates a certain degree of cross-pollination between Saudi Arabia and its Western business partners.⁸⁴³ However complete cross-

⁸³⁷ Luisa Pinto and Alwyia Allui (n 812) 259, 261.

⁸³⁸ Wan Sulaiman bin Wan Yusoff, 'Modern Approach of Zakat as an Economic and Social Instrument for Poverty Alleviation and Stability of Ummah' (2008) 9 *Journal Ekonomi dan Studi Pembangunan* 105, 105.

⁸³⁹ *ibid*, 117.

⁸⁴⁰ Husam-Aldin N. Al-Malkawi, 'Corporate Social Responsibility and Financial Performance in Saudi Arabia: Evidence from Zakat Contribution' (2017) available at:

<https://www.researchgate.net/publication/320839814_Corporate_Social_Responsibility_and_Financial_Performance_in_Saudi_Arabia_Evidence_from_Zakat_Contribution> accessed 3 October 2021.

⁸⁴¹ Ulf Henning Richter, 'Liberal Thought in Reasoning on CSR' (2010) 97 *Journal of Business Ethics* 625.

⁸⁴² Andreas Ostermaier & Dominik van Aaken, 'Freedom trumps profit: a liberal approach to business ethics' (2020) 90 *Journal of Business Economics* volume 947.

⁸⁴³ Dima Jamali and Walaa El Safadi (n 693) 123.

pollination is impossible to achieve at this stage for the reasons enumerated above but also because the concept of CSR is still relatively new for the KSA, particularly compared to the rest of the world. This means that Saudi corporations have not yet fully understood the fundamentals of the concept, how it should be practised and implemented,⁸⁴⁴ adopting timid initiatives that do not address basic concepts of CSR.

Cultural peculiarities

Saudi corporations tend to first consider the effect of their activities on their immediate community, then think about its effect at the level of the Saudi nation and only after that will they consider the effect of their business on the international stage, if at all.⁸⁴⁵ Because of this cultural peculiarity, part of the deviation between the international and the Saudi understanding of CSR is manifested in the excessive (from a Western perspective) focus on the development of human and social capital, characteristic of the *Shari'a* law tradition. This makes alignment more difficult, particularly because the ethnocentrism of each party's attitude to CSR does not leave much room for compromise. Thus, even if the Saudi government decides to adopt a more Western attitude to CSR, it is questionable whether the corporations would take this to heart and implement it in their practices.⁸⁴⁶ This is not to say that the CEOs of big Saudi corporations do not value and appreciate CSR. However, even if they wished to modernise and align themselves with their international partners, they may be prevented from doing so by their national customer base whose opinions can prove more inflexible than those of politicians and company managers.⁸⁴⁷ This outcome would become more likely if the change was likely to clash with customers' culture.⁸⁴⁸

This point merits some further investigation because CSR, just like many other policies of the modern era, originated in the West but has been exported around the world, regardless of the hosts' cultural or religious differences with the imported concept.⁸⁴⁹ One possible solution could be if the CSR requirements applied in the West become more flexible or able to accommodate or even absorb some of the good practices of the Islamic world. This might make it easier to persuade those Saudi and other Islamic corporations which have not yet adopted the

⁸⁴⁴ Rahayu Abdull Razak, 'Corporate Social Responsibility Disclosure and its Determinants in Saudi Arabia' (2015) 23 Middle-East Journal of Science Research 2388.

⁸⁴⁵ Magnus Gravem (n 283).

⁸⁴⁶ *ibid.*

⁸⁴⁷ Areej Abdullah Algumzi, 'The Impact of Islamic Culture on Business Ethics: Saudi Arabia and the Practice of *Wasta*' (2017) PhD thesis, Lancaster University Management School, Department of Leadership and Management available at: <<https://core.ac.uk/download/pdf/153320454.pdf>> accessed 24 September 2021.

⁸⁴⁸ *ibid.*, 49.

⁸⁴⁹ Randa Diab-Bahman (n 187).

full spectrum of CSR practices to do so. Adopting a more permissive and open-minded approach to CSR will reiterate that commitment to CSR is a ‘two-way street’ and that CSR itself is a dynamic concept⁸⁵⁰ that necessarily is a work in progress and that cross-pollination between cultures could enrich the existing CSR. This argument becomes more convincing if one considers that CSR concerns the world as a whole.⁸⁵¹ The ‘corporate’ in CSR is particularly telling because modern corporations very often turn global. This means that their operations will have implications across the cultural and political divide. ‘Social responsibility’ speaks about society and that society is not limited to the West; the world is colourful and full of diversity. Not having an understanding of how certain cultures perceive CSR could easily evolve into cultural imperialism⁸⁵² which by now should have become a thing of the past.⁸⁵³ Having all of these into consideration shows why it is so important to accommodate local traditions.

Lack of awareness, legislation and an institutionalised system for CSR

Analysts from around the world have identified a variety of reasons for subpar performance. For example, a study in India⁸⁵⁴ which, together with Saudi Arabia, is considered a developing country⁸⁵⁵ identified twelve barriers to the adequate development of CSR:

Lack of stakeholder awareness, lack of training, lack of information, lack of financial resources, lack of customer awareness, lack of their reputation value, lack of knowledge, lack of regulations and standards, diversity, company culture, lack of social audit, and lack of top management commitment.⁸⁵⁶

It makes it clear that there is an ongoing issue with the lack of awareness of what the principles of CSR constitute and an insufficient understanding of the value flowing from the adoption of these principles. Some commentators have concluded that Saudi corporations investing in CSR do so only to gain good publicity among their customer base. For example, many Saudi corporations use CSR ‘to achieve a competitive edge over the other organisations in the domain

⁸⁵⁰ Binghui Zu, Zhongxue Li, Yiqing Zhao and Cuiping Li, ‘A Dynamic Model for Corporate Social Responsibility: A Case Study of Chinese Major Coal Producers’ (2014) 14 *Journal of Applied Sciences* 2109.

⁸⁵¹ Andrew Crane, Dirk Matten and Laura J. Spence, ‘Corporate Social Responsibility in a Global Context’ (*SSRN* September 10, 2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322817> accessed January 3, 2023.

⁸⁵² Farzad Rafi Khan and Peter Lund-Thomsen, ‘CSR as Imperialism: Towards a Phenomenological Approach to CSR in the Developing World’ (2011) 11 *Journal of Change Management* 73.

⁸⁵³ Krista Bondy and Ken Starkey, ‘The dilemmas of internationalisation: corporate social responsibility in the multinational corporation’ (2014) 25 *British Journal of Management* 4.

⁸⁵⁴ BBC, ‘Case study – emerging and developing country – India’ (2021) available at: <<https://www.bbc.co.uk/bitesize/guides/zgwm4j6/revision/1>> accessed 26 September 2021.

⁸⁵⁵ WorldData, ‘Saudi Arabia’ (2021) available at: <<https://www.worlddata.info/asia/saudi-arabia/index.php>> accessed 26 September 2021.

⁸⁵⁶ Luisa Pinto and Alwiya Allui (n 812) 262.

of brand loyalty of the customer'⁸⁵⁷ and not so much out of conviction. The study identified financial constraints as the main driver behind the barriers to full CSR implementation.⁸⁵⁸ It follows that should more money be invested in this area, performance will improve. Considering the immense recent economic progress of the Saudi Kingdom,⁸⁵⁹ This should not be a challenge for the government and neither this should be an issue for big Saudi companies.

A similar study this time carried out in the KSA identified 7 barriers: 'additional costs, lack of awareness and knowledge, lack of guidelines and coherent strategy, lack of stakeholder communication, lack of law enforcement, lack of training and unclear project requirements'.⁸⁶⁰ While there are some differences between the Indian and Saudi reports, it appears that the issues are similar. The interesting thing here is that India is not a poor country and neither is the KSA. India has traditionally been under the cultural and political influence of the UK by virtue of its colonial relationship. The trade relationship between the two countries is of significant importance to both⁸⁶¹ and in many cases, these activities are carried out by Indians who have either lived or are currently living in the UK. It could be expected, therefore, that they would have transposed the CSR traditions from the UK into their jurisdiction. However, it appears that this has not been the case, at least not for now.⁸⁶²

It is easy to assume that the link between Western countries and the KSA should have helped introduce new business ideas and practices, including those belonging to the CSR concept. However, the reality is that Saudi Arabia demonstrates a reluctance to adopt the Western approach to CSR in its entirety. It remains a victim of weaknesses and barriers in this area that it is capable of overcoming with greater investment. Currently, however, Saudi Arabia displays a 'lack of legislation or an institutionalised system for CSR [leading to] fragmented efforts with a low level of overall strategic strength'.⁸⁶³

⁸⁵⁷ Samia Maqbool (n 306) 282, 283.

⁸⁵⁸ Lixin Shen, Kannan Govindan and Madan Shankar, 'Evaluation of Barriers of Corporate Social Responsibility Using an Analytical Hierarchy Process under a Fuzzy Environment – A Textile Case' (2015) 7 Sustainability 3493.

⁸⁵⁹ Samia Maqbool (306) 282, 283.

⁸⁶⁰ Ali Alotaibi, Francis Edum-Fotwe and Andrew D.F. Price (n 316) 1755.

⁸⁶¹ Sangeeta Khorana, 'UK-India trade deal: why the timing is crucial for both nations' (2021) The Conversation, available at: <<https://theconversation.com/uk-india-trade-deal-why-the-timing-is-crucial-for-both-nations-160383>> accessed 3 October 2021.

⁸⁶² Lixin Shen, Kannan Govindan and Madan Shankar (n 858).

⁸⁶³ Dima Jamali and Walaa El Safadi (n 693) 123; Tareq Emtairah, Asya Al Ashaikh and Abdulmohsen Al Badr 'Context and corporate social responsibility: The case of Saudi Arabia' (2009) 1 International Journal of Sustainable Society 325.

To promote CSR in Saudi Arabia, such investment should not be only financial but should include more staff training and education of higher management. Challenges related to ‘high bureaucracy, labour laws, corruption, legal systems and investment regulations’ should be overcome.⁸⁶⁴

The question remains as to whether the change can be implemented without the corresponding legislative framework. *Shari’a* law would be insufficient to legislate on CSR matters because *Zakat* is not the same as CSR and has never been a part of the Islamic tradition. This leaves legislation as the only route to CSR compliance.

A recent report on the Middle East and North Africa (MENA) CSR practices, carried out by Cicero and Bernay in cooperation with YouGov⁸⁶⁵ found that Saudi Arabia and the UAE are at the forefront of CSR implementation.⁸⁶⁶

- 41 per cent of respondents there are familiar with CSR
- CSR is not just important for organisations but is also a factor that job seekers consider. • This was marked as an important criterion for 70% of executives in the KSA who are fully aligned with this statement
- Of the executives surveyed in Saudi Arabia, 90% possessed an intrinsic understanding of the scope of CSR
- 58% deemed CSR to be integral for their businesses.⁸⁶⁷

These findings are encouraging but they should not detract from the concerns that ‘currently there is little regulation in Saudi Arabia which could prompt a structured approach to CSR’.⁸⁶⁸ Some empirical data is suggesting that while Saudi customers would look favourably on a company that incorporates CSR values in its policies, whether the company does so will not influence their buying habits. Saudi customers are mainly influenced by the price of the products they buy and being able to offer the lowest price gives a company a decisive

⁸⁶⁴ Dima Jamali and Walaa El Safadi (n 693) 123; Tamkeen Sustainability Advisors, ‘The Evolution of CSR in Saudi Arabia: The Changing Landscape’ (2010) available at: <<http://www.tamkeencsr.com/images>> accessed 26 September 2021.

⁸⁶⁵ Cicero, Bernay, and YouGov, ‘MENA CSR Survey Report 2020’ (2020) available at: <<https://saudigazette.com.sa/article/604634>> <https://cbpr.me/csr/Cicero_and_Bernay_x_YouGov_First_Annual_MENA_CSR_Survey_Report_2020_English.pdf> accessed 3 October 2021.

⁸⁶⁶ Saudi Gazette, ‘KSA leads by example in CSR adoption and integration’ (2020) available at: <<https://saudigazette.com.sa/article/604634>> accessed 3 October 2021.

⁸⁶⁷ *ibid.*

⁸⁶⁸ Nuha Hamed Alofi, ‘Corporate Social Responsibility in Saudi Arabia: Perception, Disclosure and Impact on Firm Performance’ (2020) PhD thesis, De Montfort University Leicester Business School, available at: <<https://dora.dmu.ac.uk/bitstream/handle/2086/21153/thesis%2010.pdf?sequence=1&isAllowed=y>> accessed 28 September 2021, 111.

competitive edge.⁸⁶⁹ This suggests that companies will not have incentives to introduce CSR because doing so will mean that to keep their profit margins they must increase their prices. Simply put, companies must satisfy their shareholders and their consumers and they have little room to accommodate sustainability concerns and other CSR-related expenses. The lack of pressure from customers or rather, the pressure to provide low prices, is complemented by a general perception that ‘[d]ue to the cultural heritage, [...] both in the business community and the public at large, that social responsibility and welfare is the primary role of government’.⁸⁷⁰ This has indeed influenced the behaviour of companies, which, along with their customers believed that CSR should be the duty of the government.⁸⁷¹

While attitudes have slowly started to change, particularly with the influx of young people who have been educated abroad, many of the areas traditionally important from a CSR perspective are considered lagging behind the Western world. This is especially evident in the area of employee welfare and labour relations where the Kingdom registers one of its lowest scores on the CSR index.⁸⁷² Companies’ diversity policies, women’s right to work and discrimination in the workplace more generally also set Saudi Arabia far behind the Western world and the UK in particular.⁸⁷³

Many companies do not see the value of CSR and continue to consider the practice something that has to be done to appease the government and assist it in its CSR agenda and help the community. This suggests that Saudi business is still labouring under the misapprehension that CSR is a placeholder for charity. Thinking of CSR as a form of *Zakat* focuses the attention of companies onto the local customers, their needs and concerns, and little to no attention is given to issues of climate change and sustainability. This conclusion is supported by empirical data suggesting that many companies do not have knowledge and information about, neither they are inclined to scrutinise sustainability in their supply chains.⁸⁷⁴ This is in stark contrast with companies in the West⁸⁷⁵ while remaining in line with the main objectives of Saudi companies, which are price competition and building a good relationship with one’s trade partners.⁸⁷⁶ The latter should be seen in the Saudi reality where most businesses are still family-run and it is

⁸⁶⁹ Nuha Hamed Alofi (n 868).

⁸⁷⁰ Tamkeen Sustainability Advisors (n 864).

⁸⁷¹ Nuha Hamed Alofi (n 868) 120.

⁸⁷² Abbas J Ali and Abdulrahman Al-Aali (n 658) 40.

⁸⁷³ Nuha Hamed Alofi (n 868) 121.

⁸⁷⁴ *ibid*, 126.

⁸⁷⁵ *ibid* 123.

⁸⁷⁶ *ibid*, 123-124.

often ‘expected that interpersonal relationships between managers are important for winning orders, innovation and collaboration’.⁸⁷⁷

Another factor that should be considered is that customers from different income categories are likely to perceive CSR issues such as Fairtrade food products or reducing carbon emissions in different ways. Middle-class customers or people with a larger disposable income are more likely to support CSR policies rather than their poorer counterparts. This finding holds across jurisdictions.⁸⁷⁸ This suggests that there are a lot of people in the country that are potential consumers, yet they have no means to afford the higher prices accompanying CSR practices.

Further to this, there is the question that it is hard to convince the local population that it is more important to care about the needs of poor people who live far away than about those who live next door. CSR requires a certain amount of money to be dedicated to its goals⁸⁷⁹ and that how it is spent be transparent and clear.⁸⁸⁰ Empirical data from interviews indicate that a majority of Saudi commerce does not dedicate a formal budget for CSR activities and almost the same proportion of companies does not evaluate CSR activities to gauge how effective they are.⁸⁸¹ Most interviewees felt that if CSR was something that is being done for the benefit of the local community, it would make sense to continue doing it even in a period of an economic crisis.⁸⁸²

Unless these issues are solved, Saudi Arabia’s CSR agenda will not catch up with that of the West. Equally, if CSR becomes a formal obligation for companies, this may impose undue pressure on the smaller firms to act in a way that will be perceived virtuous from the perspective of CSR which may lead to turmoil and readjustment of the stakes companies have in their respective industries and the market more generally.

4.2.7 Overcoming challenges to the adoption of CSR in Saudi Arabia

Although some degree of progress is being made, it is clear that the challenges to the adoption of CSR in Saudi Arabia remain pervasive and enduring. They include a lack of desire and a

⁸⁷⁷ Nuha Hamed Alofi (n 868) 124.

⁸⁷⁸ Zhilong Tian, Rui Wang and Wen Yang ‘Consumer responses to corporate social responsibility (CSR) in China’ (2011) 101 *Journal of business ethics* 197.

⁸⁷⁹ Kasturi P. Rangan, Lisa Chase and Sohel Karim, ‘The Truth about CSR’ (2015) *Harvard Business Review* available at: <<https://hbr.org/2015/01/the-truth-about-csr>> accessed 3 October 2021.

⁸⁸⁰ Wim Dubbink, Johan Graafland and Luc van Liedekerke, ‘CSR, transparency and the role of intermediate Organisations’ (n .d.) available at: <https://www.montesquieu-instituut.nl/9353000/1/j4nvih713kb91rw_j9vvj72dlowskug/vjclg3i5c7dc/f=/artikel_johan_graafland.pdf> accessed 3 October 2021.

⁸⁸¹ Nuha Hamed Alofi (n 868) 126.

⁸⁸² *ibid.*

lack of understanding of the nature of CSR and what it seeks to do. They stem from a failed appreciation of what CSR is and the positive effect that it can have once implemented, both for the company and for society more broadly.⁸⁸³ It has been noted that, unlike in Europe, North America and Asia, the lack of domestic appreciation for CSR in Saudi Arabia is influenced by a lack of research by companies and academics.⁸⁸⁴ While there is an extensive amount of research into CSR at an international level going back decades, more needs to be done at the domestic level so that the key tenets of CSR can be considered, discussed and adapted in Saudi Arabia.⁸⁸⁵ Where CSR has been adopted, it has on occasion had the effect of erasing these doubts, for instance with the cost perceptions of CSR.⁸⁸⁶ This has been the case internationally and would have the same effect in Saudi Arabia.⁸⁸⁷ One of the major challenges that members of the Saudi corporate sector and the general public in Saudi Arabia feel is that CSR has an overly western character which is inappropriate or inapplicable in Saudi Arabia. This can be overcome by research and evaluation in the Kingdom so that the fundamental tenets of CSR can be applied. Pinto and Allui indicated that a more concerted effort to encourage research and understanding of CSR domestically will give rise to a more sophisticated level of CSR integration in the country, with the primary means of encouraging CSR being through a concerted effort at building understanding.⁸⁸⁸

Companies' leaders, top management and investors need to understand the meaning of CSR in decision-making and strategic planning and be more aware of the importance of CSR practices on companies' performance. CSR activities enhance the importance of the CEO's authentic leadership and the performance of the company's members.⁸⁸⁹

It is for the government to act. As has been shown by the gradual legal reform efforts alongside broader statements such as those made at the G20 Summit in 2020 and under the purview of Saudi Vision 2030, there is a desire at the governmental level for a greater degree of social interaction and engagement by the corporate sector. This is important considering governmental desire has been a major force in making CSR part of the status quo elsewhere. The next step in overcoming the underlying challenges to the penetration of CSR in Saudi society is for the government to take constructive action in boosting the understanding of what

⁸⁸³ Luisa Pinto and Alwiya Allui (n 812) 265.

⁸⁸⁴ Ali Alotaibi, Francis Edum-Fotwe and Andrew D.F. Price (n 316) 1755.

⁸⁸⁵ *ibid.*

⁸⁸⁶ *ibid*; Moneera Abdullah Alwahaibi, 'Mapping the Territory of Saudi Corporate Social Responsibility', PhD thesis: Brunel Business School, 2018.

⁸⁸⁷ Lixin Shen, Kannan Govindan and Madan Shankar (n 858) 7.

⁸⁸⁸ Luisa Pinto and Alwiya Allui (n 812) 265.

⁸⁸⁹ *ibid.*, 265.

CSR is, the nature of CSR policies, and how these can be applied, tailored and implemented in the KSA.

In constructing an effective CSR framework, one priority for Saudi authorities must be ensuring that certain types of CSR conduct are encouraged. This is not only to ensure that the CSR activities broadly fit within the scope of the definition of CSR, but also to have a longer-lasting effect on Saudi corporate culture, particularly in properly differentiating between what amounts to be philanthropic activity in line with *Zakat* and activities which are true forms of CSR.⁸⁹⁰ The legislative framework should not lay out a minimum amount of money that must be spent on CSR but only certain types of activities can qualify. Saudi Arabia would benefit from this approach by incorporating certain types of activities that were seen as societal priorities by local authorities, ensuring that a sufficient degree of flexibility is woven into the framework to allow it to be extended, for instance to the coronavirus pandemic.

Conclusion

CSR in Saudi Arabia is in its infancy. Where companies have adopted CSR practices, this has been purely voluntary and the frameworks often only have a few true hallmarks of CSR. Where CSR or CSR-relevant policies have been adopted, this has primarily been due to companies having a larger international footprint, which therefore indicates that there is a less significant and developed CSR culture domestically. There is in effect little to no legislative foundation for CSR in the Kingdom. As a result, CSR remains underdeveloped in Saudi Arabia.

Saudi companies have no effective framework to guide them on the nature of CSR, and basing these companies on international norms is still weak. Due to the legislative absence of CSR, there is no clear and practical methodology for improving the social behaviour of Saudi companies. The Companies Act does not impose special consideration for stakeholders when the director makes decisions about the company. In addition, corporate governance, although it urges companies to adhere to disclosure and transparency in general, does not follow an approach to demand an explanation in the event of non-compliance with the disclosure of non-financial reports. The Human Trafficking Act does not require companies to report on the human rights situation in global supply chains. Neitehr does the Environmental Law oblige

⁸⁹⁰ Abhishek Mukherjee and Ron Bird 'Analysis of mandatory CSR expenditure in India: a survey' (2016) 7 International Journal of Corporate Governance 32.

companies to take any preventive measures or report on the environmental impacts of their current and future activities.

While *Zakat* may have resulted in a slower uptake on some aspects of CSR and while it may hamper an overall switch to CSR rather than *Zakat* principles, the fact that it has embedded corporate responsibility as a core aspect of company affairs into the country's cultural psyche is important. For centuries, Saudis have understood the religious and spiritual nature of the *Zakat* obligation, giving rise to a feeling of societal responsibility for organisations, entities and individuals. Tailoring the country's legislative CSR response around ideological principles does not exist yet. The country's inherent religious spirituality has shaped CSR practices. The cultural structure of society in general and the lack of awareness of the effect of corporate social responsibility on sustainable profits also constituted a problem for the development and improvement of social responsibility practices in Saudi Arabia.

Chapter 5. Conceptual and regulatory challenges of CSR in Saudi Arabia compared with The UK model

5.1 Introduction

This chapter assesses the implementation of CSR in UK and Saudi firms from the perspective of experts to understand the differences. It analyses 30 interviews with industry practitioners, 10 from the UK and 20 from the KSA, to answer the main research question of this chapter, how UK and Saudi experts assess the application of CSR. This analysis includes the conceptual framework of CSR, the relationship between CSR and international and private law, and challenges that may impede corporate efforts to achieve the best practices in CSR. The contribution to the research is presented in this and the following chapter.

It concludes that there are cultural, regulatory and structural differences in the practical implementation of CSR in both countries. While the religious pillar dominates the CSR of Saudi companies, the situation is more regulated in the UK where CSR endeavours are more strategic and more related to the law. The practical result of having international guidelines and domestic legislation in the UK is that firms look both at the international and the domestic legal framework and adjust their conduct accordingly. This is appropriate because the domestic legislative framework is where the guidance on responsible business conduct, practical advice and sector-specific recommendations can be found. In the UK, relevant legislative acts include the Modern Slavery Act 2015 and the Companies Act 2006. In Saudi Arabia, CSR and law do not seem to be directly related to international directives. Saudi companies, which are mostly family-owned, lack legislation that protects human rights in the supply chains.

The chapter also finds that fears of the negative effects of overregulation are the most prominent challenges that practitioners in the UK believe prevents companies from achieving their economic function of making a profit. Islamic stereotyping of CSR and the severe disparity in the level of compliance between family businesses are the most prominent challenges facing CSR practices in Saudi Arabia. This may negatively affect the institutionalisation of CSR, meaning that unregulated charitable work, which is commonplace in Saudi firms, may benefit only a small group of stakeholders.

The chapter begins with a discussion of the methodology and then the nature of CSR, then discusses CSR in both international and private law. Finally, it addresses the problems that interviewees find real challenges in implementing CSR in both the UK and the KSA.

5.2 Empirical methodology

Qualitative research is concerned with collecting, analysing and interpreting non-numerical information. It can be used to gain a better understanding of how people perceive and interpret reality subjectively.⁸⁹¹ It includes the analysis of qualitative phenomena, including their variety of manifestations and contexts and perspectives in which they may appear, but excludes aspects such as their range, frequency and place in a chain of causes and effects that is objectively determined. As a practical matter, qualitative research typically consists of words rather than numbers.⁸⁹² Qualitative research aims to describe, investigate and explain the phenomenon under study. Common questions of qualitative research include: what is its nature, how does it work and what results can it achieve?⁸⁹³

Several benefits of qualitative methods include their ability to examine processes effectively, consider context, examine symbolic dimensions and generate empirically-supported ideas that can be applied to practice.⁸⁹⁴ Qualitative research methods and interpretation are used to view experiences holistically within specific contexts. Dennisen and Lincoln opine that qualitative research is an interpretive method and can therefore be used in interdisciplinary research. Qualitative research has developed human knowledge through the use of interpretative methods.⁸⁹⁵

A series of 30 interviews were carried out. The interviewees were mainly professionals, managers and those working with the management of CSR in 20 Saudi and 10 UK enterprises. This number of participants was chosen because further information became repetitive, signalling saturation in the interviews. It is the saturation criterion that Glaser and Strauss used in their original grounded theory to decide when to stop sampling distinct groups within each category. Saturation means that there have been no additional findings to aid in developing the

⁸⁹¹ Kamal Mahamed Zeed, 'The Difference Between Quantitative and Qualitative Research Studies' (2015) 1 *The Journal of Middle East and North Africa Sciences*, 7-9.

⁸⁹² Loraine Busetto, Wolfgang Wick and Christoph Gumbinger, 'How to Use and Assess Qualitative Research Methods' (2020) 2 *Neurological Research and Practice* 1.

⁸⁹³ Jenny Ploeg, 'Identifying the Best Research Design to Fit the Question. Part 2: Qualitative Designs' (1999) 2 *Evidence-Based Nursing* 36.

⁸⁹⁴ Alan Bryman, Michael Bresnen, Alan Beardsworth and Teresa Keil, 'Qualitative Research and The Study of Leadership' (1988) 41 *Human Relations* 13.

⁸⁹⁵ Norman K Denzin and Yvonna S Lincoln, *The qualitative inquiry reader* (Thousand Oaks, Calif : Sage Publications, 2002).

properties of the category. The author observed similar data over and over again which meant a category was saturated. The author tried to find groups with data diversity as wide as possible so that she could make sure the study is saturated with information from as many sources as possible.⁸⁹⁶

Thirty practitioners in industrial companies, academic institutions and NGOs in the UK and the KSA were selected to be interviewed. They were identified because they had experience deemed appropriate for research purposes (5 years or more) in CSR practices. Twenty were Saudis and 10 of them worked in the UK of different nationalities. Their majors were law, social service or administration. The practitioners from Saudi Arabia were academics in Saudi universities, executive directors in large and medium Saudi companies specialising in mining, petrochemicals or warehousing, middle managers in CSR and sustainability departments in large companies, and some of them worked in non-profit organisations. As for the practitioners from the UK, some of them were academics and others worked in public or private institutions.

The author obtained ethical approval from the University of Sheffield.⁸⁹⁷ An interview was designed around a set of semi-structured questions designed to provide an opportunity for discussion on a number of issues relevant to the study.⁸⁹⁸ A semi-structured interview was the best choice for the study as it laid out logically which topics or questions should be discussed during the interview.⁸⁹⁹ By using semi-structured questions, the author was able to explore more information systematically and the interviews were kept on track.⁹⁰⁰

An hour was allotted for each interview. DiCicco-Bloom and Crabtree argue that semi-structured interviews should extend from 30 minutes to no more than an hour.⁹⁰¹ The interviews were conducted in either English or Arabic (20 in Arabic and 10 in English) and recorded with the consent of the interviewees. Transcripts were then made. Since qualitative research is primarily concerned with interpreting meaning, language differences can affect understanding and interpretation at different stages. If translation issues are not properly addressed, the process can resemble the game 'Chinese Whispers' that children play. The participants whisper to each other during the game. A message is whispered by the first player to their neighbour

⁸⁹⁶ Barney G. Glaser, Anselm L. Strauss and Elisabeth Strutzel, 'The Discovery of Grounded Theory; Strategies for Qualitative Research' (1968) 17 *Nursing Research* 364.

⁸⁹⁷ See Appendix 1.

⁸⁹⁸ See Appendix 6.

⁸⁹⁹ Barbara DiCicco-Bloom and Benjamin F Crabtree, 'The Qualitative Research Interview' (2006) 40 *Medical Education* 14.

⁹⁰⁰ *ibid.*

⁹⁰¹ *ibid.*

and passed on to the end of the line. The final message of a successful game differs dramatically from the first.⁹⁰² Most interviews were translated from Arabic into English by the author and then reviewed by a professional translator to ensure that the translation was correct and the slang was translated correctly. The goal of translation was to share the findings with supervisors.

Usually, the first coding coincides with the data since the most of participants and the researcher speak the same language. The fragile nature of the interpretation process has led to the discussion of multiple interpretations of the same words, since even the meanings of these words are not fully clear in the source language. The best English wording is achieved by explaining the first English interpretations and understanding subtle differences in meaning.⁹⁰³ This is exactly what the author tried to do when she used a professional translator to reach the best English wording by determining any difference in translation that may change the meaning.

The author chose a thematic analysis. This is a method for identifying patterns in qualitative data and analysing them using data sets.⁹⁰⁴ Thematic analysis can be applied to distinct purposes and outcomes, depending on the research paradigm. It can be used to gain insight into external reality by focusing on a person's meanings and experiences. This helps build conjectural knowledge about reality and enables the researcher to construct knowledge using interactions between the researcher and participants, revealing the socially constructed meanings embedded within the individual experiences.⁹⁰⁵ The author identified 'patterns of interrelationship between many categories'.⁹⁰⁶ The study seeks to understand how CSR professionals perceive the existing rules and how they execute them in practice. It was interesting to analyse their visions and understanding of CSR. The interviewees were questioned about the extent of the company's commitment to CSR but also the elaboration of its rules of conduct and the challenges the company was facing, especially in environmental preservation and company profit. Interpreting complex thoughts and concepts require a nuanced approach.

⁹⁰² Fenna van Nes, Tineke Abma, Hans Jonsson and Dorly Deeg, 'Language Differences in Qualitative Research: Is Meaning Lost in Translation?' (2010) 7 *European Journal of Ageing* 313.

⁹⁰³ *ibid.*

⁹⁰⁴ Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77.

⁹⁰⁵ Virginia Braun and Victoria Clarke, *Thematic Analysis, APA Handbook of Research Methods in Psychology* (Research designs Washington (DC): American Psychological Association 2012).

⁹⁰⁶ Grant McCracken, *The Long Interview* (Sage 1988) 16.

In thematic analysis, certain features of the data are reinterpreted, reinterpreted and connected. With thematic analysis, it is easier for the author to classify and label data than by using tools. The author used thematic analysis to develop organisational and classification labels to describe data, in addition to interpreting and transforming the data. Unlike grounded theory, thematic analysis does not focus on interpreting or transforming data to develop theory, but neither is it not solely descriptive. It occupies a middle ground between the two poles because it goes beyond mere description and categorisation, but does not go so far that it forms theories.⁹⁰⁷

Braun and Clarke suggest that the first step in thematic analysis is to become familiar with the entire data set.⁹⁰⁸ Before jumping into the coding and theme search right away, the author became familiar with the data set which provided a valuable context for all subsequent steps and gave her an idea of how the data is structured. The author also used voice-recognition software to facilitate checking the transcript against the original recordings.

Data was sorted specifically and granularly by creating initial codes. The author began taking notes as she became familiar with the data and began to establish connections between the items. A code is described by Boyatzis as the numerical component of raw data that can be analysed with reference to a phenomenon that the data describes.⁹⁰⁹ The author made sure that the use of each code did not conflict with the use of other codes and that it fitted logically into the larger framework that outlined the codes being used. The coding frameworks reflected the deductive data.

Analysing coding and collation of data extracts reveals broader themes. Braun and Clarke suggest that taking the author's entire analysis as a house, the codes and themes represent the bricks and tiles, while themes represent the walls and roof. The entire process of construction is an interactive and interpretive process to identify themes.⁹¹⁰ Developing themes rather than relying solely on data required analysing, combining, comparing and mapping the relationships between codes graphically.⁹¹¹ The author examined the coding within each theme to make sure the data matched. Her first questions after reviewing all codes and extracts for each theme were: Are there sufficient supporting materials for each theme? Do the data included

⁹⁰⁷ Michelle E. Kiger and Lara Varpio, 'Thematic Analysis of Qualitative Data: AMEE Guide No. 131' (2020) 42 *Medical Teacher* 849.

⁹⁰⁸ Barbara DiCicco-Bloom (n 899) 14.

⁹⁰⁹ Richard E. Boyatzis, 'Transforming Qualitative Information: Thematic Analysis and Code Development' (Psycnet.apa.org, 1998) <<https://psycnet.apa.org/record/1998-08155-000>> accessed 2 April 2022.

⁹¹⁰ Virginia Braun and Victoria Clarke (n 905) 77.

⁹¹¹ *ibid.*

correspond to theme? Are there any themes that can be combined? To better capture data coding, the automated extraction of data and theme reorganisation were undertaken.

In a narrative description, the author presents a theme map and explains why each theme is important to the study question. Each theme is reviewed for succinctness and descriptiveness. All themes are deconstructed into their most important aspects and the factors of the data set that they are relevant to, establishing a coherent narrative of what each theme is about and why it is important.⁹¹² In the previous steps, the author noted and described themes and chose representative data extractions as part of the writing process. In the final step, the results and analysis are presented in a summary and submitted to supervisors.

Flexibility is considered a disadvantage of thematic analysis and thematic analysis is often perceived as being indiscriminate in its application.⁹¹³ Given the flexibility of this method, it was difficult for the author to select which aspects of the data to analyse or which theoretical or epistemological framework to apply. The terminology used often varies from methodology to methodology and is less well-defined than the methodologies with more flexible and well-defined frameworks. Therefore, manuscripts claiming to use thematic analysis may be difficult to evaluate due to their vagueness.⁹¹⁴

5.3 Understanding CSR in the UK and KSA

5.3.1 The charitable nature of CSR

The purpose of this section is to highlight the differences in the understanding of the nature of CSR in the UK and the KSA, the reasons for these differences and the problems that may result from the KSA's adoption of CSR as a form of charity. It explores if charitable work and CSR are synonymous or whether charity is just an extension of CSR in the UK and Saudi Arabia. This will help in understanding practitioners' opinions of current CSR practices which cannot be understood without analysing their adaptation to the nature of CSR. The UK practitioners' view of the benevolent nature of CSR may provide a more effective theoretical framework for adapting CSR to the KSA. The question posed to the interviewees was: what is the basis for practising CSR in your jurisdiction from your point of view?

The findings show that all the Saudi interviewees argued that practising CSR is an expression of their gratitude to the community in which they carry out their business: 'CSR is essentially

⁹¹² Virginia Braun and Victoria Clarke (n 905) 77.

⁹¹³ *ibid.*

⁹¹⁴ Michelle E. Kiger and Lara Varpio (n 907) 849.

a donation, it is our way of thanking the community'.⁹¹⁵ Sixteen of the 20 Saudi interviewees stated that the application of charitable assets means legally that it is not required to achieve a financial return from any social investment. CSR, therefore, is used synonymously with philanthropy in the KSA. For example, one Saudi interviewee noted:

The rationale underlying this attitude is rooted in the simple fact that the members of the community help the business grow by investing in it as customers.⁹¹⁶

However, all the UK interviewees said that CSR is not focused on charitable aspects such as building hospitals and care centres but current practices go far beyond that. For example, a participant from the UK stated:

CSR has historically been purely charitable work, but now is extremely different.⁹¹⁷

Nine of the 10 UK interviewees felt that practising CSR is a legal requirement for social investment.⁹¹⁸ By using social investment to address important social issues, the UK can provide insight into how the KSA can improve its CSR. An investment in social causes is repaid by financial means aimed at achieving a social and economic objective. A Saudi business can do this by seeking out social investment opportunities to enhance its business objectives, create value for society and generate value for customers and investors. The purpose of social investment is to discover new markets, grow existing markets and foster innovation that generates sustainable returns.⁹¹⁹

The Saudi perspective of CSR may mean that, for religious reasons, social investment is a religious practice known as *Waqf*.⁹²⁰ Religious practices in general, except for *Zakat*, are voluntary and therefore it is not a legal requirement that requires a penalty for non-compliance. Two good examples of how this may work in practice are the project of one company to secure food baskets during Ramadan where the company undertook to contribute in a manner equivalent to the total contributions of the employees. As a result of this project, 1,000 food baskets were distributed to the needy. Another initiative was to provide computers and tablets

⁹¹⁵ N11.

⁹¹⁶ N11.

⁹¹⁷ N2.

⁹¹⁸ The UK Protection and Social Investment Act 2016.

⁹¹⁹ Oliver Wyman, 'Corporate Social Investment: Achieving Impacts' (MARCH & MacLennan Companies 2016) <https://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2016/feb/OW_Corporate_Social_Investment_Final.pdf> accessed 9 March 2022.

⁹²⁰ *Waqf* is a charitable endowment made in perpetuity. A donation of a fixed asset that generates a financial return or benefits the donor is called a gift of capital. Profits from the gift are then distributed to beneficiaries according to their needs.

for orphans. This initiative allowed them to continue their studies on virtual education platforms. One Saudi interviewee linked CSR practices to Islamic teachings:

The concept of CSR is mainly found in religion and Islamic law and there are hadiths of the Prophet Muhammad calling for CSR towards the environment. There are also other examples, such as the presence of a woman who entered Hell because of a cat and here another woman entered Heaven because of a dog and this is a kind of CSR towards animals.⁹²¹

Another explained that CSR does not necessarily mean *Zakat* or religious practice; although we mean two compatible practices, they are completely separate:

In fact, *Zakat* is legally divided into banks, here it may be in harmony between the recipient of CSR and the recipient of *Zakat* as for CSR, it has many doors that do not converge and do not interfere with *Zakat*. [...] Employees, regardless of their administrative positions, contribute to the implementation of many other programmes, including cooperation with associations in distributing food to the needy, contributing to cleaning beaches, visiting patients in hospitals, visiting wounded soldiers stationed on the southern border, participating in breaking the fast of needy fasting people and many other CSR-related programmes.⁹²²

While a few of the UK interviewees (three out of 10) claimed that corporate charitable work may bring economic benefit to the company, the majority focused on adopting a corporate concept of CSR as a voluntary commitment to the company rather than an act of charity. For instance, two interviewees claimed:

CSR as a voluntary work could be an economic benefit to the company.⁹²³

CSR would mean more of a voluntary commitment.⁹²⁴

Philanthropy in the KSA should not be a substitute for CSR because, ‘unlike philanthropy in which corporations simply donate money, CSR takes a proactive approach to solving social and environmental issues’.⁹²⁵ For example, a study of 384 companies in the US found that those which performed worst in social work were the most generous in charitable donations.⁹²⁶ This means that to improve CSR in the KSA, it should not be a tool for a Saudi company to use to prove that it is socially responsible. While some have argued that charitable work is an

⁹²¹ N12.

⁹²² N14.

⁹²³ N3.

⁹²⁴ N7.

⁹²⁵ Zach Lazzari, ‘The Difference between Corporate Philanthropy & Corporate Social Responsibility’ *CHRON* (2018) <<https://smallbusiness.chron.com/difference-between-corporate-philanthropy-corporate-social-responsibility-65129.html>> accessed 9 March 2022.

⁹²⁶ Jennifer C. Chen, Dennis M. Patten and Robin W. Roberts, ‘Corporate Charitable Contributions: A Corporate Social Performance or Legitimacy Strategy?’ (2007) 82 *Journal of Business Ethics* 131.

indication of the ‘good citizenship of the company even if it does not stem from a moral sense,⁹²⁷ the link between CSR and philanthropic responsibilities prevails but is not essential to prove good intentions.⁹²⁸

The reason why practitioners in the KSA equate CSR with charity is due to the Saudi understanding of possessions, based on the *Quran* verse:

And the heaven He raised and imposed the balance in order that you do not transgress the balance and establish weight in justice and do not make deficient the balance.⁹²⁹

This means that people’s property is not their property but is in their possession temporarily; they are custodians of the property to serve mankind and must obey the limits set by God. Muslims, therefore, act as stewards. An Islamic perspective recognises that people serve as trustees and stewards (*khalifah*) to counter the effects of environmental crisis and ameliorate climate change. This means there is an ethical responsibility to respect the environment and all living creatures. Islamic philosophy promotes a holistic view of the universe based on the principles of proportion (*mikdar*) and balance (*misan*) within each system, therefore fostering harmony.

Saudi businessmen follow the Prophet Muhammad’s three basic principles in their work: fairness, charity and honesty. Thus, religious works have a reward in Islam because the Holy Qur’an grants the privilege of exploiting the natural resources of mankind based on stewardship, which implies the right to use someone else’s property and be rewarded if he does not damage it.

This points to CSR as a synonym for philanthropy in Saudi Arabia.⁹³⁰ As a result, no legal liability arises for the non-performance of CSR; it is subject to the company’s discretion.⁹³¹ As a practical matter, this means that Saudi firms donate to prove their CSR towards society. Since philanthropy and CSR are strongly linked in Saudi Arabia, the concept of CSR has been reduced to unsustainable practices and the serious negative effects that Saudi corporations have

⁹²⁷ Sylvie Formánková, ‘The Role of Corporate Philanthropy in CSR’ (2015) <https://www.researchgate.net/publication/291832374_The_Role_of_Corporate_Philanthropy_in_CSR> accessed 19 February 2022.

⁹²⁸ Archie B. Carroll (n 200).

⁹²⁹ Qur’an, 55:7-10.

⁹³⁰ Dima Jamali and Archie Carroll, ‘Capturing Advances in CSR: Developed Versus Developing Country Perspectives’ (2017) 26 *Business Ethics: A European Review* 321.

⁹³¹ Heesup Han, Jongsik Yu and Wansoo Kim, ‘Environmental corporate social responsibility and the strategy to boost the airline’s image and customer loyalty intentions’ (2019) 36 *Journal of Travel & Tourism Marketing* 371.

on society, the environment and the planet are ignored. By extending the concept of CSR in the KSA based on the UK experience, CSR could be improved beyond philanthropy. This means that CSR should become a legal requirement.

The UK's starting point in CSR is morality, not religion. However, some have criticised the moral philosophy created by Western companies:

My fear is that all this talk of ethics is just that, talk; new forms of corporate self-presentation that have no reference to or influence on what is practised in the name of the corporation, beyond those associated with good public relations. In this form, CSR is cheap and easy; a sort of prosthesis, readily attached to the corporate body, that repairs its appearance but in no way changes its actual conduct.⁹³²

The UK experience shows that the moral motivation of CSR can be interpreted as just an image. Morals alone may not suffice to enhance CSR. Islamic morals may have a stronger positive effect on CSR in Saudi firms than the deontology⁹³³ or utilitarianism⁹³⁴ applied in the Western world. Islamic morals strongly support CSR and business sustainability in general, but its current application is sometimes flawed.

Another difference between these two jurisdictions, in the UK, CSR should be within the company's strategy and be more institutional than just a marketing tool; for example, participating in fair trade, improving labour policies and reducing carbon footprint. Charity is a tool of CSR and not synonymous with it and CSR includes other legal, economic and moral aspects that should not be overlooked. The UK has a long history of applying CSR; for example, ethical business was dominant in the 1980s in the West and, in the 1990s, the West's seriousness in dealing with CSR appeared with the implementation of the 'strategic dimension'.⁹³⁵ This historical background to the UK's CSR made it in line with international guidelines. This was an important factor in adapting the concept of CSR from charity to an organised institutional task.

This UK vision started after linking CSR to international and private law when the regulations improved the concept of CSR in the UK. The UK's understanding of CSR affects employee

⁹³² John Roberts, 'The Manufacture of Corporate Social Responsibility: Constructing Corporate Sensibility' (2003) 10 *Organisation* 250.

⁹³³ Deontology is based on the concept that 'the end does not justify the means'.

⁹³⁴ The utilitarian perspective works on the concept of 'the end justifies the means'.

⁹³⁵ Ulrike Gelbmann, 'Establishing Strategic CSR in SMEs: An Austrian CSR Quality Seal to Substantiate the Strategic CSR Performance' (2010) 18 *Sustainable Development* 90.

retention and a company's ability to attract top talent. Employers with a clear and effective CSR strategy attract the younger generation of workers currently entering the workforce.⁹³⁶

In Saudi Arabia, there is no institutional mechanism to regulate CSR and it mostly depends on initiatives from individuals. It is applied without necessarily developing a framework strategy which means that it is limited to charitable initiatives that are primarily religious in nature. For instance, following the emergence of the Covid-19 pandemic, several Saudi companies distributed tens of thousands of masks and sterilisers. These initiatives were considered religious because they contributed to maintaining public health and Islam urges helping Muslims to preserve their lives from perishing in adversity and calamity⁹³⁷ because all human practices are dominated by religious values. Islam is a religion that deals with all aspects of life and organises them in the form of *Qiyas*. It suggests that modern cases are measured by previous cases and taken as role models, such as the idea of judicial precedents concerning common law. This means that any initiative should be religious in nature and should apply Islamic law and not oppose it in anything. Thus, the idea of a charitable nature prevails because of its religious meaning that must be done to earn a reward from God.

A fundamental problem with the Saudi understanding of CSR is that Saudi companies may deliberately mix it with charity and limit the practices of CSR to volunteering and charitable work so as not to have to pay any additional costs. This implies that many Saudi companies evade CSR with unsustainable charitable initiatives that do not create any societal wealth.

The UK model shows that CSR can be effective in the KSA if it is institutionalised as opposed to being merely used for marketing purposes or to obtain a competitive advantage. This is a tested approach to improving CSR and its transfer to the KSA is possible because there is nothing to hinder the institutionalisation of CSR either in Islamic morals or social values. This can be done through domestic regulations.

⁹³⁶ Intan Azurin Zainee and Fadilah Puteh, 'Corporate Social Responsibility Impact on Talent Retention Among Generation Y' (2020) 27 *Revista de Gestão* 369.

⁹³⁷ On the authority of Abu Musa, he said: The Prophet, may God's prayers and peace be on him, said: 'If the Ash'aris were widowed during the invasion, or their families' food in Medina was less, they gathered what they had in one garment, then divided it among themselves in one vessel equally, so they are from me and I am from them'. Narrated by Al-Bukhari in K. Al-Sharakah, B: Company in Food 3/138 No. 2486, and Muslim in K. The Virtues of the Companions, May God Almighty be pleased with them, B: From the Virtues of the Ash'aris, may God be pleased with them 4/1944 No. 2500.

5.3.2 Legal nature of CSR

It is important to consider CSR as an integral part of the business rather than as an optional luxury. The interviewees were asked:

Is there a legal framework of CSR in the UK and Saudi Arabia or if non-strategic initiatives still dominate CSR?

The answer is important because it identifies the relationship between CSR and the law. This section explores the current state of CSR governance and the reasons for the observed differences, if any. An analysis of the legal framework of CSR in Saudi Arabia provides an avenue to improve future CSR and philanthropy by suggesting a more comprehensive legal and strategic framework to keep up with its Western counterpart.

All the UK interviewees said that CSR had changed a lot because UK firms seek to achieve an acceptable legal framework for human rights. One interviewee stated that:

The UK companies try to improve their global reputation by improving the human rights regulations.⁹³⁸

This means that CSR in the UK has moved from being a form of charity to a necessity for companies to maintain their customer base, suppliers and employees:

Our work in the UK tends to focus more on how companies make their money so thinking about responsible business practices and the authority, global standards that have been developed in the Business and Human Rights space to encourage companies to recognise and implement, respect for human rights by doing your due diligence to understand how they affect people and then to do something about that.⁹³⁹

From the UK's experience, human rights are at the core of CSR and should not be ignored. The first step Saudi companies need to take to improve their social responsibilities is to consider the rights of their customers, employees, suppliers and creditors. This can be done through codes of conduct and regular disclosure of non-financial reports.

Only two of the 20 Saudi interviewees believed that CSR in Saudi companies was a strategic choice in some areas and that it was legally framed, but they did not explain how. One noted:

CSR is a strategic choice for our companies with regard to their external communications.⁹⁴⁰

⁹³⁸ N1.

⁹³⁹ N2.

⁹⁴⁰ N13.

What contradicts the idea of a strategic choice is that 10 of the 20 did not see any direct link between CSR and the law or a need for departments that may be at the heart of the work of CSR such as risk management, sustainability and occupational health. One interviewee stated:

A risk management plan has not been developed for our company. Because our company consists in developing initiatives that rely on volunteers only and initiatives that have no financial costs.⁹⁴¹

The other half claimed that the law has a role in protecting specific groups in society such as the consumer and the investor but not workers in the supply chains of Saudi companies:

We have consumer protection law and offender investment law, but no human rights law in supply chains. First time I hear about this topic!⁹⁴²

These findings show that the legal framework of CSR in Saudi Arabia is still in its early stages, quite the opposite of the situation in the UK where there is a connection between law and CSR. This means that, while Saudi respondents felt that CSR makes limited charitable contributions stemming from beliefs religious, eight of the 10 UK interviewees said that law plays a fundamental role in CSR, particularly concerning human rights:

CSR is like a balance, so it doesn't instantly privilege, those other groups, but ensures that you consider your effect on those groups as part of the decision-making process.⁹⁴³

I think it's certainly the result of regulation in the UK, which is increased, they're trying to redress that balance by saying as a director saying the management's you must take account of the environment, you must take account of consumers, you must take account of competition law health and safety.⁹⁴⁴

This connection between CSR and law in the UK and the KSA is for two main reasons. First, the law in the UK's point of view is man-made, and thus is linked to all other fields, while in the mind of the Saudi practitioner the law is God's creation. As one of the Saudi interviewees stated:

There are the *Qur'an* and *Sunnah* that regulate all our actions and it is not the law of humans that is forcing companies to do good. Second, *Zakat* is the only practice imposed on Muslims in their financial management. *Waqf* and CSR are recommended but they should not be a law or an obligation.

When describing CSR, nine of the 10 UK interviewees used the phrase 'balance', whereas all Saudi interviewees used the phrase 'religiously motivated'. This provides two major findings.

⁹⁴¹ N14.

⁹⁴² N30.

⁹⁴³ N7.

⁹⁴⁴ N10.

First, the UK perspective of CSR is an institutional and regulatory process for corporate social work in which morality plays an essential role. The reason is that morality is the main engine for practising CSR in the West according to Kant's moral philosophy that actions are moral if the motive is a sense of duty rather than fear of punishment.⁹⁴⁵ Three interviewees explained that ethical standards are binding duties that are not subject to discretion and morality can be translated through law and not the other way around.⁹⁴⁶ In contrast, according to two interviewees, the Saudi perspective is nothing more than 'traditional' where in most cases, CSR is described as charitable work. While religion is the dominant force in all business, this makes the symbolism of CSR the prevailing method. It does not mean an objective change for the benefit of stakeholders, but rather a religious commitment whose purpose is to manage impressions.⁹⁴⁷ Based on the UK's experience, CSR as a tool for impression management could undermine the entire process in the KSA. The law limits such practices and manages organisations so that they are accountable to their stakeholders.

Second, the institutionalisation of CSR in the UK is closer to internationalism as it adheres to the guidelines of the UN. While it is premature to talk about the institutionalisation of CSR in Saudi Arabia, the entire process is still seen as a religious obligation. The reason is that the EU applies the UN directives of CSR because of its commitment to international standards,⁹⁴⁸ especially with the presence of branches of European companies around the world. The KSA has a special legal system, a mixture between *Shari'a* and man-made laws that do not violate *Shari'a*. Given that the principles of CSR are highly recommended in Islamic law,⁹⁴⁹ many practitioners feel that there is no need to remind them. For instance, there are Quranic verses and honourable prophetic *hadiths* that call for compassion in society, whether as individuals or groups.⁹⁵⁰ Therefore, there is no need for law above divine law. Saudi Arabia can improve its

⁹⁴⁵ William Maker, 'Kant's Moral Teleology' (1986) 16 *Idealistic Studies* 154.

⁹⁴⁶ For example: N2, N5 and N10.

⁹⁴⁷ For example: N12 and N28.

⁹⁴⁸ Yanina Kowszyk (dirección), Emilie Besnier, Irene Haddad, Rajiv Maher and Grissel Meneses, 'Corporate Social Responsibility in Relations between the European Union and the Community of Latin American and Caribbean States' (2015) online Aei.pitt.edu. Available at:

<http://aei.pitt.edu/43368/1/Mullerat_CSR_Europa.pdf> accessed 17 February 2022.

⁹⁴⁹ Abdalrahman Mohamad Migdad, 'Scope of CSR in Islamic Economics and Finance' (2021) 7 *Islamic Economics Journal* 186; Nurisal Ismail and Ahmad Muqorobin, 'Implementation of Corporate Social Responsibility (CSR) on Islamic Banking: Maqasid Sy Ariaah's Approach' (2017) 3 *Islamic Economics Journal* 75; Muhammad Asif and Saima Batool, 'Corporate Social Responsibility Measurement Approaches: Narrative Review of Literature on Islamic CSR' (2017) 7 *Journal of Islamic Business and Management* 299.

⁹⁵⁰ 'If you were harsh and hard-hearted, they would have dispersed from around you (Surah Al-Imran verse 159, *Qur'an*).

CSR by making these lofty Islamic teachings into written law. As a result, inconsistencies in interpretation of the Islamic teachings among companies will be reduced.

CSR in Europe has increasingly come to mean social justice and human rights,⁹⁵¹ such as combating slavery in supply chains. As an example, one UK interviewee said that most of their work was about human rights.⁹⁵² All the UK interviewees felt that CSR had become subject to various legal requirements. This means, as one interviewee demonstrated, that ‘the implication of this development that adhering to the principles of CSR became more effective across all companies and it was done in a more consistent manner’.⁹⁵³ The legal requirements created a level playing field which contributes to taking a more scientific approach to the issue of CSR. These legal requirements are necessary to standardise corporate social work. For example, all companies tackle issues of environmental protection or climate change in a similar way. It is more likely that the accumulation of measures will lead to a constructive change on a larger scale and that the changes introduced in the practice of one firm will complement and support the changes introduced by other firms. An interviewee from the UK explained this idea:

Such a consistent approach could contribute to increased sustainability and could even affect wider issues such as better working conditions for employees and greater respect for human rights.⁹⁵⁴

In the Saudi jurisdiction, there is no indication of coordination between parties on CSR and to enhance CSR, actors in Saudi Arabia should call for a written CSR law to be consistent with Islamic teachings and global standards. This would create an atmosphere in which the public is more likely to trust the initiatives undertaken by notable corporations because these entities will be subject to greater accountability. This is a factor contributing to social peace and coherence. Since the legal framework of CSR provides a minimum level of corporate accountability, companies have no choice but to comply. This will significantly reduce disparities in Saudi companies’ compliance with CSR. In this way, every Saudi company will contribute to the benefit of society. This could be by providing jobs and reducing unemployment, by building housing complexes and reducing the housing crisis, or by other sustainable initiatives that contribute to social cohesion.

⁹⁵¹ Gabriel Toggenburg, ‘Fundamental Rights and The European Union: How Does and How Should The EU Agency for Fundamental Rights Relate to The EU Charter of Fundamental Rights?’ 2013 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2368194> accessed 19 February 2022.

⁹⁵² N1.

⁹⁵³ N4.

⁹⁵⁴ N8.

Although diverging from the approach of the UK, it would be wrong to assume that CSR in Saudi Arabia is understood as only relating to human resources and environmental issues:

While being charitable and working on the company's CSR is an important part of the work of a corporation, having a sustainable business is also of primary importance.⁹⁵⁵

Sustainable business is ensured by, for example, diversifying investment. Apart from bringing financial gains, this tactic also serves as a means of successful risk management.⁹⁵⁶

Islam does not conflict with the legal nature of CSR since it encourages risk management and environmental and social governance. Despite this, it has not been practically translated into Saudi law, which is derived from the provisions of Islamic *Shari'a*.

A serious problem arises due to the lack of CSR laws in Saudi Arabia, the lack of standards for corporate interaction with society and the random nature of Saudi companies' measures for conserving the environment or for the benefit of society. With the lack of accountability or any legal regulation, SMEs may be relieved of their social obligations. Consequently, these companies cannot contribute much to the economic and social development of the country.

An unorganised voluntary approach to CSR has been internalised in the work of Saudi corporations. Although follows the principles of Western philosophy in part in the voluntarism of CSR, it is based on the religious enjoinder of being benevolent. Therefore, the need to improve CSR in law and practice in Saudi is important. This is not because of the charitable nature of CSR, but rather because Saudi CSR initiatives lack sustainability. Improving CSR in Saudi Arabia requires a domestic law that clarifies: (a) sustainable initiatives that the Saudi community may need from companies; (b) the content of annual reports that companies must share with the public; and (c) the consequences of non-compliance.

There are a few examples from Saudi Arabia which contradict this ad hoc approach by the institutionalisation of charitable work. For example, the Sulaiman Abdul Aziz Al Rajhi Holding Company⁹⁵⁷ has institutionalised and organised its CSR goals. As one Saudi interviewee said:

⁹⁵⁵ N14.

⁹⁵⁶ N25.

⁹⁵⁷ Established in 2011 to be the investment arm of the endowment system of Sheikh Suleiman bin Abdulaziz Al-Rajhi. It has direct and indirect investments in a number of sectors inside and outside the KSA. It seeks to diversify and grow investments while achieving good annual returns to finance the work of the charitable sector and seeks to achieve coordination and integration among its subsidiaries.

The scope of this project suggests that complying with the CSR objectives of a business is something that should be dealt with on an institutional level, employing the necessary legal, financial and administrative measures. This approach would help achieve the professional management of the system while contributing to the positive development of Saudi society.⁹⁵⁸

This raises the question of whether Saudi companies confuse social work with CSR. In the UK, s172 of the Companies Act 2006 makes CSR a matter that should be considered when a manager takes any decision regarding the company. The law helps distinguish between the concepts of social work and CSR. In the Saudi view, CSR's scope is sufficiently wide to include dealing with human resources and the social contribution of the company. This means that there are departments that may be concerned with CSR within their work and therefore there is confusion between routine social work and CSR.

The legislative absence of CSR causes another confusion in Saudi Arabia between charity and philanthropy. A corporation can give directly to a charity and non-profit organisations can be beneficiaries with no strings attached. While the purpose of philanthropy is to solve a problem,⁹⁵⁹ in Saudi Arabia charitable donations are not differentiated. This means that donors do not have to submit spending reports to ensure funds and resources are used as planned. Saudi companies fail to distinguish between the types of contributions they make. There are no legal repercussions for Saudi businesses conflating charitable giving and philanthropy, but organisations that are dedicated will pay attention to the causes they support and particularly emphasise the donations they make and may use the media to draw attention to a specific cause to help raise money and continue the non-profit's work.

There is another difference in that in the UK, CSR targets three categories of activities: internal influences and performance indicators, external influences and donation.⁹⁶⁰ The approach in Saudi Arabia is more superficial:

The Saudi company invites charities to present their projects and initiatives referring to a specific geographical area, offering the corporation's support to the respective charity foundation with respect to those specific sectors, which are of interest to the company. Once this has been arranged between the parties,

⁹⁵⁸ N16.

⁹⁵⁹ Joseph S. Fulda, 'In Defence of Charity and Philanthropy' 2000 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=213248> accessed 19 February 2022; Anne O'Brien, 'Charity and Philanthropy' (2008) 1 Sydney Journal 247.

⁹⁶⁰ Minji Kim and Tohyun Kim, 'When Do Ceos Engage in CSR Activities? Performance Feedback, CEO Ownership, and CSR' (MDPI October 5, 2020) <<https://www.mdpi.com/2071-1050/12/19/8195>> accessed January 10, 2023.

the projects are studied, developed and worked on with a view of their implementation.⁹⁶¹

This is important for two reasons. First, cash donations that prevailed in the 1950s were ineffective as long as there was no CSR strategy.⁹⁶² As a result, UK companies are increasingly practising CSR based on ‘creating shared value’.⁹⁶³ The intention to donate in Islamic culture makes the individual more sympathetic and human.⁹⁶⁴ This is why all charitable contributions in the KSA have religious motives. Second, the institutionalisation of CSR in the UK was imposed because many Western industrial companies have a history of scandals, especially in supply chains; for example, human rights abuses were found throughout Marks & Spencer's supply chain.⁹⁶⁵ Therefore, pressure groups and audit bodies in the West are more insistent on institutionalising the process of CSR.

Consequently, non-strategic initiatives that lack a regulatory framework dominate CSR initiatives in Saudi Arabia since they are driven by religious motives, meaning Saudi firms act as stewards of society without providing any clear metrics for compliance. As a result of the lack of a legal framework, there is a confusion of concepts that significantly limits the effectiveness of the social responsibility of Saudi businesses. By contrast, UK companies are much more regulated and the link between law and CSR is a Western philosophy that has improved corporate behaviour and sustainability.

The promotion of CSR can take place through strategic donations in the KSA. This institutional action is similar to that of the UK. Hence, it should be an annual strategic donation plan, which is designed to create sustainable results. To create a long-term effect, the selection of eligible entities and donated activities must be subject to further analysis by Saudi organisations.

⁹⁶¹ N12.

⁹⁶² Santosh Nandi and Madhavi Latha Nandi, ‘Porter and Kramer’s Creating Shared Value (CSV): Evidence from International Business Models’ (2017) 2017 Academy of Management Proceedings 1.

⁹⁶³ Maximilian Schormair and Dirk Ulrich Gilbert, ‘Shared Value Beyond the Porter and Kramer Paradox – A Procedural Framework’ (2017) 2017 Academy of Management Proceeding 1.

⁹⁶⁴ ‘Your smiling in the face of your brother is charity, commanding good and forbidding evil is charity, and your giving directions to a man lost in the land is charity for you. You are seeing for a man with bad sight is a charity for you, your removal of a rock, a thorn or a bone from the road is charity for you. Your pouring what remains from your bucket into the bucket of your brother is charity for you’ (Hadith of Prophet Muhammad).

⁹⁶⁵ Jennifer McKeivitt, ‘Modern slavery allegations burn clothing supply chains’ Oct. 26, 2016 available at: <<https://www.supplychaindive.com/news/modern-slavery-clothing-retail-supply-chain/429021/>> accessed 19 February 2022.

5.4 CSR in international law

5.4.1 Sources of international law of CSR

Several sources exist from which the rules of international law relating to CSR can be extracted and analysed, including the UN Compact and OECD Guidelines for Multinational Enterprises. These and the activities of NGOs in the UK and the KSA are important for three reasons. First, to identify the difference in deriving international sources of CSR between the jurisdictions to reveal which have the greatest effect on the application of CSR and why. Thus, Saudi firms can learn from the UK what the most effective international sources of CSR are. Second, reviewing the role of NGOs is very important because they are partners to both society and companies. As focal points, they can thus identify the community needs of companies to be more socially responsible. Third, determining the code of conduct that Saudi companies focus on helps reveal the reasons for this selectivity and how to address it. By pursuing more comprehensive codes of conduct, as in the UK, Saudi companies could better fulfil their social responsibilities. The interviewees were asked two questions:

In your jurisdiction, which international social responsibility instruments have a significant effect on CSR?

What is the role of NGOs in improving CSR from your point of view?

International CSR instruments

All the UK interviewees linked CSR practices to international guidelines, especially the OECD Guidelines, the UNGC and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. An interviewee emphasised that this commitment has two important consequences:

First, that the international community has internalised the importance of CSR. Secondly, that the measures taken in this respect must be harmonised and unified, which is of particular significance, given that the majority of the corporations that may have an effect on issues connected to CSR, operate across the border and even globally.⁹⁶⁶

Another respondent from the UK mentioned the proposal for the adoption of the EU Gender Pay Gap Reporting Directive⁹⁶⁷ and argued that ‘it should be applied in the UK even after it has left the EU’.⁹⁶⁸ Nine of the UK interviewees referred to international human rights standards within the scope of their work as international labour standards:

⁹⁶⁶ N2.

⁹⁶⁷ EU COM, ‘Gender pay gap – transparency on pay for men and women’ (2020) available at: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12098-Gender-pay-gap-transparency-on-pay-for-men-and-women_en> accessed 13 September 2021.

⁹⁶⁸ N8.

The big UK brands such as Tesco, Sainsbury's or Waitrose have CSR policies and guidelines which reference and integrate into their internal legal policies various international human rights standards, including the UN guiding principles, ILO and International Labour Standards.⁹⁶⁹

The same interviewee pointed to the case of Shell, which was recently instructed by a Dutch civil court to reduce emissions by 45%.

In particular, the court requested that Shell complies with UN guiding principles and OECD guidelines and successfully manage the legitimate legal risks and the environmental and social effects, flowing from their operation'.⁹⁷⁰

These international CSR instruments are just some of what has been issued by international law. Perhaps the reason why these instruments are mentioned and not others is because of their tangible effect on domestic laws and practices in the UK.

No Saudi interviewee mentioned such general international directives, indicating the gap between the UK and Saudi perspectives. This difference arises because there is a conflict between some of what is in these international directives and Saudi domestic law. For example, the ILO urges support for trade unions, which Saudi law prohibits. There is no legislation on the ILO in Saudi Arabia and so this treaty cannot create rights in Saudi domestic law and these international guidelines are not very popular with Saudi companies. In practice, this results in two consequences: a loss of loyal employees, who may look to a competitor offering better working conditions, and a loss of innovation and market opportunities since companies do not seek to import sustainable products to save costs in the short term.

To take on social responsibilities at a global level, Saudi businesses could learn from UK companies. This means respect for international codes of conduct such as labour and environmental practices, human rights, regulatory governance, fair operating practices, community involvement and consumer issues. Saudi firms can put these international guidelines into practice through self-regulation. A company's competition with its peers around the world is the key motivator for taking a global approach in the UK. Saudi companies adhering to international standards of CSR could attract overseas clients and employees.

NGOs and CSR

Non-governmental organisations (NGOs) have increasingly supported disclosure and transparency processes aimed at measuring the degree to which companies implement CSR

⁹⁶⁹ N1.

⁹⁷⁰ *ibid.*

policies and objectives. In Saudi, this is particularly important as questions remain over whether Saudi companies have any CSR in the midst of a global debate over how best to implement it. This section discusses the role of NGOs in improving CSR practices globally and recommends making room for civil society, which represents all stakeholder segments, to be involved in implementing CSR in the KSA. CSR can be enhanced if Saudis involve non-profit organisations as partners in implementing their social responsibility.

CSR is directly related to some NGO guidelines:

Standards of CSR in the KSA are determined according to the international standard of ISO 26000.⁹⁷¹

We have, for example, ISO 26000, you say that we can create a guide that is compatible with our own and therefore in existing global applications that we encourage companies to implement them.⁹⁷²

Nine of the UK interviewees gave examples of international directives issued by NGOs which are related to human rights, workers' rights and environmental protection:

The TC identifies carbon capture initiatives. This is an organisation that companies committed to carbon emissions and supply chains.⁹⁷³

Seven of the Saudi participants mentioned the GRI in their discussion about CSR, while no participant from the UK discussed this indicator. Two Saudi participants stated:

The GRI international standards were applied this year to measure the social effect by the Ministry of Trade.⁹⁷⁴

We are committed to a global classification for sustainability and we apply one of these classifications as classification AA100, GRI.⁹⁷⁵

This is interesting because GRI has led the move toward mandatory sustainability reporting requirements in Europe and the European Commission has committed to achieving improvements in corporate transparency regarding sustainability following the publication of a proposed new Corporate Sustainability Reporting Directive (CSRD).⁹⁷⁶ This means that UK companies take into account the GRI standards as a practical result of CSRD. Saudi Arabia

⁹⁷¹ N13.

⁹⁷² N14.

⁹⁷³ N1.

⁹⁷⁴ N18.

⁹⁷⁵ N25.

⁹⁷⁶ Justina Lipskyte and Harold Koster, 'Evaluation of Sustainability Reporting Under EU Directive 2014/95' 2018 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3237133> accessed 19 February 2022; Josef Baumüller, Nikolai Haring and Stefan Merl, 'Der Kommissionsvorschlag Zur Corporate Sustainability Reporting Directive (CSRD) – Inhalte Und Implikationen' (2021) 1 Nachhaltigkeits Recht 365.

lacked environmental regulations before the mid-1990s. Before 2014, companies had to comply with new air, water and noise pollution standards. To comply with Saudi Arabia's international development plan, all projects must meet international benchmark standards for protecting natural resources and human health. In the early 2000s, the GRI became widely known in Saudi Arabia's CSR reporting systems due to its use as an international benchmark. Despite this, in 2018, a Saudi study found the annual CSR reports of Saudi energy and materials firms did not meet the standards of disclosure stipulated in the GRI guidelines. Companies disclosed inadequate environmental information and fail to meet the international benchmark standards set by Saudi Arabia's Presidency of Meteorology and Environment (PME).⁹⁷⁷

Three of the respondents from the UK felt that CSR was more beneficial in places that had local representation from NGOs. One participant believed:

Starbucks is active with NGOs that are present in a variety of coffee-growing regions in the US, this is as part of its CSR work.⁹⁷⁸

The majority of interviewees saw CSR as a significant opportunity for NGOs to achieve their mission of social transformation. NGOs have thus been able to establish relationships with companies' managers, employees and clients. Among the Saudi participants, only three agreed that NGOs no longer need to convince companies of the benefits of CSR to obtain financial support for their causes, as CSR has become a vital part of many corporations' business plans. According to a Saudi respondent:

NGOs are increasingly integrated into CSR activities as the public becomes more aware and the social performance of companies is of increasing concern to stakeholders.⁹⁷⁹

From the Western perspective, the role of NGOs is to change the economic conditions that cause social problems.⁹⁸⁰ It refers to Western companies seeking a partner to guide them in their commitment to stakeholders. In Saudi Arabia, as long as Saudi companies are not held accountable, they do not have to cooperate with NGOs to bring about social change. Due to this, the role of NGOs in the KSA is very limited. Even Saudi companies that declare that they are at least applying the GRI standards may not be doing so sincerely or they may only be

⁹⁷⁷ Rahayu Abdull Razak and Raneem Al Ahmedi, 'Environmental Disclosure Practices of Saudi Companies According to the New Gri Standards' (*Apiar.org.au*, 2019) <https://apiar.org.au/wp-content/uploads/2019/10/2_APCCR_Aug_2019_BRR732_Bus_9-13.pdf> accessed 19 February 2022.

⁹⁷⁸ N3.

⁹⁷⁹ N30.

⁹⁸⁰ Cecilia Tortajada, 'Nongovernmental Organizations and Influence on Global Public Policy' (2016) 3 *Asia & the Pacific Policy Studies* 266.

applying them to improve their reputation rather than using them for their actual purposes. Consequently, businesses become socially irresponsible and their environmental and social costs exceed their economic benefits.

Although some improvements have been made, there still needs to be more reforms and support to assist NGOs in the KSA to help firms by encouraging CSR. NGOs must contribute to the improvement of CSR in the KSA by researching to advance policymaking, strengthen institutional capabilities, and promote independent conversation with civil society to support sustainable business practices. NSOs should be legally recognised and able to access funds; local leaders should support and endorse NGO activities; and NGO representatives should participate in CSR development and implementation.

Corporate codes of conduct

Codes of conduct specify the moral guidelines and standards that guide employees' and corporations' behaviour.⁹⁸¹ Historically, they evolved to meet social and economic needs. The company's values and goals were the only information that codes of conduct provided in the 1950s to help employees know how to serve the company's interests and generate profit.⁹⁸² Therefore, CSR is also oriented toward the public good, focusing on economic and social goals.

The content and focus of codes vary depending on the business culture of the continent where they were conceived or operated. European codes, for instance, explain the principles of business holistically and the relationships between companies and their stakeholders. UK codes of conduct produced by individual firms offer rules centred on customer service. The codes emphasise that all employees share a responsibility, regardless of their position.⁹⁸³ Many Saudi companies have a code of conduct related to environmental sustainability, but most lack any other type of code. These codes usually do not include human rights issues. This shows that only one main area of CSR (the environment) plays an important role in the KSA companies at the moment. Discussion of codes of conduct in the West is important because it is a good practice to follow in the KSA to improve CSR.

⁹⁸¹ Vincent Giorgini, Jensen T. Mecca, Carter Gibson, Kelsey Medeiros, Michael D. Mumford, Shane Connelly and Lynn D. Devenport, 'Researcher Perceptions of Ethical Guidelines and Codes of Conduct' (2015) 22 *Accountability in Research* 1.

⁹⁸² Archie B. Carroll (n 200).

⁹⁸³ Alexandru Ioan Cuza, 'In brief: pros and cons of corporate codes of conduct' (*Jopafl.com*) 2016 <https://jopafl.com/uploads/issue9/PROS_AND_CONS_OF_CORPORATE_CODES_OF_CONDUCT.pdf> accessed 19 February 2022.

Four of the UK interviewees claimed that leading UK firms are complying with their CSR responsibilities by investing in ethical trade. For example, one interviewee stated:

Corporate code of conduct means that hiring people from different places to create good and solid relationships with suppliers.⁹⁸⁴

Another that:

I see this is a different type of non-financial reporting a legal requirement to report publicly on the steps taken to conduct due diligence in your supply chain to mitigate the risk of forced labour.⁹⁸⁵

All Saudi interviewees said that was no code of conduct for supply chains in Saudi firms but there is a new project that regulates supply chains:

Authority is working to develop its regulations so that they are sustainable, there are several variables, including: the 'Saudisation' system, training programmes, transfer of expertise and contracting with small and medium companies.⁹⁸⁶

A fundamental difference between the UK and the KSA is that most participants from the UK stated that the majority of UK corporate codes are about supply chains and anti-slavery, followed by consumer protection and environmental protection.⁹⁸⁷ Therefore, because adverse environmental effects are often linked with human rights violations, some UK companies may realise that these issues should no longer be tackled separately, but in a comprehensive code of conduct. Most Saudi companies have codes of conduct related to environmental sustainability, especially oil and gas companies. This difference is because Saudi Arabia is one of the world's largest oil producers and is consequently under pressure from groups concerned with environmental protection. Saudi oil companies, therefore, pay special attention to environmental sustainability since many of their customers are overseas, thus maximising profits by maintaining their reputations internationally. This is partly because there is pressure from foreign investors to focus on environmental issues.⁹⁸⁸

Saudi companies' focus on environmental sustainability should not come at the expense of other rights such as those of workers in supply chains. Except for major government-owned enterprises, few Saudi companies have codes of conduct related to supply chains. As a result,

⁹⁸⁴ N1.

⁹⁸⁵ N7.

⁹⁸⁶ N27.

⁹⁸⁷ N6, N7 and N9.

⁹⁸⁸ Habib Alshuwaikhat and Ishak Mohammed, 'Sustainability Matters in National Development Visions—Evidence from Saudi Arabia's Vision for 2030' (2017) 9 Sustainability 408.

labour rights in supply chains are left unprotected leading to more forced labour, environmental crime and corruption.

The KSA has a more domestic approach to CSR and the UK a more global approach. The Saudis can learn that conduct codes should be much more comprehensive. To improve social responsibility in Saudi organisations, codes of conduct regarding human rights in supply chains and anti-corruption are necessary. These codes should have a global rather than a local focus.

5.4.2 The effect of international law on CSR

Improving corporate behaviour

This section discusses the role of international law in improving corporate behaviour towards the community by promoting shared values. Based on the responses provided by the interviewees, it is argued that the international concept of creating shared value with the community is a good way for Saudi companies to improve their corporate citizenship and social responsibilities, thereby propelling their own growth and benefiting society simultaneously. However, these recommendations face the challenges of conflicting moral values between Saudi Arabia and the West. The following question was posed to the respondents:

Do you support businesses to improve their behaviours through shared values between companies and society?

As a result of recent cases in the UK, multinational companies may now be legally responsible for human rights violations committed abroad when local justice may not be accessible.⁹⁸⁹ Although neither the UK Alien Tort Claims Act (ATCA) nor UK cases have established international precedents, the actions are a positive step towards corporate liability for inappropriate corporate conduct abroad.⁹⁹⁰ This means that an effective international legal system enhances the accountability of companies across borders and thus improves their behaviour. For instance, one interviewee from the UK said:

UN guidelines promote community behaviour and enhances the credibility of the company.⁹⁹¹

⁹⁸⁹ *Vedanta Resources Plc and Konkola Copper Mines Plc (Appellants) v Lungowe and Ors. (Respondents)* [2019] UKSC 20. The UK Supreme Court found unanimously that Vedanta Resources, a UK company, owed a duty of care to the residents in adjacent areas of Konkola Copper Mines Plc (KCM) one of its subsidiaries in Zambia.

⁹⁹⁰ Kim Kercher, 'Corporate Social Responsibility: Impact of Globalisation and International Business' 2007 Enterprise Governance eJournal available at: <<https://ejej.scholasticahq.com/article/6906-corporate-social-responsibility-impact-of-globalisation-and-international-business>> accessed 19 February 2022.

⁹⁹¹ N5.

This means that the international regulations of CSR, especially those issued by the UN and the EU, are effective in the UK. This suggests the adoption of such a consistent international approach in Saudi Arabia to improve corporate responsibility. However, these international efforts are undermined by the fact that the UK does not have laws that require that companies carry out due diligence in their supply chain. This means that no obligations are imposed by the UK's Modern Slavery Act to remedy risks found in a supply chain, as most of the UK interviewees noted:

This is an apparent omission and could create inconsistent CSR practices across the system of operation of the company in question, including in its international operations.⁹⁹²

Fifteen of the Saudi respondents felt that the company's value is not in improving its behaviour because it is not one of its duties. Rather its value lies in enhancing its competitiveness with its peers in the first place. Four stated that some Saudi companies deal with the fact that disclosure is something negative for them:

Many corporations do charity, but they fear to be judged on account of insufficient charity, it is important for such companies to understand that transparency in this area may greatly contribute to improve the behaviour of company.⁹⁹³

This shows that while the UK perspective sees that international law creates value for the company, in linking the company's social performance to its financial performance the Saudi perspective is deficient because it does not directly connect international guidelines of CSR with corporate behaviour. However, multilateral agreements impose obligations on states, not on companies. Convention 29 of the ILO, for example, prohibits forced labour but does not directly prohibit companies from using forced labour. States must take the necessary steps through domestic legislation to meet this objective. As part of the 1997 OECD Convention against corruption, some provisions deal with both host and home states. It requires states to establish jurisdiction over acts of bribery committed outside their borders in addition to bribery committed on their territory and by their citizens abroad. However, no mention is made of companies in this Convention.⁹⁹⁴ This means that the effect of international law is limited internationally in improving the behaviour of corporate social practices as long as there is no

⁹⁹² N1.

⁹⁹³ N13.

⁹⁹⁴ Cecily Rose, 'Corporate Obligations under International Law. By Markos Karavias' (2014) 85 UK Yearbook of International Law 178; Ryszard Piotrowicz, 'States' Obligations Under Human Rights Law Towards Victims of Trafficking in Human Beings: Positive Developments in Positive Obligations' (2012) 24 International Journal of Refugee Law 181.

enforcement mechanism. However, signing international agreements that limit forced labour, corruption and the employment of minors is imperative for improving social responsibility in Saudi companies. With this type of agreement, Saudi companies will bring their ethical practices into line with global standards.

Seven Saudi respondents argued that the disclosure required by international organisations is detrimental to the company as transparency does not necessarily create value for the company and may cause dissatisfaction amongst consumers due to a lack of social performance. One claimed that ‘compliance with international directives is a Western industry [and such] concepts are alien to the KSA’.⁹⁹⁵ It is probably because there is no competition between the moral values advocated by these directives and Western moral values, but the opposite is true in Saudi Arabia where there is competition between values.⁹⁹⁶ For example, international directives recognise non-discrimination against homosexuals, something that blatantly contradicts Saudi moral values. Saudi Arabia does not accept homosexuality, as this contradicts its religion,⁹⁹⁷ culture and values. A solution to this problem to enhance CSR in the KSA can be found by addressing international agreements as separate parts. This means applying the parts that do not conflict with the internal values and excluding others that might cause public discontent. By way of example, Saudi companies could implement labour agreements that forbid modern slavery and leave out provisions that may conflict with local laws, such as unionisation.

Global business ethics have their historical roots in the Age of Enlightenment from which they derive values such as equality and non-discrimination.⁹⁹⁸ This means that Western culture is dominant over international directives, while the local culture in Saudi Arabia has different values. For example, the relationship between worker and employer is never governed by social rules, but by labour law and even some local programmes such as ‘Saudisation’ do not mean discrimination against foreigners but rather giving priority to locals to work. Saudisation is the substitution of a citizen for a non-Saudi resident in a specific job, provided that the Saudi has the capabilities, qualifications and competencies needed by the job. It constitutes a moral value

⁹⁹⁵ N29.

⁹⁹⁶ Corallina Curzi, ‘Are Human Rights Merely ‘Merely’ Western Constructions?’ (Academia.edu, 2022) <https://www.academia.edu/10739501/Are_Human_Rights_Merely_Western_Constructions> accessed 8 February 2022.

⁹⁹⁷ ‘Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people’.

⁹⁹⁸ Samara Ann Cahill Tony J. Moutray and Brijraj Singh, ‘Transitions: Studies in Religion and The Age of Enlightenment’ 2018 1 Studies in Religion and the Enlightenment i- ix; Toren Finkel, ‘The Enlightenment of Age’ (2019) 573 Nature 193.

for companies in Saudi Arabia because it contributes to reducing unemployment by qualifying Saudi citizens in all theoretical and practical fields of work in a way that gives the citizens a high market value. Companies, therefore, enhance their behaviour through Saudisation. Internationally, the process may be viewed as racial discrimination against foreigners. Such differences in moral values between societies pose a problem. CSR in the KSA cannot be improved through a traditional positivist methodology which cannot avoid values conflicts because it is no longer relevant to the realities of modern international law. The values-based method of coordination should be used instead.⁹⁹⁹

A unified legal framework for CSR

Despite differing views on CSR, providing a unified international standard is a critical step toward achieving social justice, economic advancement and human welfare in the international community. The importance of this is threefold: (a) such a framework will reduce disparities in compliance among Saudi companies; (b) it will make Saudi companies' social practices more consistent; and (c) Saudi companies will adopt a global approach to implementing CSR. Respondents were asked the following question:

Are you in favour of a unified legal framework for CSR?

Nine of the UK interviewees argued that there was a need for an international legal framework for CSR because it would benefit society rather than the company and this was not intuitive for company executives.¹⁰⁰⁰ If the management and leadership had not yet internalised the necessity for social and environmental measures, the legal framework would pressurise them to act as if they had. This was evident across all industries but particularly those affecting the environment. A respondent supported this view by giving the example of Shell:

Shell is an international corporation, which has subsidiaries in many countries. The judgment delivered by the Dutch court will certainly have repercussions on the company's operations outside the Netherlands.¹⁰⁰¹

⁹⁹⁹ Marco P. Mazzeschi, 'Coordination of Different Principles and Values in International Law' 2018 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3163099> accessed 9 February 2022.

¹⁰⁰⁰ N10.

¹⁰⁰¹ N7.

Not only does this judgement affect the way Shell approaches its CSR obligations, but it will also affect the operational culture of their competitors who want to be seen to ‘do the right thing’ as regards the environment and more generally, their CSR duties.¹⁰⁰²

Although 17 Saudi respondents stated that they had no idea and preferred to skip this question, the other three supported the need for a unified international framework. One noted:

There is a need to work institutionally under the umbrella and legislative reference and this, in turn, achieves a balance between the parties.¹⁰⁰³

A fundamental difference between the UK and Saudi is that the UK recognises the effect of a unified legal framework on CEOs as if it helps them realise the importance of CSR. Therefore, under the UK paradigm, a CSR international legal framework benefits businesses because it can help them manage risk, save money, access capital, manage customer relationships, manage human resources and develop innovation abilities.¹⁰⁰⁴

The Saudi point of view is that the effect of such an international framework on Saudi companies is limited because they focus on the local than the external community. This is due to a lack of public awareness about the international framework of CSR which creates lower demands on Saudi companies from the local community. The Saudi consumer does not look for the company’s history in social performance if they want to buy a commodity, only at a competitive price. Although there are a few examples of Saudi boycotts of international companies, it is mostly because they have violated an Islamic tenet.¹⁰⁰⁵ While it is true that there is no consistent, integrated international legal system of CSR, Saudi Arabia lacks even a domestic law regulating CSR, which makes this problem worse. It does not appear to be influenced by international standards, possibly because business culture and underlying social philosophies conflict. By incentivising Saudis to standardise CSR practices, CSR can be improved. The goal of CSR standardisation is to ensure that all processes of CSR are performed under agreed principles. CSR standardisation is meant to enforce a certain level of consistency

¹⁰⁰² Innocent Ekatah, Martin Samy, Roberta Bampton and Abdel Karim Halabi ‘The Relationship Between Corporate Social Responsibility and Profitability: The Case of Royal Dutch Shell Plc’ (2011) 14 Corporate Reputation Review 249.

¹⁰⁰³ N16.

¹⁰⁰⁴ Alan Gutterman, ‘Responsible Business: A Guide to Corporate Social Responsibility for Sustainable Entrepreneurs’ 2019 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3824992> accessed 10 February 2022. ; Manuel Castelo Branco and Lúcia Lima Rodrigues, ‘Corporate Social Responsibility and Resource-Based Perspectives’ (2006) 69 Journal of Business Ethics 111.

¹⁰⁰⁵ In 2020, Saudis called for a boycott of French supermarket chain Carrefour because a cartoon offensive to Muslims was published by a French magazine.

and uniformity which would force Saudi firms to adhere to a more comprehensive international framework of CSR and limit conflicts of interest.

5.4.3 Application of international law of CSR

International guidelines such as the UN Compact and OECD guidelines provide an open-ended regulatory framework for sovereign states and a comparison of adherence to such frameworks provide us with a ready standard of CSR acceptance and commitment. This section discusses reflexive law and disclosure statements known as the comply-or-explain mechanism. This discussion is important in improving CSR in the KSA for two reasons: (a) the reflexive law tends to emphasise procedures rather than objective rules and therefore does not conflict with the KSA's objective rules; and (b) disclosure statements in annual reports will probably be a compromise in the KSA to promote CSR although current voluntary disclosure has had no effect. Interviewees were asked the following two questions:

How do corporations implement international CSR, in your opinion?

To what extent do you think companies in your jurisdiction are bound by a disclosure statement to improve their social responsibility?

Voluntary compliance & self-regulation (reflexive law)

International reporting promotes companies to self-regulate based on an analysis of their influence on society in order to achieve public policy objectives.¹⁰⁰⁶ CSR and reflexive law theory are not novel concepts. Reporting and certification programmes have been viewed as forms of reflexive law related to CSR-related topics such as labour rights and environmental law. It has been the primary aim to encourage self-regulation through reporting or certification procedures.¹⁰⁰⁷ Reflexive law theory is concerned with regulating individual or collective actions (mostly business actions) to address societal concerns such as pollution or unfair employment practices. The concept of reflexive law can be explored both theoretically and as a regulatory approach focused on meeting the needs and concerns of the public. The primary goal of reflexive law is not to replace substantive law, but to supplement it.¹⁰⁰⁸ Norms are developed based on this learning from societal actors in reflexive law which involves making

¹⁰⁰⁶ Anna Beckers, 'Towards a Regulatory Private Law Approach for CSR Self-Regulation? The Effect of Private Law on Corporate CSR Strategies' 2019 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3369596> accessed 10 February 2022.

¹⁰⁰⁷ *ibid.*

¹⁰⁰⁸ Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 *Law & Society Review* 239.

procedural frameworks that allow them to learn about the needs and expectations of others. As a regulatory strategy, reflexive law can be employed to internalise externalities.¹⁰⁰⁹

Although some argue that the reflexive law is the best description of international procedures for CSR,¹⁰¹⁰ especially the UN Compact and OECD guidelines, no respondent from the UK or the KSA used this phrase in their interview, nor even synonymous terms such as ‘responsive law’ or ‘procedural law’. Twenty-five of the interviewees described compliance with these international directives (UN Compact, ILO guidelines, ISO26000 and OECD guidelines) as voluntary for companies. For instance, two interviewees from the UK and Saudi Arabia stated, respectively:

If we speak on the global level, CSR is a voluntary commitment.¹⁰¹¹

Adherence to international guidelines is voluntary, it cannot force anyone.¹⁰¹²

Some described them as becoming an important international requirement for members of the UNGC.¹⁰¹³ While no respondent used the term ‘reflexive law’, eight of the UK respondents made it clear that ‘the principles of the UN are procedural but do not lead to a specific outcome’,¹⁰¹⁴ which is in a way a reference to reflexive law.¹⁰¹⁵ This means two things. First, most interviewees knew that the international guidelines on CSR are non-binding procedures and that there is no accountability mechanism. Second, there is flexibility in these international directives to avoid creating a conflict of interests and restricting the work of companies. Therefore, voluntary international law is a fact according to 29 of the interviewees and is synonymous with flexibility in commitment and implementation. As one Saudi interviewee noted:

Companies should have a certain degree of flexibility as to the extent of their commitment to CSR.¹⁰¹⁶

¹⁰⁰⁹ Karin Buhmann, ‘The Danish CSR Reporting Requirement as Reflexive Law: Employing CSR as A Modality to Promote Public Policy’ 2011 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1964220> accessed 11 February 2022.

¹⁰¹⁰ Valentin Jentch, ‘Corporate Social Responsibility and The Law: International Standards, Regulatory Theory and The Swiss Responsible Business Initiative’ (Core.ac.uk, 2018) <<https://core.ac.uk/display/161571805>> accessed 30 January 2022; Kelley Burton, ‘Using a Reflective Court Report to Integrate and Assess Reflective Practice in Law’ (2016) 9 Journal of Learning Design 56.

¹⁰¹¹ N14.

¹⁰¹² N30.

¹⁰¹³ For example: N7 and N8.

¹⁰¹⁴ N5.

¹⁰¹⁵ Ірина Володимирівна Атаманчук, ‘Procedural Norms in The System of Procedural Law: General Theoretical Aspect’ (2015) 1 Air and Space Law Journal 18.

¹⁰¹⁶ N13.

However, four Saudi participants argued that Saudi businesses must work towards building a better understanding with their Western commercial partners. The importance of this cannot be overestimated since it is linked to the trust Western business partners and clients place in their Saudi counterparts.¹⁰¹⁷ Ultimately, this has to do with how successful the Saudi business will be and how able its management will be in allocating cash and effort in the achievement of its internal CSR objectives. This means that there is no application of reflexive law according to the KSA participants. The international directives are not a source of soft law, they are only incentives to improve their image and are closer to being a social rather than a legal responsibility, while their Western counterparts impliedly referred to the concept of reflexive law and supported the role of law in international directives, although they did not deny that they are voluntary and the UN cannot, for example, impose them on companies in order not to impede their work. It does suggest the need to apply even minimal directives by framing the procedures that regulate the needs of the internal community, while simultaneously accommodating external factors such as reflexive law.

There is a significant difference between the UK and Saudi Arabia in that the degree of implementation of reflexive law in the UK legal system is greater than that in Saudi Arabia. Most of the UK participants implicitly linked reflexive law with the international law of CSR, while all the Saudi participants stated that reflexive law is 'unclear and undefined'. This means that the EU reflexive harmonisation of CSR is higher than in the KSA. For example, the implementation of the EU Working Time Directive rules was framed to reduce working time by diversifying the solutions offered to unions and employers. Until the Regulation was enacted, the UK had a set of working time limits centred on a maximum of 48 work hours per week.¹⁰¹⁸ Using the UK example, we can see how reflexive law works in practice. The EU coordinated efforts between member states to reduce working hours by defining procedures that would help companies see the benefits of reducing working time. In response, the UK worked with unions and companies to create domestic working time legislation.

Reflexive law is a relatively recent theory developed by German legal theorist Gunther Teubner in the 1980s.¹⁰¹⁹ This means that reflexive law is a Western thought that symbolises self-

¹⁰¹⁷ For example: N21.

¹⁰¹⁸ Catherine Barnard, 'Reflexive Law, Corporate Social Responsibility and The Evolution of Labour Standards: The Case of Working Time' (Academia.edu, 2004) <https://www.academia.edu/14262107/Reflexive_law_corporate_social_responsibility_and_the_evolution_of_labour_standards_the_case_of_working_time> accessed 8 February 2022.

¹⁰¹⁹ Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 *Law & Society Review* 239.

regulation and normative solutions and does not replace the objective rules of domestic laws. Rather, it is the motivation for companies to carry out their social duty. Because of the emergence and development of this theory in the West, it is not widely known in Saudi circles.

This means that Saudi corporate self-regulation on CSR does not consider international normative sources, particularly international law instruments on human rights. Reflexive regulation in the EU can be an effective means of encouraging self-regulation, but it can be difficult to capture definite results. The idea of reflexive regulation might conflict to achieve specific results by public institutions. However, as a model, Saudi Arabia may learn from s54 of the UK's Modern Slavery Act, which requires commercial organisations to include a statement regarding their efforts to prevent slavery and human trafficking in their global supply chains in their annual reports. Even though this provision focuses on improving transparency in supply chains, its broader scope indicates that a more reflexive paradigm of laws is emerging amid globalisation and implications for the responsibilities of commercial organisations to respect human rights.¹⁰²⁰ Many argue that reflexive law has little practical value since it is associated with neoliberal economic policy practices. In the case of s54, these characteristics seem to have a profound effect both on its doctrinal clarity and its lack of compliance mechanisms.¹⁰²¹

In light of the experience of the EU with reflexive law, regulating authorities in Saudi Arabia should be confident that the communication process of reflexive regulation will enable them to identify and address the concerns of other social subsystems. By setting up the procedural design in such a way as to encourage inter-systemic learning and information, societal interests would be balanced in the normative outcome. Whenever expectations are exchanged, Saudi public authorities have a role to play, including providing expectations that Saudi businesses adhere to international legal standards. The normative foundation of human rights in today's society is their observation and even promotion by businesses as part of their social responsibility. As a result, business normative self-regulation in Saudi Arabia may reflect an effective reflexive regulating process. A procedure that supports the norm-creation process

¹⁰²⁰ Shuangge Wen, 'The Cogs and Wheels of Reflexive Law – Business Disclosure under the Modern Slavery Act' (2016) 43 *Journal of Law and Society* 329.

¹⁰²¹ Harry W Arthurs, 'Corporate Self-Regulation: Political Economy, State Regulation and Reflexive Labour Law', in Cynthia Estlund & Brian Bercusson (eds.) *Regulating Labour in the Wake of Globalisation* (Oxford, Hart, 2008) 19.

must create conditions that support the process of learning about social expectations for it to achieve its maximum potential.¹⁰²²

Disclosure statement: the comply-or-explain mechanism

Comply-or-explain means that the company should introduce the disclosure review panel to the public or a justification for non-compliance.¹⁰²³ Disclosure is a way for companies to demonstrate their social responsibility. A disclosure statement as a tool to implement a comply-or-explain mechanism is important because it may be the only way to bring about a real improvement in Saudi Arabia's social responsibility.

None of the interviewees touched on the comply-or-explain principle. One participant from the UK said that the reports of disclosure of CSR are 'the tip of the iceberg for the UK companies'¹⁰²⁴ while ten of the Saudi interviewees felt that a disclosure statement is an undeclared commitment for companies; taking the first step to disclose is optional, but later it becomes hardly soft law because withdrawal may affect the company's reputation. One respondent stated:

The most important standard in strategic social and CSR work for us is the disclosure statement, which shows the company's business and its effect by using tools.¹⁰²⁵

Another Saudi interviewee noted an important point, which is that 'many Saudi companies lack the necessary disclosure and do not see the need for annual disclosure reports'.¹⁰²⁶ This means that there are still Saudi companies that view the disclosure process as just a secondary procedure that they do not have to abide by. This is for two reasons. First, state- and family-owned companies dominate the Saudi market. Over 70% of listed firms are owned by family members and more than 30% of Saudi Companies are represented by the Saudi governments and CSR disclosures are negatively correlated with government ownership.¹⁰²⁷ Second, there is no international mechanism except for some directions and instructions that are nothing more

¹⁰²² Karin Buhmann, 'Reflexive Regulation of CSR to Promote Sustainability: Understanding EU Public-Private Regulation on CSR Through the Case of Human Rights' 2010 University of Oslo Faculty of Law Legal Studies Research Paper Series, available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1712801> accessed 15 February 2022.

¹⁰²³ Yuri Biondi, 'an Economic Analysis of 'Comply or Explain Principle' Under A Review Panel Regime' (2015) 5 Accounting, Economics and Law – A Convivium 295.

¹⁰²⁴ N2.

¹⁰²⁵ N27.

¹⁰²⁶ N22.

¹⁰²⁷ Khaleed Omair Alotaibi and Khaled Hussainey, 'Determinants of CSR Disclosure Quantity and Quality: Evidence from Non-Financial Listed Firms in Saudi Arabia' (2016) 13 International Journal of Disclosure and Governance 364.

than advice. This means that some Saudi companies take care of their own interests without regard to the welfare of society and are therefore self-serving. The main goal of some Saudi companies is to increase their stock price and make profits. Therefore, the tool of disclosure is not sufficiently used by Saudi companies to monitor their operations and follow the regulations and ethical standards.

Seven of the UK interviewees were more supportive of companies' compliance with European disclosure reports and mentioned that EU companies are legally obligated to publish disclosure reports, even after Brexit. For example, an interviewee said:

All big companies within the EU are complying with the requirements of the EU non-financial reports.¹⁰²⁸

Only one Saudi respondent felt that disclosure processes must be binding by international law and even think it essential to define a measurement tool to make the disclosure process more transparent:

We use the recognised Social Return On Investment (SROI) tool. Briefly, to define the challenge the company is working on, the resources allocated to solving it, the stakeholders and what each stakeholder offers and this conscious method of CSR makes us move away from the 'traditional public relations' because it lacks measurement standards.¹⁰²⁹

Five of the Saudi interviewees stated that the disclosure process means calculating the value of what they should give to stakeholders. This proves that they take the issue seriously as a commitment toward their international investors and suppliers and even their global reputation, especially if a Saudi company has branches abroad. Nonetheless, this vision may only apply to multinational companies based in Saudi Arabia or large Saudi companies with overseas branches, as they are more exposed to international scrutiny than others. In itself, this is not problematic. However, many SMEs may not choose to disclose their social responsibilities at all or may publish minimal information about their social practices.

There is a difference between the Saudi and UK perspectives about compliance with disclosure and transparency processes. The UK view interprets disclosure reports as a legal requirement and not just a tool to improve image or manage impression. The Saudi perspective is about enhancing the credibility of companies, but it is not a legal requirement. Although the empirical results confirm the existence of a positive relationship between the level of disclosure and the

¹⁰²⁸ N1.

¹⁰²⁹ N27.

profit of Saudi companies,¹⁰³⁰ the Saudi regulator has not imposed an accountability mechanism for companies that do not comply with disclosure reports. Since some Saudi companies do not comply with voluntary disclosure, Saudi companies could become isolated from the international business community. This might lead to the universal belief that Saudi Arabia is not an attractive investment environment and thus hinder the implementation of Saudi Vision 2030, which the main goal of it is, making an atmosphere that opens up business opportunities and broadens the economy.

To improve its CSR, Saudi Arabia should make disclosure a legal requirement similar to the UK's strategic report from the Companies Act 2006 or s54 of the Modern Slavery Act and its comply-or-explain system. Through CSR reports, Saudi companies will be able to assess how they affect the environment, society and the economy. As a result, companies can improve their processes and positively contribute to society. This process can help stakeholders including employees, investors, the media and non-profit organisations to make better decisions. Various decisions can be made, such as investing in a business, buying its products and writing reviews about it.

5.5 CSR in private law

5.5.1 The corporate purpose

In recent years, businesses have become more aware that the goal of a company should be to produce profitable solutions to society's problems rather than to profit from causing problems such as pollution of the atmosphere and oceans. As a result, Milton Friedman's view that a corporation has a purpose of 'just making money' has been discredited and instead it is believed a corporation should strive to produce a profitable solution to both the problems of people and the problems of the planet.¹⁰³¹ Solution-producing rather than philanthropy is increasingly becoming the purpose of some Western companies. Because of this, company theory affects CG and CSR. This section explores the effect of company theory in the UK and Saudi Arabia on CSR. This is important for two reasons. First, to determine the relationship between company theory and CSR, meaning how a company's goals contribute to sustainable profit in its social practices and vice versa. Second, it helps to redefine the corporate purpose in the KSA that addresses the positive relationship between maximising company profit and environmental

¹⁰³⁰ Putri Renalita Sutra Tanjung, 'Effect of Corporate Social Responsibility Disclosure, Good Corporate Governance Implementation, and Profitability on Corporate Value (ASEAN Country Study 2016-2018)' (2020) 05 *Saudi Journal of Business and Management Studies* 274.

¹⁰³¹ Thomas Carson (n 141) 3.

and social governance. This is fundamental to understanding how to improve Saudi Arabia's CSR practices because it explores the theory of the Saudi company as compared with the UK company and how this might affect the company's behaviour and social practices. To explore this, a question was asked of the interviewees:

Do you think that company profitability is its only purpose?

Seven of the UK practitioners said that a balance between profit and social benefit is dependent on the sector. For example, two interviewees said:

It's hard to characterise business practice, on the packaged definition of do businesses look out for the right stakeholders? Many businesses do and many businesses do not. It depends on which sector you look at.¹⁰³²

I think it varies in which stakeholders the influential, the companies that are most serious about managing social effect issues and human rights issues, those that are most kind of brand exposed.¹⁰³³

The purpose of a company in the UK, according to the respondents, is dependent on industry type. This means that some companies have greater potential to consider what is beneficial for society and others are more prone to concentrate on profit.¹⁰³⁴ It is possible to presume that corporations dealing with products that are not easily accessible to the wider public such as defence corporations are better able to conduct operations outside the remit of the CSR framework.¹⁰³⁵ All the UK interviewees stated that the purpose of the company affects its behaviour and thus its reputation. For instance, three explained how the company's behaviour affected its reputation:

This is particularly relevant for companies that deal directly with the public, such as clothing brands. Such firms are scrutinised more closely than others that are not situated in the public sphere, meaning that they are bound to observe more closely their legal obligations vis-à-vis CSR.¹⁰³⁶

If you're an oil company and you're drilling for oil in Nigeria and there are a lot of concerns about the effect that would have on the environment and on local communities. You would come in with your CSR to perhaps generate good publicity, which would be seen as positive in the sense that this is a good company.¹⁰³⁷

¹⁰³² N1.

¹⁰³³ N2.

¹⁰³⁴ For example: N7.

¹⁰³⁵ Barton H. Halpern and Keith F. Snider, 'Products That Kill and Corporate Social Responsibility' (2011) 38 *Armed Forces & Society* 604.

¹⁰³⁶ N1.

¹⁰³⁷ N7.

There was a big advertising company in the UK Bill, which made some statements in South Africa, which were considered racist, that company no longer exists, because it was, people do not want to work with them.¹⁰³⁸

Fifteen of the Saudi respondents felt that the corporate function is making a profit in the first place. Saudi company theory, therefore, emphasises shareholder value. For example, five respondents said:

Our philosophy is profitability.¹⁰³⁹

Our priority is to achieve profits.¹⁰⁴⁰

The best interest of any company is profit.¹⁰⁴¹

Companies are established to achieve profits and their existence.¹⁰⁴²

Most companies put on top of their goals and priorities the achievement of profitability in the first place.¹⁰⁴³

Some Saudi companies may decide to greenwash their activities, meaning that they will decide to implement the principles of social responsibility to achieve the greatest degree of profit possible by improving their CSR-related reputation. While it was argued by one of the interviewees that such practice is not widely seen in Saudi Arabia, it was also admitted that:

Some companies do label some of their investments a contribution to society. [...] This raises the sensitive questions of what is or should be the main purpose of a Saudi company and whether the latter should try to emulate the experience of its Western counterparts.¹⁰⁴⁴

The second question may be controversial because it requires that the company perceives itself as a legitimate participant in society and a driver for societal change. This proactive behaviour and particularly the emulation of Western practices run the risk of being misinterpreted by the more conservative parts of Saudi society which may view it as going astray from the principles of *Shari'a* law. However, Saudi companies can and should incorporate this part of the Western experience which most closely aligns with the values of Islam, including the practice of *Zakat*, and leave out the parts which can create tension and societal concern. This means that a consensual way can be found to redefine the purpose of the Saudi company to emulate its

¹⁰³⁸ N9.

¹⁰³⁹ N13.

¹⁰⁴⁰ N14.

¹⁰⁴¹ N16.

¹⁰⁴² N25.

¹⁰⁴³ N26.

¹⁰⁴⁴ N13.

Western counterpart in line with Islamic practices that emulate CSR such as *Waqf* and philanthropy.

Most of the respondents from the KSA stated that the main purpose of a Saudi company is to make a profit and thus add shareholder value because this is a social responsibility and social norm. For example, one Saudi interviewee argued that '[m]aking profits is a part of our CSR in our company'.¹⁰⁴⁵ By making a profit, the company helps the country's economy.¹⁰⁴⁶ This makes companies' social responsibility economic responsibility. The difference from UK companies, according to a Saudi respondent, is that:

Shari'a law requires this effort to obtain a profit to remain pure and aligned with the company's legal and regulatory responsibilities.¹⁰⁴⁷

Understanding corporate economic responsibility in this way links its fulfilment to the company's social responsibility and without the former, the latter could not exist meaning that profit ensures the existence of stakeholders which the company must take care of to meet its CSR objectives.

It is thus necessary for a company to learn to balance its responsibilities, both economic and social, by dedicating an amount to the latter which will not cripple the entity and make it unable to meet its economic goals. Such a balance should be done regularly and consider the context in which the company operates: whether the overall economic state of the country is beneficial for social investment or not; whether the international market relevant to the corporation's activities is stable; and whether the company's business progresses well. Once such an analysis has been conducted, the corporation can allocate its resources to each area.

The Western view of the economic responsibility of corporations does not align with this. Creating an economic responsibility means not just making profits, but also enhancing the standard of living of citizens, ensuring they have access to quality goods and services at reasonable prices, providing jobs and paying decent wages, enhancing career opportunities in all sectors and eradicating poverty.

The Saudi philosophy of corporate purpose is that the claim that making profits contributes to the common good is not necessarily true. Thus, the common good in Saudi Arabia may not

¹⁰⁴⁵ N21.

¹⁰⁴⁶ Alexander Kritikos, 'Entrepreneurs and Their Impact on Jobs and Economic Growth' 2014 IZA World of Labour available at: <<https://wol.iza.org/uploads/articles/8/pdfs/entrepreneurs-and-their-impact-on-jobs-and-economic-growth.pdf>> accessed 15 February 2022.

¹⁰⁴⁷ N23.

benefit from profit-making enterprises, particularly if they are only interested in serving themselves at the expense of stakeholders. The damage companies do to the environment and society may outweigh their contribution to local economic development.

This raises a familiar issue, namely whether there is there a conflict between the objective to make a profit and thus fulfil the company's obligations to its shareholders, and the desire to achieve its CSR goals. The discussion on UK companies and how they approach their CSR responsibilities showed that profitability is one of their main objectives. At the managerial level, profitability is the focus of the activities of Western corporations in general according to a UK interviewee.¹⁰⁴⁸ This is driven by deference to the shareholders and by the established notion that a company must produce value for them. The position of a Saudi company is different, as is its motivation. One Saudi respondent stated that a Saudi company is 'primarily driven by the objective to create value for society, to be and remain its service'.¹⁰⁴⁹ This is reflected in practice by the utilitarian drive to create the greatest benefit for society by distributing it across the largest possible number of individuals. This is motivated by gratitude and a sense of responsibility towards society, which inspires companies to harness their financial and human potential to serve the community to the best of their abilities.

In their discussion of corporate purpose, the Saudi participants held differing opinions. Those who argued that the company aims to create value for society draw their inspiration from the charitable nature of CSR in Islamic law, but some felt that maximising profit itself is CSR. One felt that the company's behaviour does not need to affect its reputation as long as it provides good service to the consumer and gave an example:

When someone goes to buy a car, he does not pay any consideration to the company that applies CSR or not, but all that matters to him is the price of the car.¹⁰⁵⁰

The reason this finding is interesting is that there is a conflict in the answers of the Saudi participants about discussing the purpose of the company. In the view of some of them, the existence of the company in itself is CSR as it is required to maximise profit to ensure its continuity and its reputation is linked to consumer satisfaction. Observing the UK experience, some sectors, especially those dealing directly with the public, must balance their economic function with societal benefit. Saudi companies, therefore, need to focus on long-term instead

¹⁰⁴⁸ N5.

¹⁰⁴⁹ N11.

¹⁰⁵⁰ N23.

of short-term profits. A company's sustainable profit is related to its social responsibility, as it should be an active part of society in solving social problems.

These findings are in favour of treating CSR as an integral part of corporate behaviour,¹⁰⁵¹ and are opposed to a scenario in which a company's leadership does not consider the effect of their actions on the community. Compliance with CSR obligations just for the sake of reputation may and often does lead to only superficial observance of CSR duties. What such companies may decide to do is to meet only the most basic CSR legal obligations without actually asking what should be done to meaningfully improve the dividend for society.

The law can result in restricting the ability of a firm to conduct its operations and creating an uneven playing field. This is due to firms' different abilities to cope with a particular CSR regulatory regime. For example, firms with greater exposure to the wider public find themselves in a position of greater scrutiny; therefore, they need to invest more in CSR and be more careful in how they carry out their activities. Companies from countries where CSR is not so embedded in the domestic legislative framework will thus have a competitive advantage over their more regulated counterparts. However, while this advantage is real and can bring greater profits in the short term, the CSR compliant companies with sufficient financial potential are in a far better position to thrive in the long term.

In the UK and Saudi Arabia, the purpose of the company is dependent on several factors including the type of sector, the size of the company and the level of local legislation. In Saudi Arabia, there is no local legislation on CSR which suggests that there is deep disagreement about the purpose of the business and the results are naturally contradictory. Although Western companies have a different level of compliance and define their purpose differently, they remain adept at inculcating the corporate theory that stresses social responsibility as a strategic behaviour. In the KSA, despite the spread of corporate charitable work, maximising shareholders' profits is still the main function of the company. This leads to corporate social and environmental costs such as pollution, poor quality products and unfair business practices. The Saudis can learn from the UK experience that practising CSR only for the sake of improving reputation is not sustainable. Observers pay attention to how well social responsibility initiatives are implemented and so short-term CSR initiatives to improve

¹⁰⁵¹ Kuiyoung Kang and Youngmin Yoon, 'The Effects of Corporate Ethicality, CSR Consistency, and CSR Fit on the Perception of CSR Authenticity: Focusing on The Moderating Effects of Anti-Corporate Sentiment' (2018) 20 *The Korean Journal of Advertising and Public Relations* 5; Yi-Ru Regina Chen and Chun-Ju Flora Hung-Baesecke, 'Examining The Internal Aspect of Corporate Social Responsibility (CSR): Leader Behaviour and Employee CSR Participation' (2014) 31 *Communication Research Reports* 210.

reputation with customers are insufficient. This suggests Saudis should reconsider the purpose of the Saudi firm to improve their social responsibilities.

5.5.2 CSR, company law & corporate governance

Corporate law and CG have an important role in promoting CSR in the UK. This section first compares how corporate law and CG in the UK and Saudi Arabia address stakeholder interests and then analyses the enforcement challenges that s172 of the Companies Act faces in the UK. The purpose of this is to study the weaknesses in UK legislation in promoting CSR before suggesting any Western mechanism or theory amend the existing Saudi corporate law and CG. The respondents were asked:

Do you believe that the current corporate law & corporate governance in your country motivate companies to improve their social responsibilities?

Nine of the UK interviewees claimed that businesses operating in the UK are motivated by company law and CG:

On CSR the UK CGC and s,172 of Companies Act 2006 offer guidance on the ways businesses are expected to engage with their stakeholders, including employees for example, by demonstrating their clear purpose and strategy' and,

The UK CGC and the provisions of section 172 of the UK Companies Act aim to create a balanced system where the companies engage CSR with all stakeholders. However, this is undermined by the current system of remuneration in the UK which links the short-term performance of the company with the remuneration of the company's leadership.

We are asking them to disclose what they do to comply with 172 and report it to their transparency way so it's reported, as the way you would have a strategic report.¹⁰⁵²

There is the Companies Act, s172 and s414, to address what others have specific responsibilities in relation to reporting.

Section 172 is a kind of the DNA of the UK company to improve CSR.¹⁰⁵³

All these respondents felt that ss172 and 414 are insufficient to protect stakeholders, but it is perhaps a gesture of goodwill. For example, two of them stated:

In my opinion, wholly insufficient, we're still at the start of a journey.¹⁰⁵⁴

We have a law enforcement problem here' and '[s]ection 172 is just an image.'¹⁰⁵⁵

¹⁰⁵² N6 and N7.

¹⁰⁵³ N8 and N9.

¹⁰⁵⁴ N1.

¹⁰⁵⁵ N10.

One UK interviewee said that:

Section 172 is an implicit identification of the relationship between the interests of the corporation and the interests of society and the case of *Re Smith and Fawcett Ltd*¹⁰⁵⁶ is approach to interpreting 'bona fide'. Although s172 promotes CSR by 'promoting the company's success for all members', it is not a starting point for establishing 'shared value', because the director's duty is to enhance the success of the company represented by its shareholders in the first place, while the rest of the community is a secondary goal.¹⁰⁵⁶

This is probably because, under s172, directors are not given much guidance on how to act in practice. It outlines the external interests that directors are to consider, but it does not specify how these external interests should be taken into consideration and therefore clarify what directors must do to comply. Neither does s172 grant standing to stakeholders other than in initiating a lawsuit against a company for non-compliance with social or environmental governance. In practice, this means that matter is more moral than physical. Investors (as stakeholders) have the right to vote for the selection of the board of directors and minority shareholders have the right to buy their shares in the case of unfair behaviour. This protection of only a portion of the stakeholders is important but certainly not sufficient. Under ss414A-D of the Companies Act 2006, companies must include information about human rights to understand the development, performance or position of their businesses, including information about any related policies and how effective they are. Although this enhances corporate transparency and imposes penalties for non-compliant companies, there is no specific mechanism for evaluating the information provided or even the extent of its transparency. This analysis, based on practitioners' analyses, is consistent with the literature critical of the mechanism of enforcement of s172.¹⁰⁵⁷ The Saudis can learn from the UK's experience that the role of the law should be stronger and more defined to improve CSR. It should specify the mechanism of enforcement of the sections calling for the protection of stakeholders. This will not be easy because it requires that it be a smart law in the sense of being in a position to support the company in the performance of its social responsibilities without pushing it to do so. Pushing companies to implement CSR may encourage them to defraud the system to evade their social responsibilities but a smart law that places CSR somewhere in the middle between a purely voluntary practice and a strict legal requirement could improve CSR in the KSA.

¹⁰⁵⁶ N2.

¹⁰⁵⁷ Ernest Lim (n 371); Amita Chohan (371); Theophilus Tawiah, 'Do We Need Public Enforcement for Breach of Duties of Company Directors under the Companies Act 2006?' (2021) 9 Journal of Law and Criminal Justice 52; Georgina Tsagas (n 379).

When the Saudi interviewees were asked if Saudi companies apply CSR under company law, all replied ‘no’, but some felt that Saudi companies are required to be socially responsible:

Our company as a joint stock company has laws and controls that protect its business and protect the rights of stakeholders, as the company adheres to the requirements for listing on the stock market, which include the organised disclosure of the company’s assets, sectors and investments and a review and analysis of its operations and financial position.¹⁰⁵⁸

We have committees and regulations that regulate CSR.¹⁰⁵⁹

Under Saudi corporate law, the highest decision-making body of a Saudi company is the General Assembly of Shareholders.¹⁰⁶⁰ Clearly, the company’s management is obligated to apply CSR policy if approved by this body. Every shareholder has the right to debate, ask questions and see reports that are disclosed. One Saudi respondent noted that a ‘company’s annual report typically discloses its contributions to CSR throughout the year’.¹⁰⁶¹ The directors of a Saudi company are under a duty of care to their shareholders,¹⁰⁶² which suggests that it is consistent with the principles of agency in Islam whereby the agent serves the interests of the principal. This means that corporations are a fiction and those who should bear this responsibility are the executives who are, however, employees of the company. This refers to the personal responsibility of the decision-makers in Saudi companies. Therefore, there is a distinction in the Saudi application of CSR between the social stance taken by the executive and what they are permitted to do in the performance of their obligations. One Saudi participant said:

In every case when the corporate executive would be pursuing a socially responsible cause, he would be spending someone else’s money for a general social interest and this is wrong.¹⁰⁶³

Most Saudi interviewees felt that the Saudi company is not motivated by Saudi CG to promote CSR, at least as far as their work within Saudi Arabia is concerned. For example, one Saudi respondent noted:

[T]here are three criteria required by the ministry to prove that the facility achieves governance, which are the following:

1- Standard of transparency and disclosure.

¹⁰⁵⁸ N11.

¹⁰⁵⁹ N27.

¹⁰⁶⁰ Saudi Corporate Law 2022.

¹⁰⁶¹ N11.

¹⁰⁶² N1.

¹⁰⁶³ N30.

2- Standard of financial safety.

3- Standard of compliance.¹⁰⁶⁴

While Saudi CG encourages compliance, transparency and disclosure of financial statements,¹⁰⁶⁵ there are no provisions that require companies to disclose such as non-financial reports and no comply-or-explain principle in Saudi CG, increasing the likelihood that Saudi companies will be indolent in their CSR since they are not required to comply with a minimum standard of publishing CSR reports.

There is a slight difference between the UK and KSA in addressing CSR in corporate law and CG. While shareholder value is prevalent in Saudi corporate law, ESV is the dominant theory of the UK's Companies Act 2006. In the KSA, executives are thought to be the agents of the shareholders. As agents, they are responsible only to the shareholders and are thus focused only on increasing shareholder value.¹⁰⁶⁶ This means that any decision which does not protect shareholders and maximise their profits is against the principle of agency. The basis of this theory is that agency principles are supposed to apply to CEOs under *Shari'a* Law. This means that the general principle of agency under *Shari'a* can be applied to directors' fiduciary duties. In particular, the agent must act within the boundaries of their authority as an agent and in the best interests of the principal.

ESV is somewhere between shareholder value primacy and the continental European model of stakeholder value. Corporate law and human involvement in companies should, therefore, go hand-in-hand. The value of a company should be determined by its contribution to society. This does not mean that ESV contradicts the company's economic function of maximising shareholder value, but rather it is an extension of it whereby directors should maximise the value of the shareholder in a way that does not conflict with moral and stakeholder values.

The UK model can be beneficial to the KSA as ESV can be a complement to shareholder value. As a result, shareholder value, which stands for maximising shareholder profits only, is no longer accepted globally and it should be improved in the KSA so that it at least does not blatantly conflict with moral values and stakeholders' interests.

When the 30 participants were asked if they were satisfied with the demographic representation on the board of directors in companies in their countries, 29 answered no. The last participant,

¹⁰⁶⁴ N12.

¹⁰⁶⁵ Saudi Corporate Governance 2017.

¹⁰⁶⁶ Milton Friedman (n 139).

who was from the UK, was not sure because he had no recent statistics. There is poor representation of women on the boards of directors in both countries, which is a challenge. Women make up 39% of the boards of directors in the UK. The FTSE Women Leaders Review sets out recommendations to encourage UK companies to open up opportunities to women, including an increase to a minimum of 40% female representation on FTSE 350 boards and in leadership roles by 2025.¹⁰⁶⁷ However, it is rare to find Saudi women on corporate boards because of cultural barriers.¹⁰⁶⁸ However, according to the Harvard Business Review, boards with diverse members are more successful than those with primarily male members.¹⁰⁶⁹ This motivated the author to propose a solution to increase the rate of female representation on boards of directors to promote diversity in Saudi companies (see Chapter 6).

5.5.3 CSR and supply chains

This section highlights the UK and Saudi perspectives in addressing human rights across supply chains and the reasons for the differences. It explores whether Saudi companies suffer from a legislative vacuum to protect human rights across borders. The purpose is to improve the practices of Saudi companies in supply chains by transferring the leading UK legislative provisions in this field. This is particularly important because international business operations are becoming more aligned to retaining customers, suppliers and partners around the world and Saudi Arabia is a significant part of this vast global business sector. To this end: the respondents were asked:

Are there domestic laws that protect human rights across supply chains? Are they sufficient in your opinion?

Human trafficking and labour exploitation are acts of modern slavery that affect the UK and the rest of the world. UK organisations are required to investigate and report on their supply chains under s54 of the Modern Slavery Act 2015. They publish modern slavery transparency statements which include a detailed description of the supply chain, the organisation's structure, slavery and trafficking policies and business location.¹⁰⁷⁰

¹⁰⁶⁷ GOV.UK, 'Sea-Change in UK Boardrooms as Women Make up Nearly 40% of FTSE 100 Top Table Roles' (GOV.UK, 2022) <<https://www.gov.uk/government/news/sea-change-in-uk-boardrooms-as-women-make-up-nearly-40-of-ftse-100-top-table-roles>> accessed 17 March 2022.

¹⁰⁶⁸ Abeer Omar, 'Rare Middle East Push for Women on Boards Runs into Culture Wall' (*Bloomberg Quint*, 2022) <<https://www.bloombergquint.com/business/rare-middle-east-push-for-women-on-boards-runs-into-culture-wall>> accessed 17 March 2022.

¹⁰⁶⁹ Sylvia Hwelett, Melinda Marshall and Laura Sherbin, 'How Diversity Can Drive Innovation' (*Harvard Business Review* 2013) <<https://hbr.org/2013/12/how-diversity-can-drive-innovation>> accessed 17 March 2022.

¹⁰⁷⁰ UK's Modern Slavery Act 2015 s54.

All the UK respondents stated that s54 did not adequately protect human rights in supply chains. Comments like ‘absolutely it is not enough, but it’s a good start’,¹⁰⁷¹ ‘I would not say that they are sufficient, I think more needs to be done’¹⁰⁷² and, ‘although with a caveat, you do not have to do anything under the Modern Slavery Act’¹⁰⁷³ were made. Three argued that the Act fails to achieve a real change and guarantee that supply chains are free from forced labour,¹⁰⁷⁴ and it had no penalties or benchmarks:

The regulator can enforce you to publish the statement, but it does not tell you what to say and in the statement you were allowed to say you have done nothing.¹⁰⁷⁵

We still do not have a situation where a company is obliged to do due diligence in respect of its supply chain and actually determine if there is exploitation, for example going on within the supply chain, there is no need for a modern slavery statement to disclosure, which often is, if you look at them in company reports, they are often quite boilerplate.¹⁰⁷⁶

Having a clear idea of what a company does and how well it manages its supply chain CSR would be a complicated task because there could be a conflict between the desire of a corporation to stay competitive and their efforts to consider the human rights of the participants in the supply chain. The modern understanding of CSR in the West is a natural progression from the understanding of the concept at its inception. In the past, CSR was understood as doing good or at least not causing harm. The current Western approach now requires much greater proactivity on behalf of corporations. For example, it will not suffice if the corporation knows that it has not endangered the community in any direct way. It is expected that the leadership of the corporation looks into all parts of its operation, including its supply chain, to identify whether something related to its operation had a negative, in the CSR sense, effect on society. Since the specific application of CSR will necessarily depend on the type and the size of the industry, it remains flexible and, to an extent, inconsistent. For example, supply chain management in big businesses in the UK must consider ESG factors. Therefore, UK businesses from sectors such as transport, technology and finance such as AstraZeneca (AZN) and

¹⁰⁷¹ N10.

¹⁰⁷² N3.

¹⁰⁷³ N5.

¹⁰⁷⁴ N5.

¹⁰⁷⁵ N7.

¹⁰⁷⁶ N9.

GlaxoSmithKline (GSK)¹⁰⁷⁷ have joined the UNFCCC ‘Race to Zero’ about climate change.¹⁰⁷⁸

The UK’s experience teaches Saudi Arabia that CSR is a proactive approach to safeguarding human rights in its supply chain and not an attempt to repair a company’s reputation after malicious behaviour has occurred. Due to this advanced approach, the KSA has to first acknowledge that it has a responsibility to protect worker, supplier and consumer rights along cross-border supply chains to improve its CSR.

This also depends on the balance of power between leaders and stakeholders. Stakeholders include a great number of individuals and organisations including investors, customers and business partners, but also the media, civil society organisations, workers and trade unions. In principle, the greater the exposure of a brand, the more likely it is that the power will shift towards stakeholders and vice versa. The majority of the leading UK supermarket retailers have become acutely aware of the implications for their reputation of whether or not they adhere to CSR principles in their operation.¹⁰⁷⁹

No participant discussed the possibility of the Secretary of State seeking an injunction against non-compliant companies, a sanction that is allowed under the Modern Slavery Act.¹⁰⁸⁰ However, all agreed that a lack of enforcement and penalties is the biggest issue in enforcing a robust supply chain. Although reports are made public under s54 of the Act, it is hard to properly measure the effectiveness of what has been done in CSR. This is unfortunate because, in principle, it should be easy to measure companies’ CSR effects. There are areas such as carbon emissions from a company’s business operations where this could be estimated with sufficient certainty. The same should apply to workers’ wages.

Making s54 of the Act mandatory is hindered by many factors. Some cases may occur outside the UK, but the UK may be used as a transit station. In this case, the enforcement of the law is much more difficult because it may collide with another legal entity in another sovereign

¹⁰⁷⁷ GOV.UK, ‘Third of UK’s Biggest Companies Commit to Net Zero’ (*GOV.UK*, 2022) <<https://www.gov.uk/government/news/third-of-uks-biggest-companies-commit-to-net-zero>> accessed 25 February 2022.

¹⁰⁷⁸ The United Nations Framework Convention on Climate Change is a race to zero campaign.

¹⁰⁷⁹ Claire Elisabeth Pulker, Georgina S. A. Trapp, Jane Anne Scott and Christina Mary Pollard, ‘Global Supermarkets’ Corporate Social Responsibility Commitments to Public Health: A Content Analysis’ (2018) 14 *Globalisation and Health* available at: <<https://globalizationandhealth.biomedcentral.com/articles/10.1186/s12992-018-0440-z>> accessed 25 February 2022.

¹⁰⁸⁰ Section 54(11) of the Modern Slavery Act 2015.

country leading to a conflict of laws and legal uncertainty for companies that attempt to determine what their obligations are. Second, laws may hinder the principle of free trade and economic progress should not be held back due to a refusal to engage in trade opportunities by mandatory scrutiny of human rights across the supply chain lest it impede economic advancement in places and for people who need it most.

One UK interviewee suggested that companies should ‘think about diversity and inclusion practices and policies within their own company data [and] about how their operations affect the human rights of other people’.¹⁰⁸¹ Even in cases where a company is doing its best to comply with CSR in its supply chains, it may not be able to do so to the best of its intentions. The failure to align intentions with reality may be due to the imperfect system of reporting slavery although, as the same interviewee observed, ‘there’s also a lot of those that only do the bare minimum to comply with the law’.¹⁰⁸² For example, firms are required to include in their reports everything which is relevant to their compliance with the protection of human rights. In reality, firms present reports which show them in a very positive light (producing a ‘nice, glossy report’ as one interviewee noted);¹⁰⁸³ however, they rarely discuss everything that has been done in connection with or as a result of their CSR responsibilities. Such omissions are due either to the culture of the company which has adopted a more streamlined line of reporting to make it more time-efficient for stakeholders or to concerns that including more in the report will expose the company to legal liability. This is not to say that everything that does not find its way into the CSR reports is necessarily negative; rather, as one participant stated: ‘there remains a big disconnect between what the company is saying that it is doing and what it is doing in reality’.¹⁰⁸⁴ This makes finding legal grounds to prosecute corporations difficult. Drawing on the UK experience, the Saudi Financial Market Authority could develop an index of CG to cover CSR reports. CSR reports of listed Saudi companies could be measured based on how well they adhere to their self-regulation of CSR. This may enhance the transparency of their reports.

One interviewee said:

The EU is moving towards mandatory human rights due diligence, whereas on the other hand, the UK is not.¹⁰⁸⁵

¹⁰⁸¹ N3.

¹⁰⁸² Ibid.

¹⁰⁸³ N4.

¹⁰⁸⁴ N2.

¹⁰⁸⁵ N3.

This is not a desirable development, especially as the Modern Slavery Act is, in the view of one interviewee, already outdated¹⁰⁸⁶ despite its strong focus on corporate accountability and has other issues which a new Act could deal with successfully. Unfortunately, since Brexit, one respondent claimed that ‘the UK legislature appears reluctant to introduce more human-rights-centric legislation’,¹⁰⁸⁷ which indicates an imbalance between overregulation and lack of the most appropriate CSR regulation in the UK.

A legislative framework does not exist in a vacuum; rather, it reflects global standards which have by now been internalised by the broader public. This means that every brand and business finds itself under constant pressure to do better in complying with standards. This pressure does not come solely from companies’ regulatory obligations but from their stakeholders who have high expectations of the performance of the business they purchase from or are connected to. For instance, studies suggest that the millennial population, Gen Z and the younger generations more generally, do not want to either work for or buy from companies that do not have a strong sustainability and responsibility agenda.¹⁰⁸⁸ This behaviour becomes more pronounced in times of a crisis such as the Covid-19 pandemic. This is not entirely surprising, as one UK participant UK stated:

Given the fact that the current health crisis had and continues to have serious economic implications, which pressures consumers into a more selfish and/or pragmatic consumer behaviour.¹⁰⁸⁹

The change in attitude described above positions a company in a difficult situation in which it must learn how to balance its main objective of making a profit with its CSR aspirations and, increasingly, obligations.

By contrast, most Saudi respondents had no idea about the relationship between CSR and supply chains. Some even have no idea about the concept of supply chains:

The truth is that during my work in this field over the past six years, I have not heard about this concept.¹⁰⁹⁰

¹⁰⁸⁶ N3.

¹⁰⁸⁷ N10.

¹⁰⁸⁸ Adrián Castro-López, Victor Iglesias and Javier Puente, ‘Slow Fashion Trends: Are Consumers Willing to Change Their Shopping Behaviour to Become More Sustainable?’ (*Researchgate2021*) <https://www.researchgate.net/publication/357091243_Slow_Fashion_Trends_Are_Consumers_Willing_to_Change_Their_Shopping_Behavior_to_Become_More_Sustainable/fulltext/61bb3feffd2cbd7200a3f9ad/Slow-Fashion-Trends-Are-Consumers-Willing-to-Change-Their-Shopping-Behavior-to-Become-More-Sustainable.pdf> accessed January 10, 2023.

¹⁰⁸⁹ N4.

¹⁰⁹⁰ N14.

Most companies do not pay attention to this problem.¹⁰⁹¹

What do you mean by supply chains?¹⁰⁹²

Only two were interested in discussing supply chains:

There are provisions in the labour system that guarantee workers' rights within the KSA. As for outside the KSA, there are many conditions and standards that must be taken into consideration when dealing with these companies, CEO among them ensuring the reputation of the company and its international classification and that it is free from any suspicions or legal problems. The Chambers of Commerce also emanating from the Ministry of Commerce have an important role in shaping some relations with companies and countries.¹⁰⁹³

There is the 'Local Content Authority' project, which is a national body that is the regulator of supply chains.¹⁰⁹⁴

Seven said that, although employee protection forms part of the broader stakeholder protection from the Saudi company perspective, employees are a more regulated group subject to regulations issued by the Saudi Ministry of Labour. This means that the worker is a human being and there is a national law that protects their rights. Thus, the respondents believed that labour law is sufficient to protect the right of employees. No Saudi interviewee mentioned the anti-trafficking law. This shows that, in the KSA, human rights and supply chains are not issues that are at the fore.

Although the UK has pioneering legislation in combating slavery through supply chains in s54 of the Modern Anti-Slavery Act, there is no similar Saudi legislation. The KSA does have anti-trafficking laws, labour laws and consumer protection laws, but they do not guarantee any protection across supply chains. This is perhaps because, although there are reports that many companies with large numbers of suppliers are Western multinationals such as 3M, Apple and Carrefour.¹⁰⁹⁵ There are no reports about large Saudi companies. This is probably because most Saudi companies are small or medium-sized, do not have branches abroad and tend to only employ foreign workers in Saudi Arabia.

Saudi companies do not engage in comprehensive risk assessments to identify and address the risks of modern slavery, human rights and wider ESG factors. Thus, they are unable to prioritise their risk management efforts and target resources to their suppliers. Due to this lack of

¹⁰⁹¹ N18.

¹⁰⁹² N19.

¹⁰⁹³ N15.

¹⁰⁹⁴ N27.

¹⁰⁹⁵ Frontlines Report 2016, 'Scandal Inside the Global Supply Chains of 50 Top Companies' (2016) <https://www.ituc-csi.org/IMG/pdf/pdffrontlines_scandal_en-2.pdf> accessed 10 February 2022.

auditing, training, policies and reporting mechanisms, Saudi Arabia's supply chains are not protected. There is a dichotomy between the steps of due diligence (including risk management) done by at least some UK companies and no risk management in the KSA. Risk analysis as part of due diligence is part of legal compliance and does not seem to be observed in the KSA and there are no reports about any indications that this might change soon. In the UK, specialised risk management is the first step towards legal compliance. As part of the risks that may harm the reputation of a company, management is supposed to take a proactive approach to protect against human rights violations across supply chains.

5.6 Challenges facing CSR practices in the UK and Saudi Arabia

The cultural, structural and even economic problems of CSR are not without a solution and highlighting them is the first step to solving them. This section identifies difficulties in applying CSR in the UK and Saudi Arabia. The main focus of this section will be, first, to determine if Islamic stereotyping of CSR conflicts with Western strategies for CSR and if the result suggests ways for improving CSR practices in Saudi Arabia. Second, it will examine whether the size and structure of the company (family or otherwise) affect its level of compliance with CSR either in Saudi Arabia or the UK and the practical effects of this, if any. Third, it will consider if the overregulation of CSR poses a challenge to UK companies and why and whether such legislative concerns exist in Saudi Arabia.

Religious stereotypes of CSR

According to some scholars, CSR as a means by which firms have a responsibility to society has a clear relationship with religion and even its origins and antecedents in theological and religious discourse.¹⁰⁹⁶ For example, there is evidence that the religious values of managers reflect both their own behaviour and that of their subordinates.¹⁰⁹⁷ The relationship between CSR and religion has been studied mostly from a macro-normative perspective of the Catholic and Islamic faiths. It may be because both present normative frameworks that are readily applicable to the business context, offering strong legitimacy.¹⁰⁹⁸

¹⁰⁹⁶ Gerald J. Schnepf and Howard R. Bowen, (n 84) 42; William C. Frederick (n 95) 40.

¹⁰⁹⁷ Bradley R. Agle and Harry J. Van Buren, 'God and Mammon: The Modern Relationship' (1999) 9 *Business Ethics Quarterly* 563, 582; John Angelidis and Nabil Ibrahim, 'an Exploratory Study of the Impact of Degree of Religiousness Upon an Individual's Corporate Social Responsiveness Orientation' (2004) 51 *Journal of Business Ethics* 119.

¹⁰⁹⁸ Florian Leo Buchner, 'Religion, Spirituality and CSR: A Systematic Literature Review' (*Academy of Management Proceedings* August 1, 2019) <<https://journals.aom.org/doi/10.5465/AMBPP.2019.14411abstract>> accessed January 10, 2023.

When questioned about the personal motive behind CSR, most UK interviewees felt that CSR is primarily a legal responsibility, perhaps slightly motivated by morals or religion, but not hugely important. The most important issue is that the company should comply with the minimum legal requirements to avoid legal sanction, regardless of any religious drive.

All Saudi respondents viewed Islam and *Shari'a* law as having a significant influence on their daily activities and business:

Islam is not just a religion, but an organisation and guide for both society and individuals within it.¹⁰⁹⁹

Economic activities are not seen by Islam as an end in themselves, but as a means to an end. This is why many Islamic business practices are incorporated into CSR practices. Two Saudi interviewees said:

Islam is an enshrined religion that is designed to redistribute wealth and improve society.¹¹⁰⁰

The aim of giving is to improve society and the living standards of local communities.¹¹⁰¹

Saudi CSR is more influenced than the UK by principles of morality due to the religious underpinning of the system and while corporations in both systems are motivated by profit, the underlying motivation for wanting to become and stay profitable differs in Saudi Arabia and the West. Most Islamic corporate scholars assume that corporate moral considerations should be found in Islamic law. This leads to missing the comprehensive legal framework for corporate social practices. Islamic culture is flexible and usable at all times, but sometimes it is used as an excuse to undertake purely charitable work at the expense of strategic commercial interests.

In many Islamic countries, there is a difference between what is taught and what is practised although CSR as religious philanthropy is not a problem in and of itself. CSR has other aspects that must be addressed, such as legal, ethical and economic considerations. Hence, there is no problem with religious profiling in Saudi Arabia; rather, the challenge lies in reducing CSR to purely charitable acts. This motivated the researcher to propose a strategy for CSR based on an Islamic CSR (I-CSR) model in Saudi Arabia.

¹⁰⁹⁹ N12.

¹¹⁰⁰ N13.

¹¹⁰¹ N15.

Different levels of compliance

CSR has changed from being an optional feature to being a compliance requirement. Internationally, there are generally three categories of compliance with CSR, with some overlap: (1) disclosure regulations which oblige companies to disclose whether they address an issue and how they do so; (2) compliance regulations which require companies to establish compliance programmes to address specific CSR issues; and (3) trade-based regulations.¹¹⁰² Compliance with CSR remains a major obstacle for many companies worldwide. This section seeks to analyse the reasons for the disparity of compliance of CSR in the UK and the KSA so that Saudis can learn from how the UK deals with the same problems.

Seven of the UK respondents, when questioned about the level of compliance of CSR in the UK, felt that it would be naïve to suggest that everyone who represents big corporations approaches the issue of compliance with CSR guidance in the same way. For example, three interviewees said:

While some managers and business leaders do, others do not.¹¹⁰³

The work on CSR is always different.¹¹⁰⁴

[T]here are some companies that take [their CSR obligations] incredibly seriously, there are some companies that are not engaging at all, everything in between, is a real mix.¹¹⁰⁵

This raises the question of whether some companies in the UK take a genuine interest in upholding the principles of CSR or whether their decisions are informed solely by considerations of profit. The answer to this is complex, as an interviewee explained:

UK companies are attracted by the CSR cause because of considerations of reputation, profit and ultimately, risk management.¹¹⁰⁶

Three of the UK respondents said that the base compliance of a company is widening to include long-term sustainable practices in addition to profit:

Climate change as a particularly good example of the importance of this new compliance since the rapid change in the environmental conditions on earth may lead to the demise of the business or even its stakeholders at a not-so-distant

¹¹⁰² Ropes & Gray, 'Corporate Social Responsibility Compliance in 2018, and Beyond – an Overview for In-House Legal Counsel' (*Ropesgray.com*, 2018) <<https://www.ropesgray.com/en/newsroom/alerts/2018/03/Corporate-Social-Responsibility-Compliance-in-2018-and-Beyond-An-Overview-for-In-House-Legal-Counsel>> accessed 26 February 2022.

¹¹⁰³ N2.

¹¹⁰⁴ N8.

¹¹⁰⁵ N9.

¹¹⁰⁶ N10.

point in the future. This underlines the importance of companies seeing themselves as part of the social fabric.¹¹⁰⁷

At this point, it would be relevant to consider whether compliance with CSR is or can ever become profitable for the businesses committing themselves to it. One interviewee asserted that, in theory, ‘this should indeed be the case, citing the organic connection between engaging in CSR practices and business profits’.¹¹⁰⁸

Equipping companies with the knowledge and skills and providing them with incentives to look at purchase orders, purchasing practices, public procurement decisions within businesses or government agencies that involve buying goods in the supply chain setting and selling goods to customers from the point of view of CSR will go an extra mile in protecting the profits of the company. [...] Company staff need to take into account how environmentally or socially damaging the products that they are selling or ordering from suppliers are.¹¹⁰⁹

However, such awareness and familiarity with the processes of CSR do not come without a cost. Typically, this is an upfront cost which must be covered by the firm at the beginning of its operation. Not all companies are in a position to meet this requirement from the start of their operation. This leaves a substantial part of many industries open to accusations of not having complied with established CSR expectations. N8 cited a study of 650 companies which found that, despite the cost of applying CSR practices, especially newly established companies, about 80% preferred legislation that would ensure that they had good CSR and benchmarking.

UK companies demonstrate different levels of commitment in which some act responsibly and some stick to empty declarations while continuing their practices from the pre-CSR era; others are a mixture of the two approaches. This commitment is further supported by an elaborate legislative framework consisting of a variety of labour and anti-discrimination laws.

Fifteen of the Saudi interviewees felt that Saudi companies also have different levels of compliance. For example, only big companies which can afford it practice adequate compliance, while smaller companies do not:

This is unfortunate since it creates an uneven playing field that could potentially disadvantage start-ups and new business ventures, preventing them from successfully taking off. [...] It privileges the big, rich companies at the expense of smaller players.¹¹¹⁰

¹¹⁰⁷ N10.

¹¹⁰⁸ N1.

¹¹⁰⁹ *ibid.*

¹¹¹⁰ N8.

However, five felt that, regardless of the voluntary nature of such contributions and their disclosure, Saudi companies should consider themselves under a moral obligation to come clean on the amount and kind of their contribution to society:

Increasing the transparency regarding a company's CSR activities may turn out to be a successful market move, because it will sit well with the younger audience, which may be influenced by the global trend towards greater CSR'.¹¹¹¹

Two interviewees stated:

This becomes even more important, considering that a number of Saudi companies have global exposure, which they have to tackle by following the global regulatory framework, the ultimate result of this would be that the more transparent a corporation is (and the greater its investment in sustainability is), the wider its client base and the greater its profit.¹¹¹²

[This] could be distributed in ways that are both religiously compliant by the company or by the Government.¹¹¹³

This could be while preserving the business benefits flowing to the company's stakeholders. Admittedly, large companies can show high compliance with such recommendations, but less so for the SMEs that comprise 99.5% of companies in Saudi Arabia's industrial sector.¹¹¹⁴

In a practical sense, one participant said:

Committing to disclosure requires that the company has a dedicated department dealing with these issues. While many big companies do have such a department, some smaller corporate entities do not. Rather, it was underlined that each company is required by law to have (at least) a dedicated person, who would deal with the issue of CSR.¹¹¹⁵

It would help to have a more homogenous CSR framework in the Kingdom.

The views of participants from the UK and Saudi Arabia about differences in compliance are similar. However, because UK companies have to disclose something due to the comply-or-explain mechanism, the difference in the level of compliance seems to be less contradictory than in Saudi Arabia. For example, the few large Saudi corporations have relatively high compliance with the voluntary disclosure process, but not so smaller, more local companies.

¹¹¹¹ N18.

¹¹¹² N25.

¹¹¹³ N23.

¹¹¹⁴ Oxford Business Group, 'Saudi Arabia's Small and Medium-Sized Enterprises Fostering New Job Opportunities and Economic Growth' (Oxford Business Group)

<<https://oxfordbusinessgroup.com/analysis/starting-small-key-role-played-small-and-medium-sized-enterprises-smes-fostering-new-job>> accessed 11 February 2022.

¹¹¹⁵ N21.

An important factor in the difference in compliance is that family businesses make up a large proportion of all UK and Saudi companies, which makes the level of compliance of these companies disparate. According to the UK Census Bureau, 88% of companies in 2018 were family-owned. Private businesses of all sizes tend to be dominated by family businesses. Most micro-sized firms had family ownership, compared with half of the medium-sized private sector firms (51.9%) and nearly 20% of the largest firms in the UK,¹¹¹⁶ and there is a strong tendency in many Arab countries for listed firms to be family-run; 95% of their companies are family businesses. Saudi Arabia, for instance, has 95% family businesses, with estimated investments of about 250 billion riyals, and they comprise 45 of the 100 largest companies in the Kingdom.¹¹¹⁷ The families, due to regulatory restrictions and the purposes of competition, consider stakeholders to be part of the extended family, so the level of compliance is more consistent than the Saudi model. Most KSA businesses are family-run and these have problems in compliance. First, the educational and cultural level of families and business owners affects the moral obligations of the company, so the level of compliance is determined by the moral values of particular families. Second, they often suffer from a limited financial resource base, which reduces their social responsibility budget. Maintaining these companies is in itself a social responsibility as they employ thousands of people and contribute to the Saudi economy, but they cannot bear the burden of additional costs. Due to SMEs' reduced exposure to pressures, many assumptions by the externally driven business case (EDBC) do not apply to voluntary CSR programmes in Saudi Arabia.¹¹¹⁸

Overregulation

It is often argued that coercive CSR practices decrease internal motivation to comply and increase circumvention of compliance procedures, even though external incentives to comply may increase.¹¹¹⁹ Overregulation may thus reduce compliance. This section will examine whether companies in the UK and the KSA have concerns about the overregulation of CSR and so assist with implementation in Saudi Arabia rather than be a solution.

¹¹¹⁶ Oxford Economics, 'The State of the Nation: The UK Family Business Sector 2019-20' (Oxford Economics) <<https://www.oxfordeconomics.com/recent-releases/The-State-of-the-Nation-The-UK-Family-Business-Sector-2019-20>> accessed 11 February 2022.

¹¹¹⁷ Knowledge at Wharton, Family Firms in the Middle East: The New Rules of Engagement (2010) available at: <<https://knowledge.wharton.upenn.edu/article/family-firms-in-the-middle-east-the-new-rules-of-engagement/>> accessed 11 February 2022.

¹¹¹⁸ Gary Lynch-Wood, David Williamson and Wyn Jenkins, 'The Over-Reliance on Self-Regulation in CSR Policy' (2009) 18 Business Ethics: A European Review 52.

¹¹¹⁹ Orr Karassin and Aviad Bar-Haim, 'How Regulation Effects Corporate Social Responsibility: Corporate Environmental Performance Under Different Regulatory Scenarios' (2019) 15 World Political Science 25.

he respondents were asked if they had any concerns about CSR overregulation. Seven of the UK interviewees felt that companies appear to need or at least be open to a single, harmonised and coherent regulation:

[...] because the current framework results in too much pressure on the company management, coming from the direction of the regulator, the investor body, the applicable industry standards and all other stakeholders that matter to the success of the company.¹¹²⁰

Thus, even if such harmonisation of CSR requirements leads to overregulation, this would be welcomed by companies because it would allow them to plan better for the future, knowing what is and what is not legal. Legal clarity, particularly when combined with a comprehensive legal framework, provides the best defence against people who argue that the company has not done its best to satisfy the CSR expectations of its stakeholders. For example, one interviewee said:

The time for voluntary compliance with CSR has gone and the market is getting ready to enter a new era of CSR regulation.¹¹²¹

While this may be interpreted as overregulation, such an interpretation would be misleading. What the respondent suggested was ‘a strengthened, more robust regulatory model facilitating CSR compliance and filling the gaps where previously simply there was no law at all’.¹¹²² With this in mind:

It is important to make sure that the extensive regulatory regime on CSR does not amount to prescription that stifles the ability of firms to develop naturally and achieve financial success.¹¹²³

It comes down to balancing between the duty not to cause harm to society and to fellow humans and the proactive duty to commit socially beneficial deeds.¹¹²⁴

It is finding this balance that may prove difficult in the UK, particularly because of the entrenched legal notion that one cannot be compelled to act positively in relation to someone else. ‘Despite the current atmosphere of acceptance, which undoubtedly has a political underlay’,¹¹²⁵ going too far in the direction of imposing positive obligations on companies may fail to achieve its purpose. ‘This may be the result due to English companies being accustomed

¹¹²⁰ N4.

¹¹²¹ *ibid.*

¹¹²² *ibid.*

¹¹²³ N7.

¹¹²⁴ N4.

¹¹²⁵ N1.

to think and act in the English common law',¹¹²⁶ and the complicated theory of positive vs restrictive covenants.

No Saudi participant mentioned overregulation. Nineteen said that CSR is a voluntary charitable matter under Islamic law. Therefore, there is no concern about overregulation:

In fact, I support the voluntary nature because societal work always depends on the values of individuals, societies and even entities and thus it stems from human and societal responsibility, in which the creative side appears and its mandatory presence means that it has become a compulsory thing and thus it is treated as a financial transaction.¹¹²⁷

CSR cannot be a law, regulations are being circumvented'.¹¹²⁸

This shows the difference between the UK and Saudi Arabia. Saudis support the idea that social responsibilities are voluntary public moral principles that have nothing to do with law, therefore, there is no room to talk about overregulation. The UK respondents generally felt that there is a concern about overregulation. Although Islamic laws are complementary to CSR, CSR has a charitable aspect and thus can be regulated by law, but it should not be overrated. This is an important finding because it shows that overregulation is not a challenge for Saudis as there are very few regulations at the moment and the religious-based laws have high rates of compliance.

5.7 Conclusion

CSR implementation differs in the UK and the KSA. The UK's CSR is more regulated and has a stronger legal and strategic focus. UK firms consider both international guidelines and domestic legal frameworks and it has world-leading legislation to protect human rights in supply chains in s54 of the Modern Slavery Act. Enlightened shareholder theory, although it faces challenges in its implementation, is an important step to improving CSR in the UK.

Religion dominates everything in Saudi Arabia and is the main motivation for all activities, economic or social. Under Islamic agency principles, shareholder value is the driver for Saudi businesses and this means maximising the profits for shareholders as managers are the agents of the shareholders. Most Saudi companies, which are usually family-owned, do not require that human rights be complied with in their supply chains and the focus of many Saudi

¹¹²⁶ N5.

¹¹²⁷ N21.

¹¹²⁸ N30.

companies is on improving their local community rather than a much wider global outlook, so the implementation of CSR in the KSA may not yet meet international standards.

The chapter has shown that in both the UK and the KSA there is dissatisfaction with the current demographic representation on the boards of directors, but to varying levels. Unregulated charitable work may impede CSR in the KSA because most initiatives are patchy and unsustainable. Islamic stereotyping of CSR and the disparate levels of compliance between family businesses are among the most severe challenges facing CSR practices in the country. Overregulation is the top challenge facing UK practitioners who believe this may impede firms' ability to achieve their mission of making profits.

Chapter 6. Proposals for improving CSR in Saudi Arabia

6.1 Introduction

This chapter responds to the thesis's main research question: how to improve CSR in the KSA in law and practice. According to analysis in the previous chapters, there is a dire need for improvement in the legal and practical aspects of Saudi CSR. Four main suggestions are made in this chapter to improve CSR practices in Saudi companies soon. These suggestions represent the main contribution of the thesis.

Due to the dominance of religion in all aspects of corporate structure in Saudi Arabia, this chapter proposes the application of the Islamic CSR (I-CSR) model since it is the most practical and acceptable theoretical framework for adopting a broader concept of social responsibility in Saudi Arabia. It is also possible to solve the problem of the current legislative vacuum in CSR in Saudi Arabia by publishing comprehensive codes of conduct that include human rights in supply chains, combating corruption, protecting inside information from circulation, protecting the environment, community service and fair competition. The challenge is to ensure that the code is compliant with the I-CSR principles.

A comprehensive process of strategic donation is also proposed to address the problem of unstructured donations. This should be done by integrating donations into an annual strategic plan established by the company. It is also proposed to create a gender audit in Saudi companies to solve the problem of demographic diversity among the boards of directors. An audit of this type, whether internal or external, will undoubtedly contribute to improving women's representation on boards of directors in the KSA firms.

Proposal 1 – An Islamic CSR model

This thesis recommends adopting an I-CSR model, that is the intrinsically Islamic perspective on CSR outlined by Carroll in 1979.¹¹²⁹ It would encompass economic, legal, ethical and philanthropic responsibility in line with the Islamic precepts.¹¹³⁰ Under I-CSR, organisations that adhere to the Islamic faith do not seek only profits, but also the welfare of their

¹¹²⁹ Muhammad Adnan Khurshid, Abdulrahman Al-Aali, Ahmed Ali Soliman and Salmiah Mohd Amin (n 15) 258.

¹¹³⁰ Archie B. Carroll, 'A Three-Dimensional Conceptual Model of Corporate Performance' (1979) 4 The Academy of Management Review 497.

communities; in other words, economic and social justice.¹¹³¹ Based on the I-CSR model, each Muslim would play an active role in the community so that spirituality can be enhanced.¹¹³²

This proposal can develop CSR initiatives in Saudi firms. It has been proposed in Saudi Arabia because it is a Muslim country and the Islamic faith is the driving force in all activities. The government, the business community, institutions and Saudi society will accept this proposal. I-CSR based on faith will inspire Saudi firms to practice good work ethics such as honesty, good manners and consideration for others, as a result of being inspired by their faith. I-CSR espouses the idea that businesses should not hurt their communities, but rather contribute to their well-being. I-CSR programmes can have an indirect effect on how a Saudi organisation's operations are run. Under I-CSR, usury, gambling and uncertain contracts are prohibited. It is also forbidden to act unethically for profit-related reasons under I-CSR.

As we saw in Chapter 3, Saudi Arabia is a society steeped in religious-based values and practices and CSR as extracted from Islamic teachings is more than just law, it is part of the company's operating ethics. However, there is a wide gap between Islamic teachings on CSR and the practices of corporations in Saudi Arabia. In Islamic teachings, social obligations are placed above profit. Saudi companies, however, apply these principles differently. This means that Saudi companies do not necessarily prioritise social commitments over profit-making. Due to Islamic teachings being flexible, their interpretation differs. Some Saudi companies explain the principles comprehensively and deeply and implement them in a way that has a great effect on society, but others follow them superficially. In Islam, for instance, philanthropy is encouraged, while many Saudi companies practice charitable giving. The fundamental purpose of charity is to alleviate immediate needs or meet necessities. As philanthropists, firms should seek to isolate systemic social problems and deal with the underlying causes of these problems to improve the community by addressing root causes.

Islam encourages long-term CSR, while some Saudi companies practice charity purely as a way to improve their social responsibility. Pure community work is an individual practice by, for example, a manager or employees, to achieve a short-term social purpose such as alms or subsidies. CSR has a much more comprehensive concept such as diversity on the board, combating unfair trade, and protecting human rights in supply chains.

¹¹³¹ Chaudhry Ghafraan and Sofia Yasmin, 'Ethical Governance: Insight from the Islamic Perspective and an Empirical Enquiry' (2019) 167 *Journal of Business Ethics* 513.

¹¹³² Jejen Sunandar, 'Corporate Social Responsibility (CSR) Dalam Prespektif Hukum Islam' (2017) 15 *Syiar Hukum: Journal of Ilmu Hukum* 40.

An issue with such a difference or perhaps the gap between the philosophy of Islamic teachings and their application in some Saudi companies is the production of social responsibility initiatives that are unsustainable or even ineffective. This means that some Saudi companies may claim that they apply the principles of *Shari'a* in carrying out their social responsibilities just to improve their reputation and manage impressions in the Muslim community.¹¹³³

It has been suggested that four I-CSR dimensions would improve CSR in the KSA: the economic dimension concerned with the economic company theory, the ethical dimension concerned with the principle of kindness as ethical behaviour, and the legal dimension concerned with *Zakat* as an obligation for companies and the charitable dimension concerned with charity in general.

6.1.1 The economic dimension

The economic dimension of I-CSR means that 'profits must be made without harming others. This entails maximising shareholder profits, halal investment, halal products and legitimate earning'.¹¹³⁴ While Islamic economics presents a rich vein of concepts around CSR and justice, there is no systematic framework or model of business practice at the level of CSR.¹¹³⁵ Many Islamic groups deal with CSR as a moral issue.¹¹³⁶ This means that legal, ethical and philanthropic dimensions are placed higher than economic aspects. Profit remains central to Islam insofar as it does not lead to exploitation and corruption. Islam considers the manager to be a representative of the shareholders and is not allowed to dispose of shareholders' money without their consent, even if it is in the interests of those stakeholders. Managers' decisions should not be offensive to society in any way through commercial fraud, unfair competition or damage to the environment.

Applying the Islamic theory of firms in the KSA would improve CSR. The Saudi market should be based on cooperation and solidarity and Saudi companies should conform to this theory to achieve long-term success. Islamically, entrepreneurs are entitled to own property to stimulate the economy by creating jobs and promoting investment and companies must not violate society's rights. It is therefore morally wrong to the conflict between social issues and individual claims. Nevertheless, Saudi firms, having fulfilled their responsibilities to society and the state, have the right to maximise their profits. Islamic theory defines the role of the

¹¹³³ N13. See also Chapter 5.

¹¹³⁴ Muhammad Adnan Khurshid, Abdulrahman Al-Aali, Ahmed Ali Soliman and Salmiah Mohd Amin (n 15) 258.

¹¹³⁵ Muhammad Asif and Saima Batool (n 949) 299.

¹¹³⁶ John Angelidis and Nabil Ibrahim (n 1097) 119.

firm as: (1) to achieve profits; (2) to not cause harm to others; and (3) to be in solidarity with community issues.¹¹³⁷

Saudi companies can adopt Islamic theory by re-evaluating the purpose of the company, changing from profit maximisation to a long-term sustainable approach. It is possible to reinterpret Islamic teachings with greater scrutiny by transforming current thinking which is solely focused on profit into a holistic one. First, the Saudi company must improve its harmful behaviour, then fulfil its economic function by increasing shareholder value and finally fulfil its community service function.

The Islamic theory of the company may run counter to the current goals of many Saudi companies which are primarily driven by profit for its shareholders but Islamic theory states that companies should act ethically before maximising their profits and sometimes this contradicts that goal. Bribery, for instance, is not permitted and is considered unethical in Islamic doctrine. Some managers may claim that bribing sometimes will gain their company a competitive advantage over others, therefore benefiting the company. This implies that bribery will be detrimental to external stakeholders outside of the normal corporate circle, but the Saudi shareholders, employees and the local community of the company will all benefit from the extra business made possible by bribery. For example, a Saudi company may decide to dispose of its toxic waste in a country with lax environmental laws by bribing officials in that country. Because of its location abroad, none of the company's Saudi stakeholders would be adversely affected by it.

I-CSR will tackle this problem by recognising that bribery and other unethical behaviour will harm the host country's social environment, and Islam does not permit causing harm to an external community to benefit the internal community. Unethical behaviour promotes corruption, which is forbidden in Islam. This is what was considered when proposing the comprehensive code in the following proposal.

6.1.2 Ethical dimension

The ethical dimension of I-CSR means 'following Islamic values and this includes avoiding fraud and commercial fraud, preventing immoral images in the workplace (such as sexual

¹¹³⁷ Haithem Kader, 'Human Well-Being, Morality and the Economy: An Islamic Perspective' (2021) 28 *Islamic Economic Studies* 102; Mehmet Asutay and Isa Yilmaz, 'Constituting an Islamic Social Welfare Function: An Exploration through Islamic Moral Economy' (2021) 14 *International Journal of Islamic and Middle Eastern Finance and Management* 524.

images), combating the exploitation of women',¹¹³⁸ and treating employees with kindness, respect and appreciation. As evidenced by *Sharia*'s concept of 'good thoughts, good words and good deeds',¹¹³⁹ Islam also contributes to a discussion of ethics and, therefore, of CSR business ethics. The values and ethics of Moslems provide a basis for decision-making. This means that Islam affects preferences, attitudes and decisions in the workplace. Religious people likely see corporations in a larger context than non-religious people do. According to the *Qur'an*, there is a direct relationship between religion and business ethics, and it even outlines the ethical standards to be adhered to in specific business circumstances. As demonstrated through one's religious convictions, Islamic spirituality also involves deeds and actions based on social responsibility.¹¹⁴⁰ Private or commercial use of a resource is not distinguished in Islamic ethics. This means that everyday life and business ethics are intertwined in Muslim culture.¹¹⁴¹ Muslims aim to do good while being conscious of their faith and aware of God's constant attention. This means that Saudi companies should adopt *Ihsan*¹¹⁴² in their work as an application of Islamic ethics, to improve their theoretical concept of CSR.

To do this, Saudi institutions should structure their ethics business in line with Islamic ethical principles either by rewarding ethical behaviour or reporting unethical behaviour. For instance, any employee who breaches the privacy of any other employee should be reported and employees who perform good deeds outside working hours, such as professional volunteering, can also be rewarded.

By building up their social capital, Saudi companies can enhance their moral values in line with Islamic ethics. This can be applied through training and qualifying their employees on cooperation, solidarity and a sense of responsibility, especially in times of crisis. Saudi companies can also train their employees on integrity and reporting any possible corruption within the organisation to improve its social responsibilities under I-CSR.

With this goal in mind, Saudi companies should provide their employees with more independence and present themselves as motivator and facilitator rather than as a regulator.

¹¹³⁸ Muhammad Adnan Khurshid, Abdulrahman Al-Aali, Ahmed Ali Soliman and Salmiah Mohd Amin (n 15) 258.

¹¹³⁹ Greg M Epstein, *Good Without God: What a Billion Nonreligious People Do Believe*. (New York: Harper Collins, 2010) 117.

¹¹⁴⁰ Al-Baqarah Verse 264 | 2:264 – Quran, 'O People Who Believe! Do not invalidate your charity by expressing favor and causing injury – like one who spends his wealth for people to see, and does not believe in Allah and the Last Day.'

¹¹⁴¹ Hussein Elasrag, 'Corporate Social Responsibility in Islam' 2014 SSRN Electronic Journal available at: <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2593945> accessed 21 March 2022.

¹¹⁴² *Ihsan* is the Arabic word for doing good used in Islamic spirituality.

This can be implemented by granting reasonable powers to employees and forgiving them for minor mistakes that may be committed during their work. Saudi companies should also look for ways to enhance the culture of mutual trust between them and the community by opening channels of communication, whether through their website or mail. It should also set up a hotline for dealing with urgent complaints, whether from employees, suppliers or consumers.

The main disadvantage of ethical responsibility based on I-CSR is that it will limit profits. It is more expensive to run manufacturing units with ethical practices based on I-CSR, such as fully rewarding workers, providing channels for communication with the community or maximising social capital. As a result, profit is reduced, a factor that might not be an issue for large companies with the ability to allocate costs. For small businesses, it can pose a problem, especially if they are growing. Under I-CSR, Saudi companies are rewarded for ethical behaviour which improves their reputation and ultimately increases revenue and investor confidence, even if they are not allowed to maximise their short-term profits. Islamic ethical practices are an indirect means of maximising sustainable profit. Based on this theory, a comprehensive code has been suggested in the next proposal.

6.1.3 Legal dimension

The legal dimension of I-CSR means adherence to Islamic law and although this includes practices such as free trade and avoiding hoarding of products,¹¹⁴³ this thesis proposes using *Zakat* and enshrining it in law. This is due to the importance of *Zakat* in redistributing wealth and thus improving CSR as a whole. *Zakat* will have a great effect on companies to improve CSR. This means that Saudi companies must exercise *Zakat* to raise the level of operation, by influencing factors related to supply and demand.

This can be done by, for example, reducing unemployment caused by poor education in Saudi Arabia. *Zakat* due to law can contribute to addressing this through the lack of *Zakat* eligibility for those who are able to work means fighting *Zakat* for voluntary unemployment and achieving an appropriate standard of living that provides the poor and needy with the requirements of food, clothing, medical care and housing, which would contribute to their ability to study and achieve an educational level that increases their ability to work productively. This will probably enhance CSR in Saudi firms.

¹¹⁴³ Muhammad Adnan Khurshid, Abdulrahman Al-Aali, Ahmed Ali Soliman and Salmiah Mohd Amin (n 15) 258.

Zakat should thus be redefined to achieve long-term goals rather than one-time charity. Saudi companies could practice *Zakat* to support research, creativity and the development of science, or by founding publishing houses or research centres. These types of *Zakat* will improve CSR in Saudi Arabia. As a mandatory act of I-CSR, it is impossible to change or transform *Zakat* because it is divine and holy and, as such, cannot be changed. It is thus inflexible and incapable of accommodating social change. This is considered in the following proposal.

Because *Zakat* cannot be modified for any reason, I-CSR would become obligatory and it is possible to see this as a solution instead of a problem. *Zakat* itself contributes to increasing CSR in a Muslim country like Saudi Arabia if the benefits and purpose of *Zakat* are considered. For instance, the main goal of *Zakat* in Islam is to redistribute wealth, which means more social justice, and this would improve CSR in Saudi Arabia.

6.1.4 Philanthropic dimension

The philanthropic dimension of I-CSR means ‘contributing to society and this includes charitable donations and alms’.¹¹⁴⁴ A daily act of charity is called *Sadaqah*, which is part of I-CSR’s philanthropic aspect. The *Qur’an*, although saying that *Sadaqah* is not a mandatory act, says that it is important to give to the needy whenever possible. Giving money to the poor or carrying out practical acts like *Waqf* can both be ways to do this.¹¹⁴⁵ While it may be small in size and just a modest gift for someone in need, every gift given to the needy is not regarded as a *Sadaqah*. The sole purpose of *Sadaqah* is to honour God by helping others.¹¹⁴⁶

To improve CSR in Saudi Arabia, *Sadaqah* should be strategic. This means that an annual charitable work plan should be created focusing on Saudi Arabia’s poorest and improving their living conditions and being able to integrate them more. For example, Saudi companies can propose a group to support either financial or in-kind charity, such as the disabled, those with learning difficulties, the destitute or prisoners and support them throughout the year according to a pre-prepared plan. They would then submit reports that measure the social results of this

¹¹⁴⁴ Muhammad Adnan Khurshid, Abdulrahman Al-Aali, Ahmed Ali Soliman and Salmiah Mohd Amin (n 15) 258.

¹¹⁴⁵ Quran 2:264, ‘Oh you who believe, do not nullify your charities by inflicting reproach and insult (on the receivers of your charity) like him who spends his wealth to be seen by others, and he believes not in God and the Last Day; Quran 2:262, ‘They, who spend their wealth for the cause of God, then do not follow up what they have spent with taunt or injury, for them is their reward with their Lord, and they shall have no fear, nor shall they grieve.

¹¹⁴⁶ Salma Taman, ‘The Concept of Corporate Social Responsibility in Islamic Law’ (2011) 21 *Indiana International & Comparative Law Review* 481.

annual charitable initiative, both negatives and positives, to improve the performance of social responsibility the next year.

Philanthropic acts have faced legal restrictions in Saudi Arabia since the September 2001 attacks on the US to ensure that alms are not spent on money laundering, terrorism or any criminal offences.¹¹⁴⁷ Thus, legal constraints may constitute an obstacle to Saudi companies' implementation of strategic handouts. However, this can be resolved by companies obtaining prior approval before any charitable acts. Such cooperation between companies and regulatory authorities is required to disburse this money to its beneficiaries. The code in the following proposal takes this point into account.

The I-CSR model is the most promising theoretical framework for improving CSR in Saudi Arabia because of the religious pillar of the Saudi regime. Such a framework will be accepted by the Muslim community and its application will be possible because Islam controls all business activities in Saudi Arabia. This philosophy needs to be acted on by the code that I propose in the next section.

6.2 Proposal 2 – Code of conduct for Saudi listed companies

The author proposes a novel code of conduct, whether for public or private listed companies. As we have seen in the previous chapter, Saudi Arabia does not have any domestic laws or regulations on CSR; many Saudi companies focus only on environmental sustainability in their voluntary disclosures and codes of conduct, ignoring other important issues. This includes human rights protection in supply chains, anti-corruption activities and fair trade practices. Such legislative shortcomings isolate Saudi companies from international markets making it more difficult to compete with peers in other jurisdictions.

This legislative absence in the KSA may be a fundamental reason for the purely charitable concept of CSR that many Saudi companies adopt. Therefore, social customs, institutional frameworks, business models and even laws and public policies should be improved to promote CSR. This thesis has not suggested amending the Saudi Companies Law because any legislative proposal that might entail mandatory CSR would be rejected because the charitable nature of CSR is the currently accepted idea and linking it to the law may face obstacles. Thus, as a first step, there is a need for a code of conduct for all companies in the KSA.

¹¹⁴⁷ The RAND, 'Muslim Word after 11 September' available at: <https://www.rand.org/content/dam/rand/pubs/monographs/2004/RAND_MG246.pdf> accessed 10 January 2022.

The Saudi Capital Market Authority could adopt I-CSR as a model to motivate listed companies to consider when performing their CSR. This authority could be a supervisory body for these companies to implement provisions of the code and even the process of monitoring any prosecutions of those violating the code brought by the legal representatives of the concerned companies. The enactment of this law will greatly contribute to the process of CSR in Saudi Arabia. When raising the issue of laws, especially concerning CSR, it should be stressed that CSR is a voluntary act with a moral obligation. The enactment of a special law for it does not mean that it is transformed from a voluntary form to a compulsory form. This means that any law issued must adapt to social, economic and technological changes and push the regulatory aspect more than restricting the movement of companies' creativity in CSR and that companies can have broad discretion in decision-making on CSR projects, allowing innovation. For this purpose, instead of a restricted or strict code, the author recommends a flexible one inspired by I-CSR.

For the code of conduct to improve CSR in the KSA, Saudi companies' values will first need to be determined based on the Islamic values as in I-CSR model. Saudi companies should frame their values and cover the most important ethical aspect in the I-CSR model – integrity – which means that they are honest before society, suppliers, merchants and employees, in the reports they issue and in their dealings with the environment and service to the community. Based on I-CSR, a company's commitment to customer satisfaction also extends to providing a high-quality product and combating commercial fraud that could harm the consumer. I-CSR also requires flexibility in addressing the challenges of a results-oriented approach and defines the foundations on which the company seeks to maximise shareholder value. It also supports the company in fulfilling its social responsibilities toward society and participation in its welfare should be an essential part of any Saudi company's values.

In the application of the I-CSR model, Saudi companies must comply with international principles and directives of CSR based on the UN Compact because the business environment is global. Compliance with the Compact in combating forced labour and discrimination will earn Saudi companies the confidence of foreign consumers, investors and suppliers and this is strongly encouraged by I-CSR. Fair competition achieves the legal dimension of I-CSR and will enhance the right of the individual and Saudi society to obtain goods or services at prices that are not exaggerated or greedy. It is seen by narrow interests who focus on looting the pockets of citizens or clients while, in reality, they are committing an economic crime that cannot go unnoticed, given its repercussions and the trouble it causes for everyone. Therefore,

promoting fair competition among Saudi companies will contribute significantly to improving CSR in the KSA. As part of I-CSR, CER is an integral part of a company's ethics and Saudi firms should learn more about the effects of their actions on the environment and work to reduce pollution and carbon footprints. By protecting the environment, Saudi companies could gain a competitive advantage over other companies. A code of conduct that includes environmental protection will allow the Saudi companies long-term success because it will create trust between them and the Saudi community that needs an environment free of pollution.

The legal, philanthropic and ethical dimensions of I-CSR also include human rights. Therefore, Saudi companies may lose lots of productive workers because of human rights violations, forced labour, discrimination against women, low wages, unfair dismissal, employing minors and working in harsh and bad conditions. They should ensure the continued loyalty of their employees by protecting their rights. Such harmful behaviours may damage the reputation of Saudi companies, affecting sustainable profits and even threatening their existence. Therefore, while creating their codes of conduct, Saudi businesses should give special attention to the preservation of human rights, especially in supply networks.

Occupational safety and health requirements and principles will encourage a culture of prevention and raise employers' and workers' awareness of the importance of complying with occupational safety and health requirements in the KSA. It would also create a more attractive work environment for raising professional competence and ensuring job security for workers. Saudi companies should develop a code of conduct to help protect their employees from negative influences in the workplace. Workers put a high value on workplace safety, which ensures their continuity of work for the company and avoids them quitting.

CSR goals are no longer just a local issue but an international one. To participate in sustainable development, a Saudi company should set clear and workable goals. This will generate shared value for the company and the community. Ultimately, CSR aims to meet the long-term goals of all stakeholders, including shareholders. I-CSR provides for the fight against bribery and corruption. Therefore, a Saudi company will gain from including specific bribery and corruption clauses in its codes of conduct. The most important of these benefits is the increase in opportunities for business expansion with the government as the company's history of being honest will increase its chances of obtaining business from the government and of becoming a supplier to major companies and entering into global markets. The Saudi company's

implementation of a good anti-bribery programme will prevent it from being exposed to any legal problems. A good reputation will be more attractive to the buyer. A reputable company that adheres to high ideals and ethics, encourages good working relationships and raises the spirit of employees. Implementing an anti-bribery programme in a code of conduct will make the company more attractive to financial institutions.

I-CSR addresses the issue of a conflict of interest in the workplace, when an employee has competing interests or competencies that are or could be, at odds with one another. Conflicts of interest result in an employee having opposing opinions, affiliations, or interests. They can also lead an employee to act contrary to the employer's or their co-workers' interests. Employees desire to avoid any actions or decisions in the workplace that can suggest a conflict of interest because doing so damages their reputation, integrity, and dependability in the eyes of management and should be forbidden under a code of conduct. The Saudi CSR will get better as a result of this.

The exploitation of confidential inside information, commercial, technical or financial that negatively or positively affects the price of the security issued by the Saudi company should also be banned in the company code of conduct to achieve the principle of equality between investors.

I-CSR also provides that a Saudi company must play its role in serving its community to enhance trust and communication between the company and the community. This would create mutual benefits if the company guarantees a good reputation and sustainable profit and the community enjoys well-being.

Saudi companies should also annually disclose their financial and non-financial reports to enhance transparency and thus improve their social responsibility. The availability of Saudi company information plays a role in the assessment of its credibility with those with whom it does business. Therefore, disclosure of the financial and non-financial reports of the Saudi company affects the efficiency, credibility and balance of the Saudi market, achieving justice and protection for investors and stakeholders, which supports the investment climate and the economy as a whole.

6.2.1 CSR Code of Conduct Model

Values of the Company

Accountability: Integrity of the Company, fairness and transparency.

Customer satisfaction: Proactively anticipate customer needs, providing innovative solutions and quality products and services.

Results-oriented approach: Shareholder value defined; an organisation that always strives to learn and desire to change and keep up with challenges.

CSR: safety first, sustainable development and shareholder involvement.

Basic Business Principles

Compliance

Throughout the world, our corporate values stem from compliance with laws and regulations that apply in each country where we do business. This must be a fundamental principle we follow at all times for our employees and our business partners. As a result of its adherence to international initiatives, our company has taken on specific commitments, such as the United Nations Global Compact Initiative and the World Business Council for Sustainable Development and is committed to complying with and promoting the directives such as human rights protection, the elimination of forced labour, the elimination of discrimination in employment, environmental sustainability and increased stakeholder engagement.

Zakat

Our company established the ‘*Zakat* Fund’ to collect the legally prescribed *Zakat* and disburse it to its beneficiaries according to its *Shari’a* banks, where our company will submit the *Zakat* declaration accompanied by its annual budgets. In addition, charitable organisations are obligated, in the event of receiving *Zakat* amounts, to provide the fund with evidence of their commitment to disbursing *Zakat* to those who are entitled to it. *Zakat* funds are limited to certain categories such as the poor, the needy, those whose hearts are to be reconciled, those who are in debt and the wayfarer. The amount of *Zakat* is equivalent to 2.5% of the budget prepared based on the Hijri year and 2.577% for the

budget prepared based on the Gregorian year. Our company is also obligated to pay the prescribed *Zakat* according to Saudi law.

Fair Competition

Our activities are conducted within the framework of fair competition and strict adherence to legal and ethical standards in each of the countries where we operate. To ensure that all company managers involved in business operations understand the applicable laws in the countries in which they compete, they will be trained for fair competition. Any employee responsible for any violation of this may be subject to civil and criminal liability, according to the laws applicable, in addition to terminating their employment in the company. If there is any doubt about the legality of any communications, contracts, practices or commercial activities, we advise you to seek legal advice. Each employee should consult the local legal department or company legal department for assistance.

The environment

We are committed to minimising the environmental effect of our operations and business activities, environmental management, environmental initiatives and continuous improvement of environmental management on the natural environment and on the quality of life in the areas where our facilities are located. The proper handling, storage, and disposal of controlled substances, as well as the timely submission of the requisite reports to the appropriate government agencies, are all aspects of our commitment to full compliance with all environmental laws and regulations.

Human Rights

As defined in the Universal Declaration of Human Rights, we are committed to protecting and developing human rights and ILO labour conventions. Through this framework, we work to advance respect for human rights within our spheres of influence, including respect for our employees' freedoms and the diversity of our values with equal opportunities for all, eradicating all forms of discrimination, and taking

human rights concerns into consideration. Our managers should be aware of our stated commitments to upholding human rights while working with workers, contractors, customers, and suppliers when creating and executing policies.

Health and Safety

The health and safety of our employees are protected in every one of our workplaces. As a result, the business abides with all relevant laws. Employees and contractors should adhere to these rules as well as the health and safety regulations put forth by the company's local safety. These guidelines and regulations offer best practices in addition to the legal obligations. In addition to caring about our clients and guests, our business offers a secure and healthy work environment for its employees.

Sustainable Development

We are committed to combining social, environmental, and human elements in order to achieve sustainable development. This dedication is reflected in our business decisions. In order to improve the wellbeing of employees, their families, nearby communities, and society at large, we strive to minimize the detrimental consequences of our operations on the environment and the communities in which we operate. Thus, our vision for the social responsibility of the company is:

The constant pursuit of achieving our business goals and creating value in a manner that involves moral and social responsibility, minimising our negative effects and striving to do the best.

Bribery and corruption

Transactions within the company must be conducted lawfully and ethically, under all applicable laws and regulations and must be audited. Keep in mind UNCAC (the United Nations Convention against Corruption). Our employees and representatives must also abide by UNCAC. Any employee or business partner who commits bribery in the performance of his duties is subject to civil and criminal liability, in

accordance with applicable laws, in addition to terminating their employment.

Conflict of interests

Business choices ought to be made with the company's best interests in mind, not for individual gain. Any commercial activity that affects an employee's ability to make unbiased decisions should be avoided. We are expected to fully disclose any conflicts between an employee's personal interests and those of the company to the senior management, which will ensure that a suitable resolution is found. The interests of employees may include 'closely linked' people, such as blood relatives, married relatives, or close friends.

Insider trading

The price of shares or other securities can be impacted by shareholders and other holders of securities who have access to insider information. Any company with a stock market listing is required to safeguard the confidentiality of other financial instruments. They are forbidden from using this insider knowledge or trading this stock, either for their own account or the account of a third party. They must adequately adhere to insider trading restrictions and sign a contract pledging to do so.

Relationship with the community

Our promise is to ensure neighborhood engagement, cooperation, and good neighborliness in any region where we conduct business. This commitment is an effort to continue growing, which can take various forms depending on the circumstance and the local conditions and cultures. Its primary emphasis is on providing real-world expertise, experience, technical assistance, and financial support for programs and activities that promote education and training. We are dedicated to long-term sustainability, which includes preserving the natural world and advancing public health and safety.

Preparing financial and non-financial reports

The consolidated financial statements of our company are audited in accordance with International Financial Reporting Standards (IFRS).

Additionally, the reports must adhere to generally recognized accounting principles, rules, and standards. Both financial and non-financial data must be accurately documented, objectively reported, and delivered on schedule. According to international standards and best practices, we view non-financial reporting as a crucial tool for involving stakeholders and make use of it to promote discussion and boost involvement. In order to maintain transparency and foster a sense of confidence among all parties involved, we promise to provide frequent reporting on our non-financial performance procedures.

3) Implementation and violations of the code of conduct

Execution

The manager's job is to explain the code to their team members and make sure our company's executives are accountable for putting it into practice. The communication of the code to subordinates and ensuring that they comprehend and abide by it are the managers' responsibilities. Everyone is accountable for upholding the code, and no one may excuse an immoral act by claiming that someone in a higher position ordered it. All personnel are accountable for adhering to the code's norms and principles and are required to familiarize themselves with its contents. Employees should ask their manager, executive management, or the local legal department for clarification if they are unclear or have any doubts. The acknowledgement must be signed by every worker.

Violations

Subject to applicable rules and regulations, any employee who violates the code shall face disciplinary action, which may include termination of employment. The employee may be prosecuted under the anti-bribery legislation, anti-human trafficking law, competition law, environmental protection law, and law regarding penalties for publishing and revealing confidential documents and information if they take any unlawful activity.

6.2.2 Discussion

Three limitations exist with this code of conduct: the first is how well leaders respond and comply with the rules of this comprehensive code of conduct. Those in leadership positions must strengthen compliance processes and lead by example, not only with slogans, but also with actions on the ground. This can be done by keeping integrity when meeting deadlines, satisfying customers or increasing revenue and by promoting direct and free reporting and ensuring that staff know how to report their concerns without feeling afraid. It is also important for the leader to ensure their team knows how to identify danger signs in situations with significant risks and complete compliance training on time. In order to identify risks and violations linked to compliance, leaders should also perform routine compliance reviews with the assistance of compliance officers, internal auditors, and the application of control standards.

Second, those who violate these rules may not understand the consequences of doing so, which may lead to them resisting enforcement, as the consequences may not be clear or comprehensive. As a solution, the Saudi company should, after writing its code of conduct, take full action when there is a breach of the rules and the consequences should be defined in language that is easy and understandable for employees and there should not be any exceptions and the consequences should be understood by all employees. This can be done through two means: publishing the consequences of violating the code on the company's website and previous prosecutions and conducting training courses and workshops for employees, including the means of implementing the code of conduct and the accountability process completely and clearly.

Third, companies need specialised departments to implement what is stated in this model, but SMEs may not be able to afford to set up these departments because of the financial challenges. This is because every department incurs annual costs, whether as a result of employing experts or allocating an annual budget for the implementation of programmes. SMEs can overcome these challenges by merging these departments and by reducing them to two or three departments at most. As a result, SMEs will minimise the costs of improving their CSR.

6.3 Proposal 3 – strategic donations

This suggestion is inspired by case studies and in particular by the Indian experience (see Chapter 4). It means that just giving does not seem to fulfil its purpose because it is seen as

insufficient by corporate critics, regardless of the size of the donation.¹¹⁴⁸ Based on qualitative empirical analysis, it is clear that the donations by Saudi companies are mostly non-strategic and are often determined by circumstances or by habit. Such an unregulated practice of charitable giving greatly reduces its effectiveness in improving CSR. Such giveaways are short-term and target randomly selected groups without an appropriate plan or strategy. A problem with this type of CSR practice is the lack of achieving real social change.

It also means that such non-strategic donations do not necessarily solve a social problem but may only contribute to reducing it in the short term. An example of these patchwork initiatives is the distribution of food baskets during certain periods of the year such as Ramadan. This initiative in itself is humanitarian, but it is not sustainable and does not reflect exemplary CSR. CSR does not mean the practice of any form of donations, but rather a systematic, strategic practice that has a far-reaching effect. This thesis recommends that donations should be strategically placed in the KSA to remain efficient.

Known as ‘strategic donation’, this type of charity is mainly related to advertising or improving the brand’s image ‘through cause-related marketing or other high-profile sponsorships’.¹¹⁴⁹ The appetite of corporations for cause-related marketing is evident in the fact that expenditure increased 8-fold in the last decade of the 20th century. The KSA can follow a good practical example. In 1999 Philip Morris, the tobacco producer, gave \$75 million to charity but spent \$100 million on advertising its charitable contributions.¹¹⁵⁰ This sort of behaviour is perceived as a cynical and strategic donation and a way of gaining goodwill, good publicity, raising employees’ morale and changing or maintaining the good public image of the company.¹¹⁵¹ Philip Morris has consistently engaged in overspending on the advertisement of its charitable donations, which suggests that this is a strategy rather than a one-off event. Some of the internal documents of the company demonstrate that the corporation’s charitable donations have always been motivated by a mixture of strategic and philanthropic concerns.¹¹⁵²

Critics have argued that such investments are intended to ‘buy’ the company an easier ride the next time they are called to account in front of the US Congress. In addition, they noted that

¹¹⁴⁸ Dwane Hal Dean, ‘Consumer Perception of Corporate Donations: Effects of Company Reputation for Social Responsibility and Type of Donation’ (2003) 32 *Journal of Advertising* 91.

¹¹⁴⁹ Santosh Nandi and Madhavi Latha Nandi (n 962).

¹¹⁵⁰ Guido Palazzo and Ulf Richter, ‘CSR Business as Usual? The Case of the Tobacco Industry’ (2005) 61(4) *Journal of Business Ethics* 387.

¹¹⁵¹ Michael E. Porter and Mark R. Kramer (n 161) 78.

¹¹⁵² ABC News, ‘Corporate Goodwill or Tainted Money?’ (2006) *ABC*, available at: <<https://abcnews.go.com/WNT/story?id=131249&page=1>> accessed 10 January 2022.

according to company documents, the tobacco giant ‘targets the ‘favourite donations’ of legislators and their spouses and seeks to ‘neutralise’ women and minority groups that might otherwise speak out against the tobacco company’s marketing tactics’.¹¹⁵³

This explains why cause-related marketing is seen as more sophisticated and effective than diffused charitable giving, largely because it helps link the corporation-donor to an idea or organisation which is generally admired by the population; Olympic sports are one of the most preferred activities for Saudis. However, cause-related marketing is not a true strategic donation because it remains focused on publicity rather than on bringing real change.¹¹⁵⁴ In true strategic donations, Saudi corporations will give back to society their expertise and assets while addressing both economic and social objectives in areas of competitive interest.

In Saudi Arabia, corporate donation is synonymous with context-focused philanthropy because it works by enhancing the context within which a corporation operates and then reaps the benefits of this positive action. Cisco Systems illustrates how this may work in practice. By creating the Cisco Networking Academy,¹¹⁵⁵ the corporation was able to train computer network administrators which provided a constant supply of well-trained staff for the company. By doing so, the firm alleviated one potential inhibitor of its growth while delivering high-quality job opportunities to high school graduates. This demonstrates that targeted giving can go a long way towards achieving a blend of social and economic objectives and Saudi corporations should think about the areas where they donate and the subjects of their donations.

To improve CSR in the KSA, Saudi firms’ donations should encompass emergency relief orphan care, food security, education, clean water, health and well-being, refugee empowerment, livelihoods and seasonal Islamic giving. Strategic donations are by definition more streamlined and goal-oriented. For example, the diverse goals of strategic donations are connected by a strong, internal link, their benefit for society. Equally, the social goals targeted by corporate donations need not be single standing and opposed to their economic objectives. For instance, investment in education creates quality job candidates and not just quality job opportunities. However, for corporate donations and shareholder interests to converge, corporate expenditures must deliver both social and economic gains simultaneously.

¹¹⁵³ ABC News (n 1152).

¹¹⁵⁴ Alice Gina Mary Crowley, ‘Woke Washing in the Wake of Covid-19: A Case Study on Amazon’ (2021) 5 *Marketing, Technology and Ethics* 287.

¹¹⁵⁵ José Villalba, ‘Cisco Networking Academy ‘Corporate Social Responsibility’ (2017) 4 *Revista Científica de la UCSA* 3.

This means that creating shared value contributes to the strategic behaviour of the company. Strategic charitable giving means that this practice will continue and will have a far-reaching effect on society. For example, by supporting Saudi writers and thinkers as a strategic giving, the Saudi community will benefit culturally. The company, therefore, plays a pivotal role in social change and will benefit from this cultural enrichment in society in the long run by developing the creative thinking skills of its employees.

Saudi companies should also donate to create an innovation programme. The Saudi community will benefit from these programmes in developing ideas because they train Saudi youth to develop innovative and creative solutions to everyday problems. These programmes will thus stimulate the Saudi community on innovative cooperation and nurture a creative incubating environment and develop the creative economy in Saudi Arabia. Saudi companies will benefit in the future from these young entrepreneurs who become innovative leaders in the companies. This example of deductive analogy could be used to launch dozens of similar strategic charitable initiatives. The company should study first a strategic initiative that might generate shared value through a survey, questionnaire or interviews with social experts and then allocate an annual budget for it. Such behaviour needs time to show its positive effects so the company is supposed to realise that the profit in strategic initiatives is not immediate, but is medium- or long-term, but has the advantage of being sustainable.

There are two limitations to the application of strategic donation in Saudi Arabia. First, the economic benefits that companies may reap may take a long time. The goal of these donations is to create long- not short-term shared value. For this reason, many Saudi companies may be reluctant to pay money but this problem can be overcome by educating managers, shareholders and decision-makers in Saudi companies about the importance of social investment to the company's sustainable profits. The media can play a pivotal role in raising institutional awareness of the importance of social investment in improving the social responsibility of Saudi companies.

Second, there are statutory restrictions inside Saudi Arabia on all kinds of donations to prevent donations to terrorist organisations or money laundering operations. However, given that the idea of strategic donation is to be in-kind donations rather than cash, Saudi companies will overcome this problem easily. However, Saudi institutions must request the approval of official authorities for such donations to avoid any legal accountability in the future.

6.4 Proposal 4 – gender audit

This thesis proposes imposing gender auditing on Saudi companies to achieve gender equality as much as possible. Many Saudi companies lack demographic diversity on their boards of directors (see Chapter 5). Saudi Arabia is still largely devoid of women in leadership positions in the public and private sectors. The main reasons are cultural and social. Saudi society is accustomed to male decision-makers in a variety of fields. This stems from the *hadith* of the Messenger of God, may God's prayers and peace be on him: 'Never will a people succeed if they have the authority of a woman'.¹¹⁵⁶ This *hadith* was mentioned on a specific historical occasion which means that Muslim scholars do not consider the generality of the text as a rule, because if it were regarded in this way it would contradict the *Qur'an* which describes the Queen of Saba who led her people in the best course of action she could have taken and the basis of her ruling was organisation and consultation.¹¹⁵⁷ The 'male corporate culture' and the inability of some women to climb the career ladder because of male domination is indicative of the fundamental reasons for this problem in the KSA.

The lack of demographic diversity on Saudi corporate boards means that there is no representation of women's talents and skills in the private sector. Although more than half of Saudi university graduates are women,¹¹⁵⁸ they do not have the opportunity to occupy senior positions on the boards of Saudi top 100 companies. This is disappointing, especially considering a recent study that demonstrated the positive effect of women on corporate boards on the company's performance.¹¹⁵⁹ Allocating quotas for women in all listed companies in the

¹¹⁵⁶ Sunan an-Nasa'i 5388, Book 49, Hadith 10,

¹¹⁵⁷ Surah An-Naml 32 – Quran O.

¹¹⁵⁸ Fatmah Jamjoom and Philippa Kelly, 'Higher Education for Women in The Kingdom of Saudi Arabia' 2013 ResearchGate., available at: https://www.researchgate.net/publication/299731670_Higher_Education_for_Women_in_the_Kingdom_of_Saudi_Arabia accessed 19 March 2022.

¹¹⁵⁹ Liliana Nicoleta Simionescu, Ștefan Cristian Gherghina, Hiba Tawil and Ziad Sheikha, 'Does Board Gender Diversity Affect Firm Performance? Empirical Evidence from Standard & Poor's 500 Information Technology Sector' (2021) 7 Financial Innovation available at: <<https://jfin-swufe.springeropen.com/articles/10.1186/s40854-021-00265-x>> accessed 25 March 2022.

KSA and all companies which have a certain number of employees or revenue has become a necessity. There are two possible approaches to this.

1) **Internal audit:** Saudi companies can assess their gender equality situation and identify major

Annual Gender Audit Model

Internal Audit

- Number of women on the board of directors: out of
- Number of middle managers who are women: Out of
- Average wages for men managers ...
- Average wages for female managers
- Reasons for the wages gap.....
- Suggestions for improving demographic diversity in the coming year.....

External Audit

- Number of women investors the company has dealt without of.....
- Number of women suppliers the company has dealt without of....
- Number of complaints from women that the company dealt with last year....
- Suggestions to improve the company's treatment of women in the coming year

Figure Error! No text of specified style in document.-1. Gender audit

gender biases through an annual internal gender audit, which will have a positive effect on CSR. As part of this audit, they should also look at how they have addressed gender equality in their decision-making structures, organisational culture and processes and how their

employees perceive, understand and behave in this regard. This audit should evaluate the extent to which the gender perspective is integrated into academic policies and programmes, research, study curricula and the management of work and staff welfare.

Saudi companies can do this to improve their social responsibility by publishing an annual report on the number of women on the board of directors, female middle employees, gender pay differential and the pay gap and its causes. Such a report should also contain suggestions for improvement in the next report.

2) External audit: Saudi companies should submit to an annual external audit that reveals non-discrimination measures against women consumers, suppliers or investors. These procedures are in the form of an annual report that reveals the number of women who deal with them from suppliers and investors and proves that they have received equal treatment with their male peers. The report should also include goals for future improvement.

This proposal may face some limitations, including the lack of clarity of responsibilities of the work of the internal audit. This would create ambiguity that ultimately leads to the failure to achieve the objectives of internal audit. To overcome this, the executive departments in Saudi companies should establish and implement internal control systems and internal audit management, including the evaluation of the annual internal audit reports and notes and taking the suggestions proposed by the internal auditor to improve demographic diversity in the company. The lack of professional skills of the audit manager and the audit team is considered as an additional limitation. This problem can be overcome by attracting legal professionals to fill the positions of internal auditors by Saudi companies.

Conclusion

This chapter suggests four ways to make Saudi businesses more engaged in CSR. It takes a bespoke approach of using Islamic teaching to conform to the Saudi legal environment and formulate theories and mechanisms for implementing CSR.

First, it proposes the application of an I-CSR model which is an Islamic application of Carroll's pyramid. I-CSR would be acceptable in the KSA because of its religious background. Second, a strategic donation is proposed to solve the problem of unstructured donations. This should create shared value to bring the interests of shareholders closer to those of stakeholders. Third, Saudi companies should be urged to create a gender audit to address the lack of women on their boards of directors. This gender audit should be carried out every year by professionals. Fourth, there is the possibility of solving the legal void of CSR in the KSA through the development

of a comprehensive code of conduct that incorporates human rights across supply chains. The code should be the most important legal solution for Saudi companies to improve their social responsibility. The chapter proposes a model that could serve as a guide for Saudi companies.

Chapter 7. Conclusion

7.1 Summary

This thesis has investigated the legal and administrative framework of CSR in the KSA and proposed improvements. CSR is an important tool for international competition and is viewed as a responsibility of the company. Improving Saudi CSR should, therefore, be an immediate priority. Saudi companies have not yet implemented CSR as a strategy and religious initiatives still dominate Saudi practice. This thesis provides a roadmap for the implementation of CSR in the KSA. This is all the more important for Saudi Arabia's vision for comprehensive improvement in all socio-economic spheres by 2030.

The thesis found that Saudi companies have not developed comprehensive plans to cover all aspects of CSR. Practices are voluntary and underdeveloped, meaning that they are unlikely to flourish without significant reform.

Zakat functions as a proxy for CSR but through it, CSR is culturally ingrained. With generations of Saudis understanding *Zakat* obligations at the spiritual and religious level, they have become more conscious of their responsibilities as individuals, societies and institutions.

The KSA is still relatively new to CSR. Companies adopt CSR practices voluntarily and the compliance frameworks do not always mirror real practice. The lack of a significant CSR culture in the KSA is partly due to its lacking CSR legislation. Saudi CSR remains underdeveloped and the country must undertake reforms to address this.

The Saudi government's contribution to CSR is heavily influenced by the country's religious pillar, whereas the UK's contribution is more strategic and concerned with legal compliance. UK companies can respond to both domestic and international laws because they receive both domestic and international legal guidance. The UK legislation has also shown how to implement responsible business practices and practical advice and sector-specific recommendations. These factors have led to a more regulated and strategic CSR environment in the UK. Using both international guidelines and domestic legislation to protect human rights in supply chains, section 54 of the Modern Slavery Act 2015 is considered world-leading legislation to safeguard human rights in supply chains.

While the enlightened shareholder theory has been challenged in its implementation, its importance cannot be overstated in improving CSR in the UK. Meanwhile, neither Saudi Arabia's CSR directives nor international regulations appear to have a direct effect on the

region's privately held corporations. Throughout the thesis, the Saudi participants argued that there is a lack of respect for human rights in Saudi Arabia's supply chains. They argued that as managers are the agents of shareholders, they are responsible for maximising shareholder value. Saudi firms struggle with the implementation of CSR practices because of Islamic stereotypes of CSR. Saudi companies often do not enforce human rights in their supply chains and they are more concerned with improving CSR in local communities than global concerns, which may mean Saudi CSR efforts do not yet meet international standards. Unregulated charitable work and discrepancies in compliance between family businesses pose major problems for CSR in the KSA. Overregulation is, according to UK practitioners, the biggest obstacle to achieving their goal of generating profits.

Our recommendations are intended to help companies in the KSA improve their social responsibility efforts. Religion has historically dominated the corporate structure and a practical and feasible theoretical framework for defining CSR must be developed based on the Islamic CSR model, I-CSR. It is also important to ensure that Saudi Arabia's CSR code adheres to I-CSR principles to eliminate the gaps in Saudi Arabia's laws on CSR. Accordingly, the KSA should enforce a comprehensive code of conduct ensuring human rights in supply chains, combating corruption, protecting information, protecting the environment and promoting competitiveness. Saudi companies should also incorporate strategic donations into their annual strategic plans to limit unstructured donations. Mandating a gender audit within Saudi companies would improve the demographic diversity of Saudi boards of directors forcing an improvement in the representation of women on boards of directors, no matter if the audit is internal, external, or both.

Limitations and future study

The most significant difficulty faced by the author was the lack of sources linking CSR to Saudi law. CSR was discussed primarily from a management perspective in most sources. There is also no legislation related to CSR in Saudi Arabia to analyse and critique. This research relied almost entirely on the opinions of the interviewees and uses verses from the Holy *Qur'an* as the source of *Shari'a* law. Social practices have also been discussed as tools for CSR.

It was difficult to translate and adapt meanings from Arabic into English. During the translation of the interviews (which are in slang), the author adapted the meaning to the extent of what the interviewees meant. A professional translator was hired who did not have to translate from

beginning to end, but only to review what the author had translated. The translator re-heard the interviews and confirmed that the meaning was translated correctly into English.

With only a superficial discussion of the importance of CSR to achieve Vision 2030, the author did not elaborate on this area. The benefits of CSR and its positive effect on Saudi companies, in general are also outside the scope of this thesis.

CSR faces more challenges than just those outlined in this thesis. Though the author attempted to discuss theoretical challenges in Chapter 2 and the practical challenges in Chapter 5, she cannot guarantee that they are comprehensive. However, the problems discussed are important and are perhaps the beginning of a more detailed discussion.

In the future, Saudi researchers should discuss the benefits of CSR for Vision 2030 and improve the theoretical framework that the author proposed (i-CSR) to better suit the Saudi business environment.

7.2 Importance

The importance of this thesis lies in the fact that it is the first of its kind that discusses CSR in Saudi Arabia from a purely legal perspective and in comparison with the UK. This is particularly important with Saudis' efforts to improve business sustainability. Therefore, it can be said that the timing of this thesis is ideal, as it coincides with the efforts exerted by Saudi Arabia for legislative development.

7.3 Conclusion

The Saudi government may want to think about developing a bespoke framework for implementing CSR rather than blindly transplanting norms. If Saudi companies are given the choice of implementing I-CSR, their compliance rate would also improve. Legislation would let the government tailor the CSR outcomes to local needs rather than simply importing them from abroad. In the KSA, such a tailored approach is likely to be viewed favourably if it is tailored to the country's characteristics. Developing an effective CSR framework requires the corporate sector's support and involvement. For any CSR framework to be effective, whether voluntary or legislative, companies need to be willing to participate, rather than reacting out of fear of sanctions. Saudi authorities should consider the unique characteristics of Saudi society when designing CSR requirements if Saudi Arabia can benefit from the *Zakat* framework to help implement CSR policy. A major advantage of introducing *Zakat* principles into corporate culture is that it may slow the implementation of some aspects of CSR and potentially hinder the transition from *Zakat* principles to CSR. Since *Zakat* is viewed as a spiritual and religious

obligation, it has gained significance in the way individuals, organisations and governments perceive their responsibilities to the community. The Saudi government will be able to develop its CSR framework by applying these ideological principles and thus make the future of CSR in the KSA a bright one.

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Directive 2018/822/EU on automatic exchange of cross-border arrangements.

Directive 2016/881/EU on automatic exchange of country-by-country report.

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Royal Decree No. M/30.

Status

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Supermarkets v Natrass* 1972 AC 153.

Appendices

Appendix 1. Ethical approval from The University of Sheffield



Downloaded: 01/08/2021
Approved: 09/12/2020

Nora Abo Shareb
Registration number: 190238580
School of Law
Programme: PhD Law

Dear Nora

PROJECT TITLE: In law and practice: enhancing CSR for listed companies in Saudi Arabia
APPLICATION: Reference Number 031139

On behalf of the University ethics reviewers who reviewed your project, I am pleased to inform you that on 09/12/2020 the above-named project was **approved** on ethics grounds, on the basis that you will adhere to the following documentation that you submitted for ethics review:

- University research ethics application form 031139 (form submission date: 08/12/2020); (expected project end date: 01/06/2021).
- Participant information sheet 1084139 version 4 (30/11/2020).
- Participant consent form 1084140 version 1 (05/11/2020).
- Participant consent form 1084971 version 1 (30/11/2020).
- Participant consent form 1084141 version 1 (05/11/2020).

If during the course of the project you need to [deviate significantly from the above-approved documentation](#) please inform me since written approval will be required.

Your responsibilities in delivering this research project are set out at the end of this letter.

Yours sincerely

Penelope Russell
Ethics Administrator
School of Law

Please note the following responsibilities of the researcher in delivering the research project:

- The project must abide by the University's Research Ethics Policy: <https://www.sheffield.ac.uk/rs/ethicsandintegrity/ethicspolicy/approval-procedure>
- The project must abide by the University's Good Research & Innovation Practices Policy: https://www.sheffield.ac.uk/polopoly_fs/1_6710661/file/GRIPPpolicy.pdf
- The researcher must inform their supervisor (in the case of a student) or Ethics Administrator (in the case of a member of staff) of any significant changes to the project or the approved documentation.
- The researcher must comply with the requirements of the law and relevant guidelines relating to security and confidentiality of personal data.
- The researcher is responsible for effectively managing the data collected both during and after the end of the project in line with best practice, and any relevant legislative, regulatory or contractual requirements.

Appendix 2. The extension of the ethical approval

Dear Nora

Thank you for your two emails. I am prepared to grant an extension of the ethics approval to 31st August 2021, as a minor amendment.

Luke - please add a copy of this email to the ethics system as a record of the minor amendment.

Thanks

Penny
Penelope Russell
Senior Fellow of the Higher Education Academy
Solicitor (non-practising)

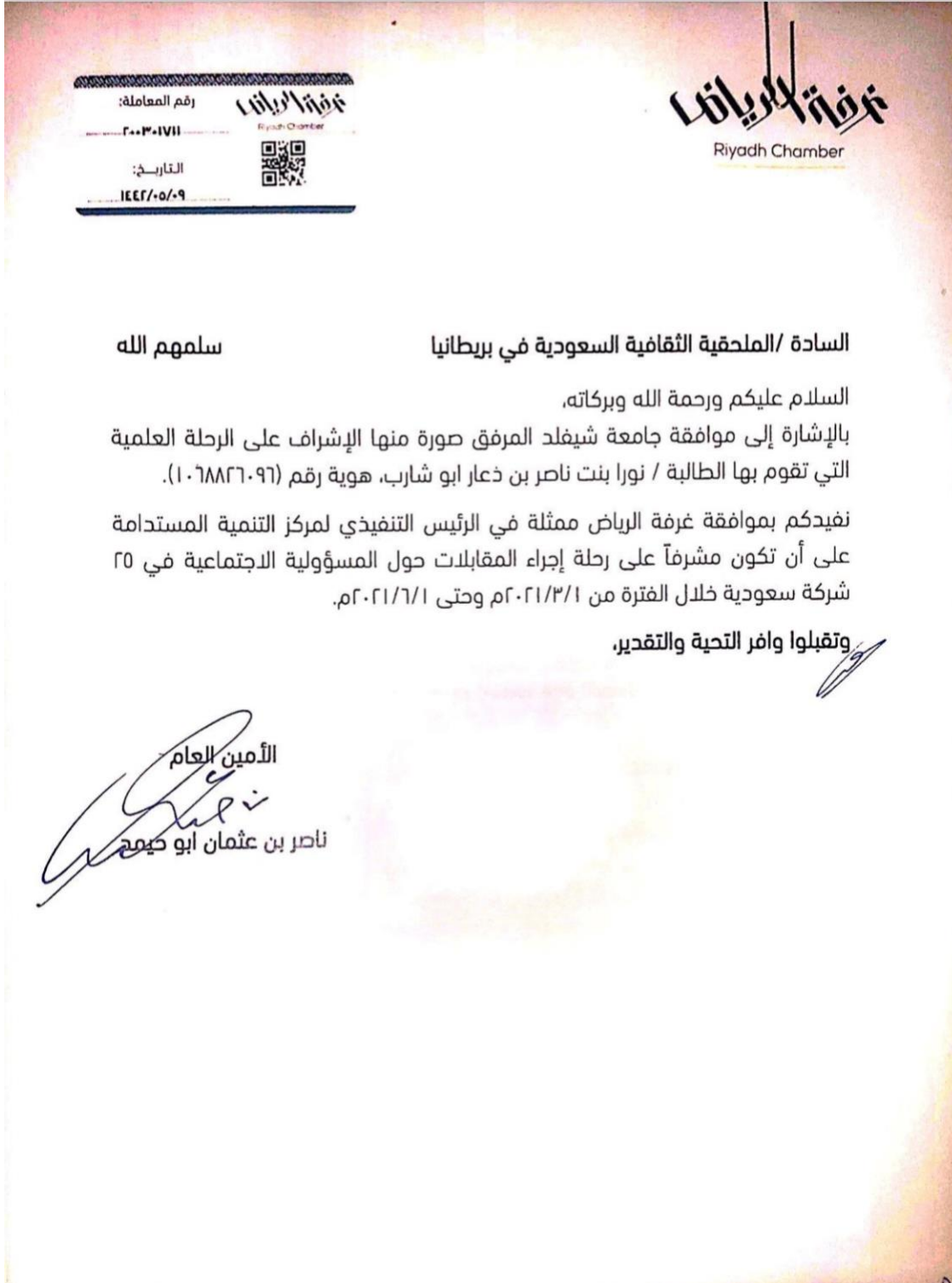
School of Law
University of Sheffield
Bartolomé House
Winter Street
Sheffield S3 7ND
Tel [0114 2226873](tel:01142226873)

Please note that I am not usually in the University on Thursdays.

If you are a student and need an urgent response, please get in touch with the School of Law's Student Experience Office. Email law-seo@sheffield.ac.uk or call +44 (0)114 222 6800 on week days between 9.00am and 4.30pm. You can also access the University's Student Services and Information Desk via <https://www.sheffield.ac.uk/ssid>.

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Appendix 3. Ethical approval from the supervisory authority in the Kingdom of Saudi Arabia



Appendix 4. Information sheet



Participants' Information Sheet

In law and practice: enhancing CSR for listed companies in Saudi Arabia

You are being invited to take part in a research study. Before you decide it is important for you to understand, why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this.

The Purpose of Research Project:

Given the different social, cultural and religious context of the KSA, the aim of study is to establish realistic guidelines for how CSR can be legally improved in the KSA in light of similarities with English law. In addition to evaluating the role of internal CSR rules in promoting Saudi corporations' sustainability and profitability.

Why am I being invited to take part?

You have been invited to take part in this study because you are currently working in a CSR role, are able to provide insight into the improvement of CSR.

Do I have to take part?

The decision to participate in this study is solely up to you; you are under no obligation to take part. If you agree to participate before the interview, I will describe the study and go through this information sheet with you to fully understand what the research consists of. I will then ask you to sign a consent form which will prove that you have agreed to take part in the study. Without offering a reason, you are free to withdraw from this research at any time.



Participants' Information Sheet

What will happen if I take part?

Due to the Corona pandemic and restrictions on gatherings in the UK and Saudi Arabia, you will be asked to conduct online interview (via Skype or Zoom) with Nora Abo Shareb if you wish to participate. At a time and place to accommodate you, I will be conducting the interview. The interview should take about one hour and will be semi-structured, meaning I am going to have a collection of questions that serve as initial conversational starters. With your consent, I will record the interview so that later it can be transcribed. You will not be identified and the interview will be confidential.

I will record the interview for the purpose of transcript via audio.

What are the possible disadvantages or risks of taking part?

If you decide that you want to take part in the research, the interview will be scheduled at a time and place of your convenience, sometime during March - June 2021. Sensitive topics are extremely unlikely to be discussed in the course of the interview. However, you do not have to answer if you feel dissatisfied with any of the questions or discussion topics, and the researcher will not inquire for any further detail on that specific topics. If you decide that you want the interview to end at any moment, you have the right to do so.

In KSA, I will conduct interviews with managers of CSR departments in 3 private sectors (SABIC, Ma'aden and Savola Company) and 3 government sectors (Competitiveness Centre in the Ministry of Trade, Investment Environment Development Agency in the Ministry of Investment and Head of CSR in the Ministry of Labor) and two non-profit sectors (National Center for CSR and the Saudi Network for CSR) and the same is the case in England, as I will conduct online interviews with 3- 5 company directors in CSR departments, therefore I assume that the managers have great powers to speak freely about CSR impediments, and they do not need special approval from the legal departments because discussions will not address disclosure aspects or any confidential information.



Participants' Information Sheet

What are the possible benefits of taking part?

Your participation will help us fill a gap in knowledge about CSR in Saudi Arabia legally, although I cannot guarantee that the study will directly help you.

Will my taking part in this project be kept confidential?

If you are worried about any aspect of the study, please contact the researcher who will do her best to address your questions: nntaboshareb1@sheffield.ac.uk. You can also contact: Dr Andreas Rühmkorf, Senior Lecturer in Commercial Law, University of Sheffield, +44 114 222 6701 , or, Dr Navajyoti Samanta, Lecturer in Commercial Law, +44 114 222 6838.

All the information collected about you in the research will be kept strictly confidential .At all times, procedures for handling, processing, storage and destruction of data will be in accordance with theDataProtectionAct1998andwill follow the British Sociological Association' sand the Social Policy Association's statement of Ethics. It is important that you are aware of the following:

Individualparticipantresearchdatataken duringinterviewswillbemadeanonymouslyby changing your name and any other details that may compromise your confidentiality or anonymity. Furthermore, you data will be allocated a code. This will only be known to me. All identifying markers which could infer identity will be removed or changed and if it is necessary information will not be published in order to protect confidentiality and anonymity. In all cases, I will check with interview participants if they are happy to allow the information they have disclosed to be used or if they wish to omit certain parts.

A list identifying participants will be kept on a password protected computer accessed only by myself. All recorded data will be stored in a locked cabinet, within a locked office, accessed only by myself. Electronicdatawillbestoredonapasswordprotectedcomputerknownonlyby myself. The data collected will be used to write a paper for



Participants' Information Sheet

publication and to support a UK research council bid to undertake a wider study. The only people able to access the data collected in the research will be myself and my supervisors.

In accordance with Saudi Arabian custom if an interviewee requires a chaperone to be present during the interview this will be arranged by myself, and in agreement with my supervisor. The chaperone will be required to observe and will also agree to complete confidentiality and anonymity at all times. Please note the attendance of a chaperone is optional and entirely at the discretion of the interviewee.

The names of companies, government sectors, or non-profit sectors will not be explicitly identified, but will be symbolized by symbols in order to preserve confidentiality and privacy and to give participants the opportunity to speak freely, and the data will be destroyed after 3 years from the date of submitting the thesis on 01/10/2023.

The participant is the one who chooses the chaperone, and if he - she attends the interview, he - she will be presented with an information sheet to sign, including a commitment to maintain confidentiality.

There is a file that contains the names of the participants, their phone numbers and electronic emails, and it is considered as personal data, so I put it in a password-protected file and no one can access it except me and the supervisors, and I will destroy the file after 3 years from the date of submitting the thesis on October 1, 2023.

Who is organising and funding the research?

Nora Abo Shareb from the University of Sheffield, UK, is conducting the study. Please feel free to email me: nntaboshareb1@sheffield.ac.uk.

Who is the Data Controller?

The University of Sheffield will act as the Data Controller for this study. This means that The University of Sheffield is responsible for looking after your information and using it properly.



Participants' Information Sheet

Who has ethically reviewed the project?

This project has been ethically approved via the University of Sheffield's Ethics Review Procedure, as administered by 'Luke Pavoni', school of Law, University of Sheffield.

What if something goes wrong and I wish to complain about the research?

You can contact my supervisors for complaint, Dr Andreas Rühmkorf, Senior Lecturer in Commercial Law, University of Sheffield, +44 114 222 6701 , or, Dr Navajyoti Samanta, Lecturer in Commercial Law, +44 114 222 6838.

If you feel that your complaint has not been handled to your satisfaction that you can contact the Head of Department, Professor Graham Gee, +441142226869, who will then escalate the complaint through the appropriate channels. If the complaint relates to how the participants' personal data has been handled, information about how to raise a complaint can be found in the University's Privacy Notice: <https://www.sheffield.ac.uk/govern/data-protection/privacy/general>.

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Appendix 5. Consent form



Participant Consent Form

In law and practice: enhancing CSR for listed companies in Saudi Arabia

<i>Please tick the appropriate boxes</i>	Yes	No
Taking Part in the Project		
I have read and understood the project information sheet dated 01/02/2021 or the project has been fully explained to me. (If you will answer No to this question please do not proceed with this consent form until you are fully aware of what your participation in the project will mean.)	<input type="checkbox"/>	<input type="checkbox"/>
I have been given the opportunity to ask questions about the project.	<input type="checkbox"/>	<input type="checkbox"/>
I agree to take part in the project. I understand that taking part in the project will include being interviewed, being recorded (audio).	<input type="checkbox"/>	<input type="checkbox"/>
I understand that by choosing to participate as a volunteer in this research, this does not create a legally binding agreement nor is it intended to create an employment relationship with the University of Sheffield.	<input type="checkbox"/>	<input type="checkbox"/>
I understand that my taking part is voluntary and that I can withdraw from the study at any time/before (01/10/2022); I do not have to give any reasons for why I no longer want to take part and there will be no adverse consequences if I choose to withdraw.	<input type="checkbox"/>	<input type="checkbox"/>
How my information will be used during and after the project		
I understand my personal details such as name, phone number, address and email address etc. will not be revealed to people outside the project.	<input type="checkbox"/>	<input type="checkbox"/>
I understand and agree that my words may be quoted in publications, reports, web pages, and other research outputs. I understand that I will not be named in these outputs unless I specifically request this.	<input type="checkbox"/>	<input type="checkbox"/>
I understand and agree that other authorised researchers will have access to this data only if they agree to preserve the confidentiality of the information as requested in this form.	<input type="checkbox"/>	<input type="checkbox"/>
I understand and agree that other authorised researchers may use my data in publications, reports, web pages, and other research outputs, only if they agree to preserve the confidentiality of the information as requested in this form.	<input type="checkbox"/>	<input type="checkbox"/>
I give permission for the interviews that I provide to be deposited in University of Sheffield so it can be used for future research and learning	<input type="checkbox"/>	<input type="checkbox"/>
So that the information you provide can be used legally by the researchers		

The template of this consent form has been approved by the University of Sheffield Research Ethics Committee and is available to view here: <https://www.sheffield.ac.uk/rs/ethicsandintegrity/ethicspolicy/further-guidance/homepage>



Participant Consent Form

I agree to assign the copyright I hold in any materials generated as part of this project to The University of Sheffield.

<input type="checkbox"/>	<input type="checkbox"/>
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Name of participant

Signature

Date

Name of Researcher: Nora Abo Shareb

Signature

Date

Project contact details for further information:

Please feel free to email me: nntaboshareb1@sheffield.ac.uk. You can also contact my supervisors for complaint, Dr Andreas Rühmkorf, Senior Lecturer in Commercial Law, University of Sheffield, A.Ruhmkorf@sheffield.ac.uk , or, Dr Navajyoti Samanta, Lecturer in Commercial Law, N.Samanta@sheffield.ac.uk.

If you feel that your complaint has not been handled to your satisfaction that you can contact the Head of Department, Professor Graham Gee, G.Gee@sheffield.ac.uk.

The template of this consent form has been approved by the University of Sheffield Research Ethics Committee and is available to view here: <https://www.sheffield.ac.uk/rs/ethicsandintegrity/ethicspolicy/further-guidance/homepage>

Appendix 6. Interview guidelines

Interviews guideline
1- Corporate social responsibility is a very broad concept with no clear boundaries. What do managers know or understand about CSR?
2- How are CSR projects decided upon and by who? What are the current projects? Are the projects short/long term and why?
3- Do you think that company that you work for have sufficient laws that guard it in regards to stakeholders when making corporate decisions?
4- What the standards that have developed by the company that you work in to implement an effective corporate governance in regards to risk management, Occupational Health and Safety (OH&S), and environmental management?
5- Are corporate decision makers in company that you work in restricted by any legal framework in their application of CSR?

6- If there is a lack of attention paid to the shareholders of a company, do you think that this be considered as breach of the duties to the Board of the company that you work for?
7- Do you think that the requirements and regulations of CSR should be dealt with solely by the company without rigorous imposition? - Do you agree that over-regulating could damage the objective of 'Best interests of 'the corporation?
8- How do you think the company's external CSR communication on its own website and in annual reports are affecting the employee Does this communication correspond to what is communicated internally? - Is there a different -Is there something that is only communicated internally content on the external communication?
9- Do you think that CSR can be effectively advanced in company that you work in by managerial voluntarism? And how?
10- Do you think practicing CSR will increase company's profit? Is that the biggest goal of the company when practicing CSR?

11- Does the company you work for incorporate a code of conduct into business contracts or have suppliers sign a code of conduct?

12- Does the company you work for disclose the company's due diligence procedures, nonfinancial performance indicators for the social responsibility matters?